

TOWN BOARD
OCTOBER 28, 1992

A regular meeting of the Town Board of the Town of Bethlehem was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, NY. The meeting was called to order by the Supervisor at 7:30 p.m.

PRESENT: Kenneth J. Ringler, Supervisor
Frederick C. Webster, Councilman
M. Sheila Galvin, Councilwoman
Charles Gunner, Councilman
Sheila Fuller, Councilwoman
Bernard Kaplowitz, Esq., Town Attorney
Kathleen A. Newkirk, Town Clerk

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SUPERVISOR RINGLER: Good evening, I would like to welcome everyone at a regular meeting of the Bethlehem Town Board. In particular it looks like we have some students here from the Participation in Government class, I welcome you, for class work. This is a regular meeting, as I said, there is not a public hearing this evening, however, with usual practice, at the end of any item on our agenda, if anyone has question regarding it -- as times permits -- if you raise your hand, the Board will try to answer your question. And, at the end of the meeting, anyone who would like to bring anything to the attention of the Board may do so.

The first item on our agenda is a recommendation from Bethlehem Republican Committee for appointment of Myrtle Bever of 67 Louise Street to replace Harry Palmer as Election Inspector for District 20.

Appoint
Republican
Election
Inspector

The motion was made by Ms. Galvin and seconded by Mr. Gunner to approve the appointment of Myrtle Bever, 67 Louise Street, Delmar, Ny to the position of Election Inspector for District 20 for Election Day, November 3, 1992. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

SUPERVISOR RINGLER: Next I would entertain a motion to remove from table a discussion of redistricting of election districts for discussion purposes.

Remove from
Table -
Discussion
re:
Redistricting
of Election
Districts

The motion was made by Mr. Webster and seconded by Mrs. Fuller to remove from table a discussion on redistricting of Election Districts for discussion purposes. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

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SUPERVISOR RINGLER: Okay, this was tabled at our last meeting and since that time, I had asked counsel to the Board to look into the legal issues regarding the redistricting and he has reported to us. And, for the record, I will read his report into the record.

MEMORANDUM

TO: Supervisor and Town Board Members
FROM: Bernard Kaplowitz, Town Attorney
DATE: October 26, 1992
RE: Election Districts

As you requested I have reviewed the requirements of Section 104 of the New York State Election Law in regard to election districts.

In regard to the claim that the districts are not compact, I suggest that the definition of "compact" is subject to interpretation. In

any event, I do not believe the law intended to require districts equal in size. The underlying purpose of the legislation is to ensure that there is no dilution of anyone's vote so that the one voter/one vote rule is not violated.

The statute was not intended to apply to the votes of members of political committees. The argument that a member of the committee's vote is some how diluted is specious. When the committee member votes to nominate a candidate, that vote is really not legally enforceable and is nothing more than an expression of intention of who the committeeman intends to support.

The nominating process is that required by law which calls for the gathering of signatures on nominating petitions. If you follow the opposite opinion each election district would have to have the same number of Republicans and Democrats and so forth.

In addition, there is no election in the Town of Bethlehem where the candidates don't run at large. If a town board members represented a specified geographic area within the Town, perhaps we would have to do things differently. But since all our candidates run in a district comprised of the town as a whole, the fact that the districts are not identical or nearly so in size is meaningless.

It should also be noted that once the districts have been established, anyone wishing to contest the size and shape thereof would have had to do so by bringing an Article 78 proceeding within four months of the establishment of the districts. This has not been done.

Whether or not the board wishes to make the districts more equal in size is up to the five of you, but I suggest there is no legal, moral or ethical reason compelling you to do so now, next year or some time in the future.

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Any questions regarding that?

COUNCILWOMAN GALVIN: I have many. First of all, this evening, I have provided to the Board a memo which I have prepared on the issue of redistricting which basically presents my position. Since the Board, obviously has not had time to review it, what I would like to do is read that into the record also. This is a memo from me to the Board on the subject of Redistricting of Election Districts.

By Memo dated June 22, 1992, Kathy Newkirk, Town Clerk, advised this Board of the requirement "for the adoption of new election districts of the Town as a result of the Albany County Legislative District changes." At that time, we were told that legal descriptions "are being prepared for Wednesday but as of this time, they have not been completed." Maps were made available and numbers of estimated voters for each district were provided to the Town Board. Copy of memo of June 22, 1992 annexed thereto and marked Exhibit "A". Copy of Election Districts/Polling Places including Estimated Voters annexed hereto and marked Exhibit "B". As a member of the Board, I was led to believe that we were facing a July 1 deadline for the filing of the new Districts with the Albany County Board of Elections. After review of the material provided, I requested an opportunity to discuss the matter further, which took place at a special meeting of the Town Board held on June 30, 1992, where I presented a detailed analysis of the Districts as presented.

Said meeting resulted in acceptance of proposed districts with specific limited modifications, and as a result of the June 30 meeting discussion, a motion was made at the July 7, 1992 regular meeting of the Town Board, relating to the review of existing Elections Districts and indicating that the changes should be prepared for implementation by January 1993. This was done on full resolution of the Board, and was confirmed by memo dated July 13, 1992 from Supervisor Ringler to Michael J. Cirillo. Memo annexed hereto and marked Exhibit "C".

No objection to or indication of any problems with meeting this deadline at any time was indicated to me as a Town Board Member, and more specifically to me as the Town Board Member initiating the revision of the redistricting, until receipt of the tentative Town Board agenda for regular Town Board meeting scheduled for October 14, 1992 at which time a request from Supervisor Ringler to consider delaying redistricting of election districts was included in the Town Board packet. Copy of annexed hereto and marked Exhibit "D". At the October 14, 1992 meeting, it was indicated that the process for redistricting had not even been commenced and that Town employees now indicated an inability to complete the project due to the press of other business. Indications were given that no supervisory check to determine the progress of this project ever had been made and that no complaints had been voiced that interim work had not been commenced.

At the October 14, 1992 meeting, issues were raised relative to the legality of the districts as adopted and as currently existing. At the time of the June 30, 1992 special Board meeting, I had provided my analysis of the Election Law with respect to requirements for districting. I will reiterate here a few of the issues raised and the basis for my opinion. Section 4-100 of the Election Law deals with election districts creation and alteration. Section 4-100 states in pertinent part at Sub. 3a. "Each election district shall be in compact form..." (Emphasis added.) More specificity is provided in Paragraph b of this subdivision, "Election district boundaries, other than those boundaries which are co-terminus with the boundaries of those political subdivisions mentioned in this paragraph, must be streets, rivers, railroad lines or other permanent characteristics of the landscape which are clearly visible to any person without the need to use any technical or mechanical device." An election district shall contain not more than 950 registrants, or, with the approval of the County Board of Elections, not more than 1,150 registrants, but any election district may be divided for the convenience of the voters." (Emphasis added) Sub. 5 of Section 4-100 specifically deals with the date of required changes of election district stating in pertinent part "Any creation, consolidation, division or alteration of election districts in any year shall be made on or before January 15, and shall take effect immediately. (Emphasis added.) See Exhibit "E".

First dealing with the issue of the time frame in which changes were required to be made by the Town of Bethlehem with respect to the election districts in question. The representations made to the Town Board clearly indicated that the Town Board was required to complete the redistricting by July 1, 1992. Based upon Section 4-100, subdivision 5 of the Election Law, it is my opinion that this is an incorrect statement. January 15 is the operative date set forth in the Election Law, and in my opinion, despite the problems which were created by the redistricting as done by Albany County, the Town of Bethlehem, essentially only was required to correct the issues raised by individual election districts which encompassed two or more county legislative districts, and was not required to correct any such problems until an election would be held on said offices. Additionally, this did not affect all of the districts in the Town, and several of the districts which were not directed affected by legislative redistricting also were the subject of the redistricting as presented to the Town Board. The July 1, 1992 date appears to have been a convenient date established by person or persons unknown. This date also significantly limited the time in which the Town Board was allotted to review the redistricting, and to act on redistricting or to make changes to the plan as proposed. It should be noted that the changed date from July 1 to January 15 was effective December 1, 1982. The previously designated date of July 1 for the date on which redistricting is required to be completed was amended by Chapter 693, Section 1 of the Laws of 1982 which changed the July 1 date to January 15. This was not a very new change in the law.

With respect to the districts themselves, the Election Law is very clear that the districts are to be compact and that they are to follow easily recognizable lines. I will not reiterate at this time the specifics with respect to the lines in question; however, our rabbit-eared district and thin elongated districts are only two examples of the problems which I previously detailed at the June 30,

1992 special Board meeting. My documentation for said meetings still is intact and is available for review by any of you who wish to inspect it. The break down of the Election Districts/Polling Place table indicating districts and number of voters speaks for itself. Numbers ranging from as low as 185 up to 900 reflect clear inequities in number of voters.

Questions have been raised specifically with regard to my concerns about the redistricting. It has been asked repeatedly why be concerned about it since "no one is elected from an election district alone". To the contrary, election districts provide the basis for the selection process for most persons whose names appear on the election ballot. There are people who are elected directly from the election district, those being party committee people. The position of the party committeemen carries with it the right to vote on the selection of candidates to go before the voters as the endorsed candidate of a given political party. It has been represented that weighted voting always is used in this process. I have been a member of the Republican Committee for in excess of ten years, and can categorically state that there have been many instances when I was in attendance at Town of Bethlehem Republican Committee meetings when weighted voting was not used for the designation of candidates. Additionally, the use of secret ballots in committee meetings at which candidates are selected and designated completely negates the validity of the claim of use of weighted voting.

It also has been claimed that no one is hurt by leaving the districts intact for another year or more. It is my opinion that this is untrue. The Town Board took action with respect to the election districts and at the July 7, 1992 meeting by motion resolved and required that our election districts be reviewed and that appropriate changes be made to conform with the terms of the Election Law. Town Attorney Kaplowitz has stated at our last meeting on October 14, 1992 that no one has sued the Town claiming inequities in districts and, therefore, the time has passed for anyone to complain. I take issue specifically with Attorney Kaplowitz's statement. Someone having a claim of inequities or disenfranchisement resulting from the action for redistricting which took place at the June 30 special Board meeting may have relied to their detriment on the representations made at the July 7, 1992 Board meeting by resolution of this Board that such inequities would be reviewed and corrected and that any substantive disenfranchisement would be eliminated. The Town Board actively moved to correct any existing legal problems resulting from the June 30, 1992 redistricting by its affirmative act taken on July 7, 1992 with the above-mentioned motion. Any attempted alteration or delay of implementation of the July 7, 1992 motion, in my opinion, is a direct breach of the trust which the voters of this Town have placed in us as members of the Town Board.

Effective disenfranchisement through inequities in the number of registered voters in each election district has the potential of violating the civil rights of those persons registered to vote in such unbalanced districts. Clearly the Town Board is on notice of the existing problem, the Town Board initially took action to assure compliance with the Election Law and protection of the rights of the individual voters within the Town. The current proposal to delay implementation of the July 7, 1992 motion would be to condone the continued violation of the specific terms and provisions of the Election law and potentially to effectively disenfranchise voters within specific districts.

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SUPERVISOR RINGLER: Thank you. I know that the Town Attorney is going to want to respond because obviously, from what I hear in yours and what I read in his memo, there is a difference of opinion but the one thing that I would like to comment on initially, at least from my perspective, is in the paragraph where you say that October 14th it was indicated that the process of redistricting had not been commenced and Town employees have now indicated an inability to complete the project. I didn't say that and my memo didn't say that, what I... as I said in my memo, I believe that if we spent the time that this could be done by our staff, prior to November, and definitely by January. The point I was trying to make is, that the

Board... that the staff has many other projects, I am not so sure the Board was fully aware -- I wasn't fully aware about the time that went into this initially and that is why it was put back on the agenda for reconsideration. Not an inability, it could have been done and if the Board is so inclined, it will be done. Now, as far as some of the legal issues, Bernie I would ask you to comment on that.

ATTORNEY KAPLOWITZ: Well, I will start off by pleading guilty on the dates of October 14th. When I made that statement, I thought the 4 month period had already run. It is still true, that someone who wanted to contest the districts has some time to do so. However, I disagree with just about everything else in this memo. I think Ms. Galvin equates the word compact with equal or equal in size. I don't believe there is any requirement in the law that the districts be equal in size. I mean, the last page of this memo says effective disenfranchisement through inequities in the number of registered voters in each election district has the potential to violating -- I don't believe that is true because I don't think there is any requirement that the districts be the same size.

You have to start off in understanding or interpreting the statute with the understanding that it is designed to prevent the dilution of anyone's vote. So that everyone's vote, one voter/one vote doesn't lose any effectiveness. Gerrymandering districts and all of that is still a very common problem in New York, probably one somebody should correct but hasn't been done yet -- at the Federal level or the State level or anywhere else that I know of. That is neither here nor there. Because we don't have anyone who runs in anything but the whole Town, it really doesn't make any difference. If we had Town Board members who ran at large parts of the Town and you had different size districts, you would have an unfair result and you would have a dilution. But, since everybody who runs at the Town level, runs geographically in the Town of Bethlehem in the whole Town, it really doesn't make any difference.

The political considerations that are mentioned, number one, I don't believe the law applied to political parties in any way at all. First of all, the democratic party doesn't use the nominating system that the republican party uses. The democrats use the caucus system. The republican party uses the nominating system. Those votes, taken at a republican committee meeting to nominate a candidate, for instance, is nothing more than an unenforceable expression of intent, I suppose on the behalf of a committeeman -- because what legally nominates the candidate is the nominating petitions that the committeeman go around and obtain signatures on. That is what -- you know, nominates the candidate officially. So, I have no strong feelings about any of this which I said before when it first came up. My only point is, I don't think that there is any great concern to do this next year if the Engineering Department is saying to us that they need some more time, so be it.

The only other thing that I can think of is there are some areas where we didn't use streets, railroads, rivers and other geographical boundaries, I can only say that I assume that Mike with the little time that he had, did the best that he could and I know it is not much different than anywhere else.

SUPERVISOR RINGLER: Any thing else?

COUNCILWOMAN GALVIN: If I could respond to the issue...

SUPERVISOR RINGLER: Certainly.

COUNCILWOMAN GALVIN: ...on election of persons to political offices. There are cases not in the State of New York but in other states and there are also federal cases, I did not give a detailed list of citations in my memo to the Board, I would be more than happy to provide it in which the courts have repeatedly held that in fact when committee persons are subject to the election process and they are elected from specific districts, that those districts are election units and that those specific districts must be in compliance with the one man/one vote rule. I will be more than happy to provide the cases.

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ATTORNEY KAPLOWITZ: I didn't see this memo, like everyone else, until tonight and I am not familiar with those cases.

COUNCILWOMAN GALVIN: I understand.

ATTORNEY KAPLOWITZ: But, I would bet anything that if you compared, you would find that the system in New York is different from the system in those other states and that is the reason for this.

COUNCILWOMAN GALVIN: Well, there are also some down state on that issue, which I will be happy to provide.

SUPERVISOR RINGLER: Any other Board members have any questions?

COUNCILMAN WEBSTER: I am just concerned... Sheila, on the one man/one vote for a committee person, where do you feel a committee person is being hurt in his district or her district? There are only 'x' number of votes in that district for a committee person to vie for.

COUNCILWOMAN GALVIN: The issue isn't for the number of votes for the committee person to vie for, it is the committee person, is the person who is in committee who is involved with the designation process. Now, while we do carry petitions, the names that go on the petition are a result of the process that takes place within committee. Those names are voted on by the committee people, that is where the inequity occurs.

SUPERVISOR RINGLER: And, you disagree with that.

ATTORNEY KAPLOWITZ: Well, we operate under the New York State Republican Committee rules, actually under the Albany County rules and they provide for the weighted voting with all republican parties throughout the State of New York. There is nothing more I can say on that.

COUNCILWOMAN GALVIN: I believe that my comments on that are set forth in the memo.

COUNCILMAN WEBSTER: Your concern there is for the weighted vote, not for the vote for the committee person but within his own district.

COUNCILWOMAN GALVIN: That is right.

COUNCILMAN WEBSTER: I am sorry, I misunderstood you.

COUNCILWOMAN GALVIN: Because they are representing the people within the district.

COUNCILMAN WEBSTER: I follow you now. Okay.

SUPERVISOR RINGLER: Anybody else any questions?

COUNCILMAN GUNNER: Sheila, I thought I read somewhere in one of your attachments, unfortunately I can't find it now, where they gave permission to certain districts if they didn't end in a 7 or a 0 year to go to July.

COUNCILWOMAN GALVIN: I can find that for you in a second.

COUNCILMAN GUNNER: I remember reading it.

COUNCILWOMAN GALVIN: It is in 4-100, it is in the amendment to it. What it says, is -- no such creation, consolidation, division or alteration shall be made between January 20th of the year ending in a 7 and December 1st in a year ending in a 0 unless required by the creation or alteration of a political subdivision. That is what you can't do.

ATTORNEY KAPLOWITZ: Charlie, I think that -- if I am not mistaken, that is in there to make sure you don't change districts before or during the census readings. So that every 10 years you have to re-change because of the 0.

COUNCILMAN GUNNER: It says you can't.

COUNCILWOMAN GALVIN: You can't.

COUNCILMAN GUNNER: But, is there anything in there that says that you can do the others? Does that just exclude those 2 years?

COUNCILWOMAN GALVIN: My reading of it is that those years are excluding and all other times you have to comply with the January 15th.

COUNCILMAN GUNNER: You agree with that?

ATTORNEY KAPLOWITZ: Probably, yes.

SUPERVISOR RINGLER: Any other questions? Sheila.

COUNCILWOMAN FULLER: Yes, I have questions on the motions. Sheila, I don't have a copy of the minutes of the July 7th. Do you have that? The June 30th meeting, the only motion was... the motion was offered by Mrs. Fuller and seconded by Ms. Galvin, that the proposed redistricting be approved with the change indicated in District 26. Now, do you have a copy of the July 7th minutes that you cited what our motion was?

COUNCILWOMAN GALVIN: I was looking for that myself but what I was referring to, Sheila, was Ken's memo to Mike Cirillo of July 13th where he said at a regular meeting of the Bethlehem Town Board on July 7th, a motion was made and passed stating that we should again look at the election districts. That is where that came from. I couldn't find that in the minutes. But, I presumed I had missed something.

COUNCILWOMAN FULLER: Do we have a copy of July 7th minutes?

SUPERVISOR RINGLER: In the other room right?

TOWN CLERK NEWKIRK: I have to unlock the safe.

COUNCILWOMAN FULLER: The motion was made and passed stating that we should again look at our election districts and make changes if appropriate. The June 30th meeting was the meeting that we had in the afternoon, when you brought in your maps...

COUNCILWOMAN GALVIN: The rabbit eared districts.

COUNCILWOMAN FULLER: But, the only motion offered that day, was the one you and I both offered on proposed redistricting be approved with change indicated in District 26.

COUNCILWOMAN GALVIN: Right.

COUNCILWOMAN FULLER: Where was it in a motion that we would again be looking at it? That is what I am...

COUNCILWOMAN GALVIN: It was in the July 7th minutes, I couldn't find it. That is what I was looking for and I couldn't...

SUPERVISOR RINGLER: Sure we did it?

COUNCILWOMAN GALVIN: I know we did it, I couldn't find it.

COUNCILWOMAN FULLER: Well, that is what I am wondering, that is why I wondered if you had a copy. I couldn't find them either.

COUNCILWOMAN GALVIN: I couldn't find the July 7th minutes.

ATTORNEY KAPLOWITZ: Here comes the Town Clerk.

TOWN CLERK NEWKIRK: I hate to say it but the meeting was on July 8th.

SUPERVISOR RINGLER: I am sorry.

COUNCILWOMAN FULLER: We don't have any minutes on July 7th.

COUNCILWOMAN GALVIN: That is why I couldn't find them.

SUPERVISOR RINGLER: Let me read the minutes.

TOWN CLERK NEWKIRK: I wondered about that.

SUPERVISOR RINGLER: Councilwoman Galvin said the second item she would like to raise is that at a special meeting on June 30th we discussed the concept of redistricting and she would like to, for the record, make a motion that we begin that process and with a target goal of mid-November have a report from Mike Cirillo or whoever is appropriate concerning proposed redistricting because at that point in time they should have the registration figures and be in a position to start looking at it so that it will not be under the gun on any type of redistricting for January 15th. Supervisor Ringler asked if there was a second to the motion. Mr. Gunner seconded the motion and it was passed.

COUNCILWOMAN GALVIN: That is why I couldn't find the 7th. Thank you.

TOWN CLERK NEWKIRK: July 8th it is.

SUPERVISOR RINGLER: Other questions? Comments?

COUNCILMAN GUNNER: Go ahead, Sheila.

COUNCILWOMAN FULLER: You go right ahead, you started first.

COUNCILMAN GUNNER: I was just curious, just to make sure I understand myself, Sheila. You're concerned that the nominating process is affected by the districts. Specifically so, so I can better understand.

COUNCILWOMAN GALVIN: Specifically, at committee the various candidates present themselves and are considered by the committeemen. While Bernie is correct that petitions are carried for the actual designation, the name that goes on the petition to be carried comes out of that voted committee. Now, other people can carry petitions but these are the ones that are distributed to the committeemen to carry.

SUPERVISOR RINGLER: But, anyone who would like to...

ATTORNEY KAPLOWITZ: Let me add something to that, Charlie. Anyone else, he or her, in the Town of Bethlehem, who wishes to can circulate the same petition. That is what a primary is. The fact that it says republican at the top is because someone is choosing to try to get the republican nomination.

COUNCILMAN GUNNER: Independent could also carry.

ATTORNEY KAPLOWITZ: Not a republican, but it could...

COUNCILMAN GUNNER: No.

ATTORNEY KAPLOWITZ: He could theoretically, but that is very involved. No, it would be a republican normally or someone seeking the republican nomination. It is conceivable -- very, very rarely done -- I have only seen it once -- where somebody other than a republican, or other than a democrat would seek the republican or the democratic nomination or independent, or liberal or conservative or whatever. My only point is -- I don't want to belabor it, that that vote, the name that goes on the petition is not binding on anyone, it is not legally enforceable. Often the committeemen will say well, I am not going to support the one who got the majority. I will carry somebody else's petition. That is what primaries are like. We have that all the time, unfortunately.

SUPERVISOR RINGLER: Sheila.

COUNCILWOMAN FULLER: My concern with the redistricting issue after we had met and then when we discussed it last week was, the concern that you had addressed, Sheila, that a lot of this was very illegal and unethical, immoral, whatever. There were a lot of problems that

you generated concern on my behalf. I was... wanted a legal opinion from it, you offered it. Bernie Kaplowitz has now offered one, disagreeing with it. I am a little confused as to where we are with this, if it is a problem with you and Bernie arguing over the election districts or if it's a Town Board issue at this point -- I guess is my concern.

COUNCILWOMAN GALVIN: Well, I am not arguing over election districts. My concern is that the Town... that we rushed into a decision without having time to look at the districts. When I took the time... when I finally got the material to look at the districts, I ended up with things shaped like rabbits, and string. To my way of thinking, those raise questions about why they were shaped that way for a starter. Then I started looking at things such as numbers and I see 185 to 900 those are major differences. The Election Law, as Bernie said, is subject to interpretation as is any law. Compact, is something that can be interpreted, there are federal cases on compact. There is plenty of them dealing with gerrymandering and specific districts. There are issues concerning numbers and equal numbers of voters. To my way of thinking, we rushed, we adopted something that I think is not correct under the terms of the Election Law. It says compact, it says following natural boundaries, following streets, railroads, etc. We don't meet compact for the most part and in many instances, we don't meet those boundary requirements. We rushed, we adopted something because we were given it at the last minute, which seems to be one of the favorite things with this Board -- we see things 3 minutes before we have to act it. And, I would like to get things corrected. When we have the opportunity, we looked at it, we get a chance to sit down and hopefully have our staff provide us with something that we can look at -- maybe there are no changes we can make. But, let's see if there are ways that could be corrected. We had the time, January 15th was quite a ways away from the first of July when we started down this road and I want to see whether or not there are ways to correct what I perceive as violations of the Election Law, the requirements of the Election Law.

COUNCILWOMAN FULLER: Where there any of these problems before this redistricting? Where there perfect election districts or...? I am not familiar with the election process or the...

COUNCILWOMAN GALVIN: We never have... we can never have perfect anything but I think that our districts were closer in shape, for the most part, and closer in numbers. Now, I have not sat down and drawn out the shape of each and every district. I had done that before. I did that for June 30th and if you recall when I did the overhead projections, there were several that developed shapes like this and then the rabbit ears -- I am particularly fond of the rabbit ears...

SUPERVISOR RINGLER: I think that was there before, though.

COUNCILWOMAN GALVIN: Not in that shape. Not in that shape, it grew ears.

SUPERVISOR RINGLER: Maybe it was a modified rabbit.

COUNCILWOMAN GALVIN: It grew ears. It may have always had a tail but it grew ears this time.

SUPERVISOR RINGLER: I think the point I am trying to make, is when Mike did this, and tried to do it with minimum change and to leave people where they were and many of those lines are the ones that are intact, that have been intact for years and years and years. So, I mean, there was no... I know in my heart that Mike wasn't out there trying to play games with lines.

COUNCILWOMAN GALVIN: I am in no way indicating that Mike was trying to play games with lines. What I am indicating and what I showed when I did that demonstration was that several of the lines that were changed, were changed from streets, natural boundaries and things like that. It may have been to pick up districts where you had people on one side of the street or other but there are other ways to correct that rather than going in violation of the Election Law.

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SUPERVISOR RINGLER: Let me ask a question.

COUNCILWOMAN GALVIN: What I would like to see is how it would be proposed to correct this.

SUPERVISOR RINGLER: Let me just ask a question, as I think this all through. On the Town boundary lines... the Town boundary lines do not follow streets, natural terrain and so forth, election districts have to end at those points.

COUNCILWOMAN GALVIN: That is right.

SUPERVISOR RINGLER: Is that in violation of the Election Law?

COUNCILWOMAN GALVIN: No, the Election Law very specifically says that you follow the boundary line of the political subdivision in which the area is located. It says...

ATTORNEY KAPLOWITZ: Right, there is no question about that.

SUPERVISOR RINGLER: Okay.

COUNCILWOMAN GALVIN: I will refrain from reading it.

ATTORNEY KAPLOWITZ: I think... if I can just say something to bring things to a head a little bit, there was no question we were at one time going to go ahead and take another look at them... or you were, not me, and the only question was, the Public Works Department asked for some additional time because they had difficulty doing it by January. That is really what we were trying to decide, to sum it up.

SUPERVISOR RINGLER: Any thoughts, the Board has heard two different opinions on this issue. Any comments from any other Board members on how we should go?

COUNCILMAN GUNNER: I have one more question.

SUPERVISOR RINGLER: Sure, Charlie.

COUNCILMAN GUNNER: I guess I am trying to nail down what specifically we loose, because that seems to be when there is a split decision on the legal end of it... I just trying to -- what do we as a Town gain or what shouldn't we loose?

COUNCILWOMAN GALVIN: Well, what I think we loose...

COUNCILMAN GUNNER: I think you tried to tell me before, maybe I didn't get it as quick as...

COUNCILWOMAN GALVIN: Okay, what I think we loose in the first instance is credibility. What I think we loose in the second instance...

COUNCILMAN GUNNER: Let me, may I... I am sorry to interrupt you twice, the credibility is that people that may have anticipated that they have an opportunity on when we first said we were going to do it.

COUNCILWOMAN GALVIN: Yes. I think in the same vein, we also loose any argument we may have had for rushing ahead. There was a rush to do this by July 1st for whatever reason, the County Board may have been pushing, whatever the problem is...

ATTORNEY KAPLOWITZ: Sheila, excuse me, you don't mean that we could have waited until this January 15th to do it?

COUNCILWOMAN GALVIN: No, we had to do it something. We had to do something before the Election.

SUPERVISOR RINGLER: Which we did.

COUNCILWOMAN GALVIN: Whether or not it had to be done by July 1st, I question because the County Board then didn't follow-up and do what they were supposed to do after that.

ATTORNEY KAPLOWITZ: As you remember, everything constantly changes, the Federal level, the State level, the County level. They were negotiating all of those districts. John Faso's district was set and then fell apart. The Town County Legislative districts were all set and then fell apart. There was a lot of negotiating between a number of political parties and others trying to make them come out. There was time... I didn't think you were saying that. I just wanted to make sure.

COUNCILWOMAN GALVIN: No, I was never implying that we could wait until January 15th. We had to do something with certain districts to make them comply with the County Legislative districts. That I agree.

ATTORNEY KAPLOWITZ: You had the problem -- probably there were better examples, you had a primary in September. The districts had to be done and established and people notified -- those whose voting places had changed and everything prior to that time. That is.. County wide, State wide, that is not insurmountable but that is a huge project.

SUPERVISOR RINGLER: Charlie, you had more questions. You had one answered, I think.

COUNCILMAN GUNNER: Yes.

ATTORNEY KAPLOWITZ: I am sorry I interrupted you.

COUNCILMAN GUNNER: Well, we got to the point where we may have misrepresented or that... but then I interrupted you and you were going on to your second point.

COUNCILWOMAN GALVIN: No problem. The second point is that while people may not have chosen to sue us because it is not the most common thing to sue over a variation in an election district, it is an issue where there is a valid claim. If you have districts that range from 185 to 900, if you have districts that do not follow the boundaries as prescribed by the Election Law, you leave yourself open. We have an opportunity to look at it, see what we can do to correct it and get it done right. Now, there was plenty of time from the beginning of July to some time prior to January 15 to at least give us a presentation. Maybe the districts as they exist are the best possible districts, I personally disagree with that because I presented at the June 30th special Board meeting what I thought would more closely conform with the Election Law. Again, as I said, I am not a licensed surveyor and I did it based on the 1989 enrollment books which was the only set that I had a full set for the Town on. But, I think we have an obligation to the voters and an obligation to the people who have relied on us to at least look at the possibility of correcting it and do it within the time frame that we said we would do it in. Hadn't there been a problem raised early on, had we been told in July or in August there may be a problem with meeting the deadline either there were things that we could have done to act on individually as Board members or we could clearly have said okay, we have to look at a time frame, what is a viable time line on this. But, again, we are coming up to the point that there was a report due in November, when do we find out there is a problem, we find out the middle of October. We are again being brought up to a deadline and being given notice at the last minute.

SUPERVISOR RINGLER: Again, I disagree with that. They could have gotten it done without a problem.

COUNCILMAN GUNNER: Now, Ken, excuse me, they could have gotten it done without a problem?

SUPERVISOR RINGLER: No, when I brought it up at the meeting, as my memo said, I believe that the staff could have it done prior to November and definitely before January 1st, okay. And, when I brought it up at the meeting, the last meeting, okay...

COUNCILMAN GUNNER: Our last meeting?

SUPERVISOR RINGLER: Yes, okay, when that was brought up at that point in time, the staff had done other -- changed their priorities

it still could be done. That is why it was done at that point in time, there was no one there trying to put anything to the Board's head at the last minute whatsoever. There is still plenty of time to do it.

COUNCILMAN GUNNER: Right, that is not my point, my point was you said there was no problem in getting it done in the time.

SUPERVISOR RINGLER: If we did not do other things, you know...

COUNCILMAN GUNNER: You didn't say that when I questioned you, okay.

SUPERVISOR RINGLER: All right.

COUNCILMAN GUNNER: And, then that is what came up, and I remember questioning that at the last meeting. And, I guess that still remains... not that either side was lying, it is just that -- why did it happen that way?

COUNCILMAN WEBSTER: I think the memo just said to put it off to a less complex time of the year for the Engineering Department where they would be out of the building season, the highway season, pretty much.

COUNCILMAN GUNNER: I guess what I am saying is, that at one point, we're saying yes we are going to do it. There was no objection raised by anybody until October. I think that is a valid point that Sheila makes, you know. I do.

SUPERVISOR RINGLER: Okay and I hope I have answered it.

COUNCILMAN GUNNER: Well, yes, I have gotten an answer.

SUPERVISOR RINGLER: One of the things that I do want to point out, is that number one, when Michael makes these estimates based on census data and there is some guesstimates in there as far as numbers go on these districts. These districts based upon the registration did not have any district as small as 185. The smallest district now is 358.

COUNCILWOMAN GALVIN: I think that partially resulted from the changes that we made in two of the districts at the June 30th meeting.

SUPERVISOR RINGLER: Well, that could conceivably could be it too but I just want you to be aware, in your memo, in your letter you talk about the districts 185, that in reality is not what is in place today. The smallest district is 358.

COUNCILWOMAN GALVIN: Well, do you have new numbers because I haven't seen any new numbers. I haven't been provided with any.

SUPERVISOR RINGLER: Just got them from the Board of Elections. 358 and the largest district, as I can see, is a little over 900.

COUNCILWOMAN GALVIN: I would like a copy.

SUPERVISOR RINGLER: Sure.

MR. CIRILLO: That 354, by the way, just let me interject something here. That 354 is the 1st election district. Looking at your proposal to have 30 election districts within the Town, I just took a quick look at a section of it. Your new 3 is equivalent to what the existing 1st is now, the only thing you picked up was the easterly side of Blessing Road to the southerly side of Krumkill Road. You probably are going to add a dozen houses so in essence, what your election district 3 was going to consist of is about 360 registered voters. So, we are talking a low number and a high number.

COUNCILWOMAN GALVIN: Yes, Mike, I would like to address that. I was given the last piece of information that I needed on Sunday night, when I was given the information and that was only because Kathy took the time and effort to come in from her home on Sunday night to get the copies of the County Legislative Districts. I spent very little

time on that in terms of having time to devote to it. Now, in relation to the numbers, I had 1989 election district books.

MR. CIRILLO: You had a disclaimer in the June 30th that you were not certain because you were using the old books.

COUNCILWOMAN GALVIN: That is correct.

MR CIRILLO: But, I am saying in essence, there was not much you could do with the 1st district as it exists now and when it existed with 800 because of the legislative lines. They basically boxed it in. The same as the 10th, Krumkill Road being a legislative line, they formed the 10th because you had the Town line on 3 sides.

COUNCILWOMAN GALVIN: Mike, I agree in certain instances, there are problems because of legislative districts but those are 2 out of 26, 27.

MR. CIRILLO: And, as far as use changing more districts than was needed, I believe -- this has been a while -- but I believe there were directly 13 or 14 that were affected, where pieces were cut off form one district by the legislative line. When you take that portion and you apply it to an adjoining district, which is the natural way you would go, you would take a number count and you would find out if that district was becoming too high in number and that would bump into another district. So, in essence, it had a domino effect. So that even though maybe 14 were directly affected, we did wind up changing more than 14. But, substantially most of the districts were intact. The thing was to leave as many voters to vote at their polling places they were going to now.

COUNCILWOMAN GALVIN: Well, Mike out of 27, according to the sheet you provided on election districts and polling places, out of 27, only 3 were not changes.

MR. CIRILLO: That is correct, 24 were changes. 14 had a direct affect and like I said, when you apply where that was cut off to some of the adjoining districts, you had to write the descriptions, no matter how minor it was, you had to write a description and prepare another map. And, maybe 4 sides or 3 sides of that election district stood the same and there was a small portion that had to be added. So, it did necessitate a new description and a new map. And, many of them, what you are talking about as far as the offsets, 150 feet from the center line of pavement, that has been done for many years and the reason being, we are trying to have one area represented on both sides of the road by the same committee person.

COUNCILWOMAN GALVIN: Mike, I understand what you are trying to do but that doesn't change what the law says and the law says that wherever possible to follow natural boundary lines and streets which can easily be discerned by a voter. But, rather than debating the issue of specific districts -- which I would be more than happy to do at painful length because I still have all of my material -- I am sure everybody has heard that too much -- my only point is that the Election Law says that we are supposed to be following certain boundary lines whenever possible.

SUPERVISOR RINGLER: Anybody else have any thoughts where we should be going?

COUNCILMAN WEBSTER: What is our biggest district now?

COUNCILMAN GUNNER: 500 I think.

COUNCILMAN WEBSTER: I mean numbers.

SUPERVISOR RINGLER: 24, 931

COUNCILMAN WEBSTER: And, that will have to be changed at the point it reaches 1050, is that correct?

ATTORNEY KAPLOWITZ: 950.

COUNCILMAN WEBSTER: 950 but 1050 by special request.

ATTORNEY KAPLOWITZ: I think it is 1150 if the Board of Election approves it or something.

COUNCILMAN WEBSTER: And, we have many in that category?

SUPERVISOR RINGLER: What, there?

COUNCILMAN WEBSTER: In the 950 category?

MR. CIRILLO: We have 5 and 24. The 25th district had 1088.

COUNCILMAN WEBSTER: Are those growing districts by any chance, Mike?

MR. CIRILLO: 25th, 24th I believe it is.

ATTORNEY KAPLOWITZ: Yes, 25th is...

COUNCILMAN WEBSTER: So, we are going to be going to a situation in a period of time, maybe an election or two elections -- whatever it might be -- if doing over 4 or 5 districts anyway, right? Is that correct, counselor?

ATTORNEY KAPLOWITZ: I would think that is likely, depending upon where the growth is, sure. We had... in 15 years that I can tell you, we had... 15 years ago we had 18 districts. Today we have 27 and that is due to the growth. Each time one hit 950 or thereabouts, the Town Board split the district.

COUNCILMAN GUNNER: So, basically our question comes down to -- okay, we may have without intent or inadvertently mislead some people and they may have missed out on not voting in the election -- correct?

COUNCILWOMAN GALVIN: They may have missed out... they haven't, as yet, totally missed out on an opportunity to challenge us but I am not looking for any more law suits, we have enough without looking for more.

COUNCILMAN GUNNER: Well, okay, that is my point.

ATTORNEY KAPLOWITZ: Yeh, here, here.

COUNCILMAN GUNNER: And the second part of it, so that sort of lines up against the second part of it which is that I have the concern that I want to make sure that we do what is legal. So, now I am sitting here as a Board member, with an opinion from our attorney of the Board and from a peer who happens to be a lawyer and on the Board. And, that makes it a very difficult choice but we will have to make and -- let's see where we go from here before I speak again.

SUPERVISOR RINGLER: Okay. Sheila.

COUNCILWOMAN FULLER: I, like Charlie, and I have already cited that to Sheila, we have two different legal opinions and I am sure if I ask the other attorneys in the audience, they will give me a different opinion also.

ATTORNEY KAPLOWITZ: That is what they are trained to do.

COUNCILWOMAN FULLER: I have one question, Mike, have you been through this before, the redistricting -- you yourself, when is the last time these lines were redrawn?

MR. CIRILLO: Back in '85-86. In that area.

SUPERVISOR RINGLER: Is that because some of them had gotten too big?

ATTORNEY KAPLOWITZ: Well, that was just splitting a district, wasn't it?

MR. CIRILLO: That was splitting a district, we added 2 more districts.

ATTORNEY KAPLOWITZ: The whole problem with redistricting comes as a result of the census in 1990 and I think you have until, I think, the

second year thereafter. So, they were done 80, probably 82, the last time, based on the 1980 census and you are required to do that. It is a little peculiar with us because when the County legislature redistricts, the Town lines cannot... cannot take a district, a Town district, and have it in 2 different County legislative districts. The law prohibits that. So, it has a drastic effect on all the towns and cities within the County when that happens. Everybody has to go out and redistrict and it is a problem. As Mike said, I think there were 14 that had to be changed no matter what. Well, when you take off of one and add onto another, you affect some of the others, you end up with 20 something out of the 27. But, it has to be done as a result of the 1990 census, every ten years.

COUNCILMAN GUNNER: Ken, can I ask one of the people who... Mr. Flanigan a question?

SUPERVISOR RINGLER: Sure.

COUNCILMAN GUNNER: Would you -- he just told me briefly on the side -- that it was 82.

MR. FLANIGAN: Well, I am not sure it was 82 but Tom Corrigan did it and that was because of the legislative district. Because I remember Mike doing this then.

ATTORNEY KAPLOWITZ: I am pretty sure it was 82, Charlie.

COUNCILMAN GUNNER: And, it was similar type problem.

MR. FLANIGAN: We went through the same thing.

COUNCILMAN GUNNER: You went through the same thing.

ATTORNEY KAPLOWITZ: Very basically the same thing.

MR. FLANIGAN: That was when they put that district, I don't know which one it was, it was way down around us.

ATTORNEY KAPLOWITZ: It may be a difference only, Charlie...

COUNCILMAN GUNNER: Was it resolved in time for that election or did it go into the second year.

MR. FLANIGAN: They were going through the same thing you are going through here.

COUNCILMAN GUNNER: Same thing?

ATTORNEY KAPLOWITZ: A little different, in all fairness. And the only reason for that... the same problems and very similar but the law we are talking about that Sheila recites, the compact and streets and everything, wasn't effective until January 1, 1987 so that that problem did not exist in 1980 but we had the same kind of problems anyway.

COUNCILMAN GUNNER: I guess I am trying to find an answer to this.

SUPERVISOR RINGLER: Thoughts?

COUNCILWOMAN FULLER: Because compact wasn't an issue beforehand, were the districts considered compact prior to this?

ATTORNEY KAPLOWITZ: I really don't want to get into an interpretation over the word compact. In my mind it does not mean equal. So, if you are asking if they were equal in size, no, they were no where near being equal in size. As far as shape in compact, I can't tell you. I don't even know... except for Sheila's presentation I would not have known what the shape was this time and I don't know that I knew last time. You know, I would have to look at a map. And, I don't bother to do that. I don't think anybody does.

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COUNCILMAN WEBSTER: If you look at the new County legislative districts and their shape is certainly not something that would... in my interpretation be compact.

ATTORNEY KAPLOWITZ: They are weird, that is true.

COUNCILMAN GUNNER: One more question and I asked it, I will try and ask it in a different way. Other than where some person still has an opportunity to sue and it is been debatable whether it will carry on or not, is there any other loss that you see?

COUNCILWOMAN GALVIN: As I said initially, the loss of credibility, I think, is very important.

COUNCILMAN GUNNER: Which would be associated with that?

COUNCILWOMAN GALVIN: That is right.

COUNCILWOMAN FULLER: And credibility would be the motion at the July 8th meeting.

COUNCILWOMAN GALVIN: Now, that we know what day it was and why we can't find July 7th minutes, yes.

COUNCILWOMAN FULLER: The July 8th motion was made and passed stating that we should again look at our election districts and make changes if appropriate.

COUNCILWOMAN GALVIN: That is right.

COUNCILMAN WEBSTER: The complaint I am hearing is quit moving me around from place to place to vote.

ATTORNEY KAPLOWITZ: That is another problem.

COUNCILMAN GUNNER: I guess I am not even worrying about you moving around, if we do it for legal purposes.

COUNCILMAN WEBSTER: No, if we are doing it for legal purposes, correct.

COUNCILMAN GUNNER: If that is what we are supposed to do that helps the judicial system -- excuse me, the electoral system. I think that our students here are certainly seeing that democracy even in setting up the basic rules and territories is not the easiest thing to do.

ATTORNEY KAPLOWITZ: This is participation in government.

COUNCILMAN GUNNER: Yes, right, maybe they have a solution for us. They have fresh eyes certainly to look at these things.

SUPERVISOR RINGLER: Maybe we could give the project to the Participation in Government class to redraw the lines for us.

COUNCILMAN GUNNER: I am sure you will get a district out of the high school.

MR. AUSTIN: DeCecco would have the largest district.

COUNCILMAN GUNNER: Right.

COUNCILMAN WEBSTER: That would be a big parking lot up there too.

SUPERVISOR RINGLER: I guess, let me just think out loud and where I am coming from on all this because the last thing that I would ever do is want to break the law. And, I think what would concern me most is if one of our residents were being adversely affected by what we did and I think Charlie is saying the same thing. I think we are both coming from the same direction, at least on that. And, I have listened to all of your discussions and I have listened to Town Attorney's interpretations of things and I just don't see where people are being adversely affected because of the way things are set up. And, you know, I have listened to the arguments on the committee, initially I was thinking of the weighted vote but now as

Bernie pointed out in his... that basically is only an indication any way. And, everyone has a right to go out and get a petition and so forth and seek elective office. So, I don't see where anybody's vote has been disenfranchised if nothing has taken place. As a matter of fact, I don't think as I look at these lines, that they are any worse than they have been for years and years and years just because of the fact where the legislative lines fall. This is not a case of gerrymandering, trying to have somebody have a better advantage of somebody else. It was done in good faith by our staff, trying, when they did it, to try to make it as simple as possible but also to affect as least amount of people as possible and where they vote and to take that into consideration.

Then when I look at the time involved that we spent in doing this and what would be involved to do this again, to accomplish something that I am not sure has an affect, I just don't think it is the right thing to do for our residents. We are talking about a great deal of time, money and so forth to do it. If we do correct additional districts, I was looking at some statistics today, you know. You are talking about additional voting machines, would cost about \$2500 a piece, plus staffing of additional election districts and eventually as our Town grows we are going to have them. But, to continue spending money at this point in time, when it is not necessarily important -- I don't see the need to do it. As a matter of fact, since last week, my honest feeling is that we should probably wait a couple of years until we get a sense of where this whole thing is going. But, the request last week was based upon information that I had at that time from the staff and their recommendation for a year's delay. And, I think a delay is appropriate and I don't think what we are doing is illegal based upon what the attorney has told me and I don't think anyone is being hurt by it which is the most important think in my view.

COUNCILMAN GUNNER: I guess, the only thing that I would question on that, Ken, and what I would tend to agree with you. I haven't found something... it is still one man/one vote, I am not denying anybody...

ATTORNEY KAPLOWITZ: One person/one vote.

COUNCILMAN GUNNER: Sorry, now I am in trouble...

SUPERVISOR RINGLER: Judi was going to catch us on that.

GENTLEMAN: She has a man sitting next to her too.

COUNCILMAN GUNNER: That is debatable, well, I won't get into that one... Sorry, I apologize to those necessary, I am not looking for that war. I guess what I am concerned about is that the cost you talk about is going to be borne at some point any how. I mean, we are just putting it off to another year.

SUPERVISOR RINGLER: Conceivably, yes.

COUNCILMAN GUNNER: Which could be conceivably a worse year, budget wise and the cost is going to be there. So, the cost is not the big consideration.

SUPERVISOR RINGLER: It is a factor.

COUNCILMAN GUNNER: It is a factor, whether you do it this year or next year, right?

SUPERVISOR RINGLER: Yes. I guess my point was that I am not so sure we should even do it next year, as I was saying. Based upon the information I have just received.

COUNCILMAN GUNNER: But, that is not... that is not... I forget what was presented to us.

SUPERVISOR RINGLER: The request... no question, the request was a one year delay.

COUNCILMAN GUNNER: It was a one year delay, we weren't talking about abolishing it, so by that statement... so what I am saying if that happened, I take the cost and I sort of wipe that out.

SUPERVISOR RINGLER: Okay.

COUNCILMAN GUNNER: All right, now I am looking at the legality of it. I am back to the two lawyers.

SUPERVISOR RINGLER: Other thoughts?

COUNCILMAN GUNNER: Maybe 3 or 4 if some others...

SUPERVISOR RINGLER: We don't want any more opinions.

COUNCILMAN GUNNER: Well, there are a couple out there.

SUPERVISOR RINGLER: I know but...

COUNCILMAN GUNNER: No, I am not asking them to talk.

SUPERVISOR RINGLER: They are liable to send us a bill.

COUNCILWOMAN FULLER: My basic concern with all of this right from the start was the legality of it and I guess I would feel comfortable with Bernie's opinion that he does not feel, as the Town Attorney, and he is paid to be the Town Attorney, if he is wrong we hold him responsible.

ATTORNEY KAPLOWITZ: If he makes a lot of mistakes he won't get paid any more.

SUPERVISOR RINGLER: Fred.

COUNCILMAN WEBSTER: I realize the cost is the cost no matter when it comes down the line, Charles, \$20,000. either way probably to initiate on the go in, plus some \$2,000 a year for 3 extra polling places but I wonder if it wouldn't be better to just wait until such time as we have to split a district when they exceed the 950 number because it looks as if -- from the numbers I have here -- there are probably 2 or 3 of them at least, maybe even 4, that are going to have to be split down the line in a couple years.

COUNCILMAN GUNNER: You are really opening that up now?

COUNCILMAN WEBSTER: I don't know.

COUNCILMAN GUNNER: If you are going to open that up, now you have me right back to the legal question where I thought I had it resolved. Because, first we say yes, we are going to do it, now we say we are going to keep it off for another year, then I hear it should be done within 2 years -- is that correct? Didn't I hear you say that, Bernie?

COUNCILMAN WEBSTER: No, I didn't hear that, I am sorry.

COUNCILMAN GUNNER: Well, that was why it was done in '82, I guess...

ATTORNEY KAPLOWITZ: No, no, no, Charlie, the reason it was done in '82 - '92 is usually because the census information isn't available to do it in the prior year in '91.

COUNCILMAN GUNNER: Right, and it usually is done at that time.

ATTORNEY KAPLOWITZ: Yes.

COUNCILMAN WEBSTER: Charlie, that is just my opinion...

COUNCILMAN GUNNER: Okay, I am dealing with it, but your opinion is entering my mind and I am trying to deal with it.

COUNCILMAN WEBSTER: If it is the consensus of the Board to put it off till late '93 as proposed in the memo, I will go along with that.

COUNCILMAN GUNNER: That is all I am saying, is that... but I didn't want to confuse the issue in my mind any more than it already is.

SUPERVISOR RINGLER: Would anyone like to offer a motion.

COUNCILWOMAN FULLER: I will move that we deal with this in 1993, two years from now.

SUPERVISOR RINGLER: One year from now.

COUNCILWOMAN GALVIN: I would like a clarification of what you mean by deal with.

COUNCILWOMAN FULLER: Whatever is on your mind and your concern, Sheila, you can help with the motion. I don't understand the need to do it at this point in time. The motion that you cited in your memo was, you know... it says if changes... make changes as appropriate.

COUNCILWOMAN GALVIN: We need a recommendation from staff. We need to see what they propose.

COUNCILWOMAN FULLER: And, any one of us can draw our own election districts.

ATTORNEY KAPLOWITZ: Well, if you don't do it... can I make a suggestion -- if you don't do it by January 15th, next November is not affected. Why don't you move to do it in such time so that whatever changes you want made have to be effective by November of 1994. Does that make sense, which is one year

SUPERVISOR RINGLER: Which means we have to approve them by January 15th of 1994.

COUNCILMAN WEBSTER: So, it has to be done and approved by the end of next year.

COUNCILWOMAN FULLER: And, that would eliminate people having to go to a different location next year.

ATTORNEY KAPLOWITZ: I am just suggesting putting a limit on it so you are only adding one year and no more than one year. And, then you look at it and decide what you want to do with it.

COUNCILMAN GUNNER: That is originally what you proposed.

SUPERVISOR RINGLER: Yes.

COUNCILMAN WEBSTER: That is fine.

ATTORNEY KAPLOWITZ: I am just trying to put a cap on it, if that helps.

SUPERVISOR RINGLER: In other words...

COUNCILWOMAN FULLER: A year from now, the election is not affected.

COUNCILMAN GUNNER: Originally it was to be done for 1993.

SUPERVISOR RINGLER: Right, would not be effective. What I am suggesting, and what I suggested in my memo is, that the report... that the staff was supposed to have a recommendation on November of 1992 be delayed until November of 1993 and then it has to be implemented by law any changes by January 15th of 1994. Do I have all those dates right?

TOWN CLERK NEWKIRK: Yes, right.

ATTORNEY KAPLOWITZ: Yes.

COUNCILMAN WEBSTER: Is that your motion?

COUNCILWOMAN FULLER: Yes.

COUNCILWOMAN GALVIN: What I am hearing is also that there is...

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SUPERVISOR RINGLER: I have a motion, is there a second?

The motion was made by Mrs. Fuller and seconded by Mr. Webster that the redistricting of the Town of Bethlehem Election Districts be delayed one year so that proposed changes be presented to the Town Board by staff before November of 1993 and be acted upon before January 15, 1994 for implementation in 1994.

SUPERVISOR RINGLER: Now discussion.

COUNCILWOMAN GALVIN: What I am hearing is that there is a generalized discussion, first of all to put it off until '93 but it seems that the consensus is not to bother. As Ken said early on in his discussion, it was -- and I am just paraphrasing him and I am being very careful to say I am paraphrasing since I don't care to hear any further comments on...

SUPERVISOR RINGLER: I will correct you if I feel you are paraphrasing me incorrectly, you can be rest assured.

COUNCILWOMAN GALVIN: Don't worry, I know the tape is running, I can get a transfer for the tape. You indicated that things were just as bad before but as has been pointed out, just as bad before was done in 1982...

SUPERVISOR RINGLER: The same as before, let's put it that way.

COUNCILWOMAN GALVIN: Was done in 1982 before the Election Law required us to have compact districts to meet these specific line requirements. The law changed, and the fact that it is just as bad as before or whatever, doesn't, in my opinion, justify ignoring the law.

SUPERVISOR RINGLER: I don't think we are ignoring the law. I mean based upon the Attorney's opinion here.

COUNCILWOMAN GALVIN: And, I disagree and I personally don't care to be individually named in any further law suits.

SUPERVISOR RINGLER: I personally hope that you are not going to be. Okay, there is a motion and a second, any further discussion? All in favor.

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Mrs. Fuller.
Noes: Ms. Galvin.

COUNCILMAN GUNNER: I will vote aye with due recognition to the questions that were brought up by Councilwoman Galvin. That they were valid, however, since I had to make a choice between two lawyers opinions, since we pay our attorney and if anything comes on this, we may want to look at that again.

ATTORNEY KAPLOWITZ: You can just flip a coin, Charlie.

COUNCILMAN GUNNER: No, I don't have to flip a coin, I made up my mind as I listened and I will vote yes.

ATTORNEY KAPLOWITZ: If I can add just a word, just to Mike really, one of the things that is forgotten sometimes in that redistricting -- this is just based on what I have seen in the past -- is looking at the existing polling places. And, the only reason I mention it is that we are very limited as far as more schools, fire houses, and churches to hold polling places in. We really... it is really a problem getting polling places. Not only trying to keep people... well, the big thing is to keep people within a reasonable distance of their polling place, if that is at all possible... I am just suggesting you look at that. We had a problem a few years ago, we don't know where else to go for polling places. A lot of churches in Town are used, all the schools in Town, I think, are used, including RCS, I think all the fire departments are being used and it is getting a little... so that people are traveling much greater distances than is desirable.

COUNCILMAN WEBSTER: And, they must be accessible.

ATTORNEY KAPLOWITZ: Yes, they all have to be handicap accessible.

MR. AUSTIN: That is the other issue.

SUPERVISOR RINGLER: Okay. Thank you all, thank you Mike.

SUPERVISOR RINGLER: Next item on our agenda is a recommendation from Mr. Secor, Commissioner of Public Works, to award the bid for modifications to the wastewater treatment plant.

Award Bid
Modifications
Wastewater
Treatment
Plant

On October 8, 1992 bids were received for various contracts for major maintenance and plant modifications for the wastewater treatment plant in Cedar Hill. Attached as exhibit 1 is a letter dated October 21st from J. Kenneth Fraser as Fraser Associates which provides a tabulation of the bids received and recommendations for awards to the various low bidders.

I concur with Mr. Fraser's recommendations that in each case the bid be awarded to the low bidder but add the following additional information with respect to the electrical bids submitted by T.H. Green Electric, Inc. A. Attached as exhibit 2 is correspondence dated October 13th from LaCorte Electric who is the second low bidder on Contract 1E, Electrical Work. Attached as exhibit 3 is my letter dated October 14th to Christopher Barker, of Dixon, Welt, Dixon, Stockton Associates which represents his review of the T.H. Green Electric Inc. bid. Attached as exhibit 4 is a letter dated October 13th from J. Kenneth Fraser to Christopher Barker of Welt, Stockton Associates. All this correspondence was forwarded to Mr. Barker because the low bidder T.H. Green, had removed bid pages from the specification book. As I stated in my letter on October 14th to Chris Barker, I cannot see where T.H. Green gained any unfair advantage but this did constitute a deviation from the technical requirements for the bid documents. After reviewing this matter, Chris Barker responded by letter dated October 16th, '92, attached exhibit 5 and issued an opinion that the Town Board could make a decision to go ahead and award contract 1E to the low bidder, T.H. Green Electric, Inc. After further discussions with Mr. Barker, we recommend that one additional step be considered by the Town Board in the matter of the bid of T.H. Green, Inc., that they be required to sign and have notarized and have placed on file with the Town a statement which would preclude them from making any claims for extras based upon any alleged error or omission in the plans or specifications. A draft of this agreement is attached for the Town Board's review as exhibit 6.

If the Town Board agrees to award electrical work 1E, to T.H. Green, Inc., I think it should be done with the stipulation that the statement shown in exhibit 6 be signed and notarized by the company and placed on file with the Town.

Any questions?

COUNCILWOMAN GALVIN: I have a comment. I have a problem of an award of any contract on altered bid documents. It is very clear when documents go out to bid that you bid on the documents as is. All of the others bid on the documents as they were presented, they did not choose to remove pages. I see that the bid documents are here tonight, I don't intend to go through a detailed analysis. I spent enough years doing that for a living. I have grave concerns and will have to vote against awarding any contract to a bidder who has altered the bid documents regardless of what subsequent statement is signed by that contractor.

SUPERVISOR RINGLER: Other questions, comments?

MR. SECOR: Could I just make comment?

SUPERVISOR RINGLER: Sure, Bruce.

MR. SECOR: At the bid opening there were a number of bidders who turned in just the bid package from within that. So, it was more than just this one low bidder. I only say that because I know you

were not at the bid opening but a number of them did that. And, this was the only low bidder that had removed it. The bid book looks like this, it is a big book.

COUNCILWOMAN GALVIN: I am well acquainted with bid books.

MR. SECOR: I understand that but that is what... they just took the spec out but their bid was complete in other ways. I just make that comment.

COUNCILWOMAN GALVIN: What were the pages that were removed?

MR. SECOR: What they did is, there is a bid form in the bid book which requires them to fill out the price of the work to be done, the bidder qualifications statement.

COUNCILWOMAN GALVIN: They took some of the pages out of the specs, right?

MR. SECOR: Right, they removed the bid form portion of the spec book out and turned it in. The bid that they submitted had all of the pages, the numbers, the bidder qualification form, they had the noncollusion certificate, they had their bid bond. They had all the technical requirements except they had removed these pages from the large book.

COUNCILWOMAN GALVIN: As they are very specifically told in the instructions not to.

MR. SECOR: That is correct.

SUPERVISOR RINGLER: Do they have an unfair advantage then?

MR. SECOR: No, as I said in my letter, I don't see where they did and that is why I referred this to Mr. Barker and I gave a copy of everything to Mr. Kaplowitz to look at. It really is a determination of the Board. Again, I know you hate to talk about law suits but you are between a rock and a hard place here.

SUPERVISOR RINGLER: We can get sued on either part here.

MR. SECOR: Right. I mean if you don't award to the low bidder, you have to substantiate that this was a major flaw.

COUNCILWOMAN GALVIN: You can rebid.

MR. SECOR: Oh, there was 18 bidders on this thing.

COUNCILWOMAN GALVIN: You can rebid. You don't have to award to any of them.

MR. SECOR: Well, the decision that the Board needs to make is whether this is a substantive error and it gave them an unfair advantage, therefore, you wouldn't award to the low bidder. I think that is the decision you have to make.

SUPERVISOR RINGLER: Counselor?

ATTORNEY KAPLOWITZ: Yes, it could be a close question. I agree with Chris Barker's analysis and I told Bruce that also. I don't think there is any indication of any unfair advantage being gained by anyone. I would much rather grant it to the low bidder than anyone else if... all things being equal.

MR. SECOR: As a point of clarification, what I would suggest is that we should alter our bid documents to say in there, very clearly, that if you remove these pages from your bid, you bid will be taken as nonresponsive. That would clear up any future problems like this because we do the same thing with the bids that Mike and I put together that we put out from the department. We say don't remove them from the bid document. What we probably should say is don't remove them, if you do your bid will be considered nonresponsive. Then there is no recourse. I would suggest that in this case, it has been my recommendation to the Board that we award this to the low

bidder but I would also recommend we change our bid document so that we don't face this issue again. I don't know, Sheila, if that would help you any but I think there is an ambiguity in this.

COUNCILWOMAN GALVIN: I will be perfectly honest, Bruce, once you recognize that pages have been removed since you do not use in your specs and your general conditions, specially colored pages, since those are not included in this -- you can't tell whether or not there have been changes or modifications or any other pages altered. I know when I was in this business, what we did was we had pumpkin colored paper printed in brown ink because you wouldn't believe what you can find. So, once I see that there have been pages removed, without reviewing each and every page of the bid document line by line against the master, I have no way of knowing whether or not there have been other alterations made to that.

MR. SECOR: Again, they didn't turn in the whole book. That was the reason we came up with the statement.

COUNCILWOMAN GALVIN: That is the problem.

MR. SECOR: Again, what the statement is intended to do, they are supposed to be bidding on a complete contract, all of them are. And, any one of the bidders can allege after the bid page number 77 was missed. I didn't put that price in my bid, therefore, you should pay me. We take these books in, we put them on file, they are in the vault. They are in the Town Clerk's. If they try to allege that we are holding his original book and we go back in there, even though at some point they have been checked page by page, if in fact that was missing, he might...

COUNCILWOMAN GALVIN: Can I ask a question, Bruce? Aren't they incorporated as part of the contract documents when the final contract is signed? Because the norm is to incorporate all of bid documents and all specs.

MR. SECOR: That is true.

COUNCILWOMAN GALVIN: And all general conditions.

MR. SECOR: But, he has already turned in his bid at that time, he has already given you a price.

COUNCILWOMAN GALVIN: I understand that but what I am saying is, they reaffirm it when it is incorporated in the contract documents.

MR. SECOR: Yes, right. But I mean that can still be alleged later on that there was some page missing or some technical flaw in that. You would be faced with that no matter when.

COUNCILWOMAN GALVIN: Oh, I agree with that completely but it still is the best practice to incorporate by reference all of the bid documents.

MR. SECOR: And, that is done in these.

SUPERVISOR RINGLER: Let me ask a question. Sheila made a recommendation about rebidding, what problems are there to rebid this?

MR. SECOR: There is an expense involved in that. I mean we have to re-advertise the thing, go through a whole new bid letting to do it.

SUPERVISOR RINGLER: Is there justification for us to rebid it because now all these people have shown their cards? Does this create another problem?

MR. SECOR: You have 18 people out there who bid it.

SUPERVISOR RINGLER: I mean, is there any legalities with that. Is this a basis for rebidding this, I guess, is my question.

ATTORNEY KAPLOWITZ: Do we have a statement in there that we reserve the right to?

MR. SECOR: Oh, yes.

COUNCILWOMAN GALVIN: Yes.

ATTORNEY KAPLOWITZ: In any event? I am just worrying about the guy who thinks he won the contract.

MR. SECOR: But, again, you know...

ATTORNEY KAPLOWITZ: Is time a problem?

MR. SECOR: No, I mean... that's... if the Board wants to do it, it would take 60 days by the time you re-advertise it...

SUPERVISOR RINGLER: We would only have to rebid this one part of the job?

MR. SECOR: Well, there were 3 major contracts.

SUPERVISOR RINGLER: The other 2 we can accept, can we not?

MR. SECOR: Yes, they were... the low bidder in that case did not have a problem.

SUPERVISOR RINGLER: That doesn't affect your construction sequence and so forth?

MR. SECOR: Yes, I mean, this is a major contract. Having the electrical contractor on board, you would have to -- I would think you would have to delay awarding -- there is no prime contract in these types... the State law requires that we have General...

SUPERVISOR RINGLER: This is the WICKS thing?

MR. SECOR: Yes, the WICKS thing, we have 3 separate contracts and we become the contract administrator and how can you award the general and not the electric. So, I think we would have to delay at least a notice to begin work until we had all 3 contracts ready to go. I mean, there is some cost in there, some... I don't think there is any crises in that. I just think... the first determination is to make is whether or not it is worth going through that.

SUPERVISOR RINGLER: I guess, my concerns are this... 1. I want us to get the best price, naturally, that is the whole idea of this whole thing. But... and 2. I don't want to put you at a disadvantage here if this delays your project and causes you problems. But, if it doesn't do any of those things, they I am concerned that we are going to get into litigation no matter what we do if we give this to either 1 or 2 at this point in time -- are we opening ourselves for litigation and unnecessarily so if rebidding is not a problem? But, if it is a problem, then I want to know.

MR. SECOR: Well, I mean the low bidder could sue us anyway for not awarding it whether he would be successful in that or not, I don't know. I mean, I don't know how you would measure that.

COUNCILWOMAN GALVIN: Well, we are already on notice that the second low bidder has looked at this, there is a letter in there on that. But, that doesn't have any weight one way or another but you raised the question, Ken.

COUNCILMAN GUNNER: How about the case citation that was made in the letter from Welt and Stockton? In the next to last paragraph, it goes on into the last paragraph onto the next page. A municipality may waive compliance with bid specifications if the noncompliance constitutes a mere irregularity and it is in the best interest of the municipality to grant the waiver -- Clancy, Collins, Storage Company Inc., vs. Board of Elections in the City of New York in 1983. It goes on to say the municipality may decline bids which fail to comply with the literal requirements of the bid specifications or it may waive a technical noncompliance with bid specification if the defect is a mere irregularity and is it in the best interest of the municipality to do so. However, where the variance between the bid and the specification is materially substantial, etc.

Bernie, any direction on that?

ATTORNEY KAPLOWITZ: The problem is what is material and what isn't. And that varies from opinion to opinion. If you got 4 judges, you might get 4 opinions. I agree with Chris that this is not a material irregularity. I cannot guarantee you that but I think his decision is the right one. That it is not material and you know, you don't have a problem. If you want to be extra cautious, you can just say let's bid it all over again. I have no strong feelings either way. You open up other doors if you go bid it all over again.

COUNCILMAN GUNNER: If that were the case...

MR. SOFI: Can I say something of T.H. Green?

ATTORNEY KAPLOWITZ: Sure.

MR. SOFI: I am Larry Sofi, I am the district manager of T.H. Green. Our policy when we... although I realize we should have had the bid documents in the book, they are usually... we usually take them out and send them to Rochester for our corporate stamp and our President's signature. This is why they were originally removed. They came back to the office, and in the last minute of running around trying to get the bid together and everything, it was our fault that they did not get back into the book. I mean, there was no other... there was no alterations to the bid documents that I seem to hear. We didn't do anything other than not put the documents back into the book. And, agreed, it did state that they should have been submitted with the specifications. But, that is kind of what happened. It wasn't anything on our part, it just altering the documents or this is...

SUPERVISOR RINGLER: Does your company have any problem in signing that addendum that is being suggested.

MR. SOFI: To the best of my knowledge, no.

SUPERVISOR RINGLER: Okay. Comments?

COUNCILWOMAN GALVIN: My position hasn't changed.

SUPERVISOR RINGLER: I know, I know.

COUNCILMAN WEBSTER: Do you feel we are better off, safety valve to rebid it?

ATTORNEY KAPLOWITZ: No matter what you do, you take a chance. No matter which way you go.

COUNCILMAN WEBSTER: Why are we taking a chance if we rebid it?

ATTORNEY KAPLOWITZ: Well, the second low bidder may sue you now because he says the low bidder's bid is no good and he got a bad deal or -- I think you can rebid it but the... I don't know. If you rebid it, you are sure that statement is in there that says we can reject all bids for whatever reason and all that? You probably are all right.

(? did Bruce concur?) - check notes.

COUNCILMAN WEBSTER: I want to hear the statement first.

ATTORNEY KAPLOWITZ: I believe it is in every bid document.

MR. SECOR: No, it is in the last paragraph down here, just that last... The Town Board...

ATTORNEY KAPLOWITZ: Well, for everybody's sake -- the Town of Bethlehem Board of Trustees reserves (that should be Directors or Town Board Members) the right to waive any informalities in or to reject any or all bids submitted. I mean, I think we are probably alright if you rebid also.

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SUPERVISOR RINGLER: Okay, what we got is 2 attorneys saying this is okay to do, 1 attorney recommending something else. And, another alternative to rebid, the conservative route.

COUNCILWOMAN GALVIN: I would recommend rebid, personally.

SUPERVISOR RINGLER: I knew you were going to say that. Bruce, your recommendation is you would like to go ahead with this, I guess you haven't changed your opinion.

MR. SECOR: No, I mean, it is there and I think we have documented it and my only fear is to frustrate the bidding process. If we were to rebid everything where one of the bidders made a technical error, we would never award a contract. I mean, you know, out of that we had 18 electrical bids, I think there were either 4 or 6 generals -- well the summary is here. I bet you a third of those people did not turn in the books. And, just looking at the envelopes, you could make the decision that the ones that were thin, that did not have the whole book, just turn them over as nonresponsive and never open them and read them. But, I guess, if we were going to do that, I would put it right on the bid tab. You know, if you do not include this your bid will not be opened, it will be rejected as nonresponsive. Put it right in there and then if they want to try to sue us, say hey, it said it right there in black and white, you didn't do it, your bid book weighed 3 ounces instead of 30 ounces, forget it.

COUNCILWOMAN GALVIN: Bruce, one of the points though, is that if we rebid we are taking no risk because we specifically said that we reserve the right to reject all bids. So, we are taking absolutely no risk. If we award to either bidder number 1 or bidder number 2, we are taking a risk. No matter which one we go with, there is a risk.

MR. SECOR: No, I think you are taking a risk. You have 18 prices that came in, on this, there were 18 bids -- when you rebid it, I don't know if we are going to get 3 bids or if we are going to get 13 bids. We may end up with a bid substantially higher than this, we may end up with a... since all these prices are on the table, I don't know what is going to happen. You know, the whole system is set up...

COUNCILWOMAN GALVIN: I am talking about a legal risk, in terms of law suit over improper bidding.

MR. SECOR: Based on the review done by Chris and again, having reviewed this by Bernie, I think the risk we are taking here is very, very slight. And, they would have to show... the 2nd low bidder would have to show that he was somehow... they had some economic loss, right?

COUNCILWOMAN GALVIN: They have to show an irregularity in the bidding process.

MR. SECOR: A substantive one.

SUPERVISOR RINGLER: According to legal interpretation.

MR. SECOR: Yes.

SUPERVISOR RINGLER: I think we should go ahead.

COUNCILWOMAN FULLER: I have to go to law school before I come back to another Board meeting.

COUNCILMAN GUNNER: Save me a seat, Sheila.

ATTORNEY KAPLOWITZ: I am not going to respond, I am keeping my mouth shut, I had a great come back, I am not going to say it.

COUNCILWOMAN FULLER: Because we are lay people in the community.

SUPERVISOR RINGLER: Whatever you say you will get the worst of it. I don't know, I have listened to all this and I think I am going to go on the attorney's recommendation that this is just a minor

technical change and that we should go ahead and award this thing. I don't know what the rest of you feel.

Let's get a couple things out of the way. Let's go with the other 2 and then we will come back to this. I will entertain a motion to award Contract 1G to the low bidder, C.O. Falter Construction Corp.

The motion was made by Ms. Galvin and seconded by Mr. Gunner that Contract 1G, General Construction for the Modifications to the Wastewater Treatment Plant be awarded to the low bidder, C.O. Falter Construction Corp., Syracuse, NY. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

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Next I will entertain a motion to award contract 1H, HVAC to the low bidder Crisafulli Brothers.

The motion was made by Ms. Galvin and seconded by Mr. Webster that Contract 1H, HVAC, for the Modifications to the Wastewater Treatment Plant be awarded to the low bidder, Crisafulli Brothers, Albany, NY. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

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Next I would entertain a motion to award contract 1E, electric, to T.H. Green Electric, Inc. the low bidder with the stipulation that they sign the proposed agreement from counsel to the Sewer District.

Anyone want to offer that motion? There was no motion. Does anyone want to make another motion?

The motion was made by Ms. Galvin that we rebid. Supervisor Ringler asked if there was a second to that. Here we go.

COUNCILMAN WEBSTER: I guess we're not going to do anything with that.

SUPERVISOR RINGLER: Okay, does anyone want to offer a 3rd motion?

COUNCILWOMAN FULLER: Unfortunately, there was discussion going on down here, so none of us paid attention to any of your motions. Start over again, please.

SUPERVISOR RINGLER: Okay. I said I would entertain a motion to award this to T.H. Green, the low bidder, with the stipulation that they sign that addendum which requires them to honor all specifications and so forth. No one offered that motion. Ms. Galvin made a motion that this be rebid. That is where we stand. Is that correct?

COUNCILWOMAN GALVIN: That is correct.

SUPERVISOR RINGLER: Thank you.

COUNCILWOMAN GALVIN: Paraphrased very well.

SUPERVISOR RINGLER: There is one motion on the floor, the motion from Ms. Galvin is on the floor.

COUNCILMAN GUNNER: That was seconded?

SUPERVISOR RINGLER: That has not been seconded. There being no second, motion does not carry. Is there another motion that someone would like to offer?

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COUNCILMAN WEBSTER: I think everyone is kind of caught betwixt and between here on the legal ramifications of this thing.

COUNCILWOMAN FULLER: And, that really shouldn't be a surprise.

SUPERVISOR RINGLER: It never is.

COUNCILMAN WEBSTER: But, that we will be able to straighten this all out at the next meeting because Sheila will have completed law school.

COUNCILWOMAN FULLER: And, I will be able to come up with a real definitive answer.

SUPERVISOR RINGLER: That is about all you will need.

COUNCILMAN WEBSTER: Rumor has it, it only takes 2 weeks.

COUNCILMAN GUNNER: Fred, she can finish in 1 week. We could have a special meeting, she can finish in 1 week.

COUNCILWOMAN FULLER: Then I will come in and give you my legal expertise.

COUNCILMAN GUNNER: For a price, right, Sheila?

COUNCILWOMAN FULLER: Bernie, give it to us one more time.

COUNCILMAN WEBSTER: Give us a safety valve.

COUNCILWOMAN FULLER: Where your opinion is that no matter what we do we are wrong.

ATTORNEY KAPLOWITZ: No, no.

COUNCILWOMAN FULLER: Pretty much summed up.

COUNCILMAN GUNNER: Then you wonder why...

ATTORNEY KAPLOWITZ: Legally it may be safer, as Sheila suggests, however, I agree with Chris Barker's letter that it is an irregularity and not a substantial or material variance that would be a problem. One of the things that bothers me and this isn't necessary a legal reason, is the playing field for the bidders is no longer a level playing field. You had all the bidders out, everybody has bid. I don't know what is going to come back either but there is always a chance that the residents of the Town of Bethlehem are going to pay more than they were going to pay if you do accept the bid. And, that is just the risk you take when you do it.

SUPERVISOR RINGLER: Or less.

COUNCILWOMAN GALVIN: It could be less.

ATTORNEY KAPLOWITZ: It is how you feel, it could be less, yes, that is possible.

COUNCILMAN WEBSTER: Knowing the low number, it might be less.

ATTORNEY KAPLOWITZ: Right, that is possible. I do agree with Chris, however, that it is not a material variation. The key really is did anyone obtain an kind of unfair advantage in the bidding process and there is absolutely no reason to think so. That is the primary concern.

COUNCILMAN WEBSTER: From the standpoint of fairness to all of the other bidders and those who did not do anything to the bid document, and from a safety standpoint -- would we be safer to rebid it?

ATTORNEY KAPLOWITZ: I am not sure I understand.

COUNCILMAN WEBSTER: Well, it was all those... in fairness to all those who did not alter the document.

COUNCILWOMAN FULLER: Could they make a case that the document was altered?

ATTORNEY KAPLOWITZ: I... the case right now is between your first and second bidders really or no bidders. Mike wants to add something, I don't know what.

MR. CIRILLO: Can I just add something. I think you brought up the point, Sheila, when you can award the bid but once... this has to be signed within a certain period of time, the whole booklet is going to be there and they are going to sign according to what is in that booklet.

COUNCILWOMAN GALVIN: Mike, it doesn't make any difference whether they sign it that way or not, it is under the law governing the bidding that they have altered it. That is one of the reasons why I was asking about how these were signed because I know Bruce has indicated that there are other instances where bids are awarded to people who have altered or had variations with the bidding. And, I am concerned about that.

MR. SECOR: No, that is not what I said. I said other bidders did not turn in the whole book.

COUNCILWOMAN GALVIN: Yes, but you also indicated that in the past there have been bids where there have been changes in the documents that were not material or interpreted as not being material.

MR. SECOR: I don't know if I said that but that's...

SUPERVISOR RINGLER: I think you did.

MR. SECOR: That is a true statement, yes, I don't remember saying that.

COUNCILWOMAN GALVIN: That is one of the reasons why I asked the question about signing documents containing the full bid documents. As far as, in this particular instance, we are aware of an alteration that may or may not be a substantive alteration since I haven't reviewed the entire bid document and since it obviously wasn't included in what we received using Bruce's method of weighing it, it is not 3 lbs. The bottom line is, I don't know sitting here tonight, whether or not it is substantive. I don't believe that any of us can sit here tonight and make a determination on our own from having read it.

SUPERVISOR RINGLER: But, your attorney did make that recommendation.

MR. SECOR: But, that is what the attorney is supposed to do, isn't it? I mean, isn't that why we send this out to Chris Barker?

COUNCILWOMAN GALVIN: Excuse me but one of the points in Chris's memo is very specific, it is the municipality may waive compliance. Now, if I am going to waive compliance with anything, I want to make a waiver based on knowledge. I have not had anything explained to me in here that there was an accurate comparison made of the entire document, exactly what the changes were. I disagree that I can sit here and know whether or not it is a substantive change tonight. There have been interpretations given but when we have a viable alternative, which is offered specifically in our own bid documents, that we have the option of rejecting all bids and rebidding, when we have a way to correct the whole thing -- and, this time tell them do it right or don't do it at all, the answer is very simple -- why don't we just rebid, then we don't get into this Board making a legal determination as to whether or not it is substantive. The operative word in all of those decisions is may. It is an option of the Board.

MR. SECOR: That is not what Chris's letter says, Chris's letter says thus, the case law indicates the municipality has discretion to waive minor defects or irregularities. As you indicate, there is no evidence of unfair advantage and I do not see where an allegation of unfair advantage or collusion has been made. It appears under the cases that you have discretion to waive this irregularity and award the contract.

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COUNCILWOMAN GALVIN: The bottom line is discretion, meaning that the Board has to apply its judgement.

ATTORNEY KAPLOWITZ: The bottom line is that he is giving you his opinion that it is okay to award the bid. That is the bottom line. That is something else, he can't guarantee you it is or it is not substantive and I can't either. But, when you are asking for an opinion, you are asking for his best guess and that is what he is telling you. Whether you want to accept it or not is another matter.

COUNCILWOMAN GALVIN: Well, when we have an option where we don't have to guess but simply rebidding, I vote that we do do it right this time.

COUNCILMAN WEBSTER: Is that your motion?

COUNCILWOMAN GALVIN: Mine was for rebid.

SUPERVISOR RINGLER: She made a motion to rebid.

COUNCILMAN WEBSTER: I will second it.

SUPERVISOR RINGLER: We have a second. Further discussion.

Rebid Contract 1E - Electrical Work Wastewater Treatment Plant	The motion was made by Ms. Galvin and seconded by Mr. Webster that Contract 1E, Electrical Work, for Modifications to the Wastewater Treatment Plant in Cedar Hill be rebid. The motion was passed by the following vote: Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin, Mrs. Fuller. Noes: None.
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Accept Easements NYS ARC Krumkill Road North Bethlehem	SUPERVISOR RINGLER: Next a request from Bruce Secor, Commissioner of Public Works, to accept easements from the New York State ARC, Slingerlands, NY and DPA, Latham, NY. Questions?
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The motion was made by Ms. Galvin and seconded by Mrs. Fuller that the easement deeds be and they hereby are accepted from the Albany County Chapter, New York Association for Retarded Citizens, Inc., Slingerlands, NY and DPA (Ralph Drake, Garry Petre, Kenneth M. Raymond Jr., Earl Ruth and A. Joseph Scaring), Latham, NY for sewer easement purposes along Krumkill Road, North Bethlehem. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin, Mrs. Fuller.
Noes: None.

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COUNCILMAN GUNNER: The Town Attorney agrees with that?

ATTORNEY KAPLOWITZ: With what?

COUNCILMAN GUNNER: I see you got a copy of this -- I am going to keep you busy tonight...

COUNCILWOMAN FULLER: Charlie, that is my legal opinion.

SUPERVISOR RINGLER: We got it, Sheila gave us her opinion.

COUNCILMAN GUNNER: Yea, okay.

ATTORNEY KAPLOWITZ: Yes, Charlie, I saw these a while ago.

Accept Deeds Adams Woods	SUPERVISOR RINGLER: Next we have a request from Bruce Secor, Commissioner of Public Works, for deed acceptance for Adams Woods, Section 1 development.
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The motion was made by Ms. Galvin and seconded by Mr. Webster that the deeds for Adams Woods, Section 1 Subdivision, Feura Bush Road for sidewalk easement, submitted by Feura Bush Associates (Joint Venture) East Greenbush, NY be and they hereby are accepted. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin, Mrs. Fuller.
Noes: None.

SUPERVISOR RINGLER: Next I have a request from David Austin, Administrator of Parks & Recreation for approval and appointment of seasonal personnel per the attached list.

Approve
Seasonal
Personnel
Parks &
Recreation
Dept.

The motion was made by Ms. Galvin and seconded by Mrs. Fuller that the personnel listed on the Memorandum from David Austin, Administrator of Parks and Recreation Department, dated October 28, 1992 be and they hereby are approved for appointment. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin, Mrs. Fuller.
Noes: None.

SUPERVISOR RINGLER: Next like the Board to consider authorization for Supervisor Ringler to sign an agreement to take possession of a portion of the Job Corps property from the US Department of Labor. Received a letter dated October 15th.

Authorize
Supervisor
To sign
Agreement
Job Corps
Property

Your application for conveyance for Federal surplus property referenced above has been approved. The General Service Administration has assigned the property to the Secretary of the Interior for disposal for public park and recreation use.

According to Condition 4, Part A of the application, your agency's request to take possession of the land described in the application within 15 days following receipt of this letter. On the date your agency takes possession of the property, it is to assume the obligation of management, maintenance and protection. Please acknowledge this request by completing the enclosed statement and returning it to this office.

We will continue to expedite final legal requirements so that we can convey the title as soon as possible. If you are required to or wish to conduct a title search of the property, we suggest that you initiate such action at this time as we expect your agency to be ready to accept title when the deed is delivered in the near future.

Regarding your concerns in your cover letter dated September 15th, which accompanied your application, we trust that subsequent completion of the GEIS survey of the property has answered them. As you should be aware, these properties are conveyed as is, where is, and without representation, warranty, or guarantee as to the quality or rather quantity, quality and character or condition. On the other hand, Attorney's report of title by the US Department of Labor has reported favorable finding concerning any possible significant contaminants and has mentioned that there are no other environmental considerations as well. In addition, you can be assured that this property can be returned to the US Government at any time that it is no longer fits the needs of your community for the express purposes under which it was conveyed.

Reference should also be made at this time to Condition 8 Part A of your application for those reservations and conditions which will be contained in the forthcoming deed for which your agency will be responsible in administering this property. One of those conditions requires the biennial report to provide information on accomplishments and any problems encountered. A reminder and suggested outline will be forwarded to your agency at that time.

With reference to the biennial report, an important element to be included is a statement by the applicant that all revenues generated on this property were used for development/operations, maintenance purposes on this or on other lands managed by the application, and that no revenues were generated on this property or expended from it for non-recreation purposes. It should be noted that any revenues generated on the surplus property must be first expended on the site until the program of utilization is completed. Also all third-party (concessionaire) agreements must be approved by this office and the Department Office of the Regional Solicitor.

Should you have any questions please contact the Project Officer, Raymond Andrews.

Federal Government said they are going to give us land at the Job Corps. Questions? I would entertain a motion.

COUNCILWOMAN FULLER: Go ahead.

COUNCILMAN GUNNER: I have just... where is Dave, I thought I saw him. Dave, that restriction on concessions and giving reports to them first and having their approval, doesn't bother you with potential future planning?

MR. AUSTIN: No.

SUPERVISOR RINGLER: There are no concessions being planned.

MR. AUSTIN: No.

COUNCILMAN GUNNER: Well, I didn't know that.

SUPERVISOR RINGLER: The original application stated that.

COUNCILMAN GUNNER: And, plans change.

SUPERVISOR RINGLER: Right, that is true.

MR. AUSTIN: That is true.

COUNCILMAN GUNNER: Who knows...

SUPERVISOR RINGLER: Just to remind everybody...

COUNCILMAN GUNNER: It might become a water skiing spot, you might want to do that.

SUPERVISOR RINGLER: Right and that is true and then we would have to modify it. But, as you recall when we submitted our application it was passive recreation that we have applied to use the land for. Other questions?

COUNCILWOMAN GALVIN: I know when we started this process one of the issues and I am going through this in order of the paragraphs that they have set forth, was we thought that a title search was going to be provided to us by the Federal Government. This letter indicates that we want a title search -- which I certainly would hope we would want -- we have to obtain it ourselves. Have we initiated that process and if so, what is the anticipated cost?

SUPERVISOR RINGLER: We have not initiated that process and Town Attorney do you have a comment on that?

ATTORNEY KAPLOWITZ: Yes, only that in view of the fact that we can give it back to the Federal Government at any time we wanted to, I wasn't going to bother with a title search. I don't really think it is necessary. If a lien turns up on the property that we are unhappy with, we will give it back to the Federal Government. If you want to have a title search, you can do it. I imagine you are talking about a couple hundred dollars because it would obviously be a search from scratch -- \$200-\$300.

COUNCILWOMAN GALVIN: I certainly hope that that cost estimate is in the right ballpark because I would be surprised if we could get a full search done for that.

SUPERVISOR RINGLER: Well, do we really need it.

ATTORNEY KAPLOWITZ: Well, Sheila, that is what I believe it would cost. I can't tell you more than that. That is what I would think it would cost.

SUPERVISOR RINGLER: I would think if we were going to go down there and build...

ATTORNEY KAPLOWITZ: I get full searches for \$250. frequently. Now, I haven't looked at this, I can't tell you what they are going to do or how much time they are going spend so I am guessing as to what it is going to cost.

COUNCILWOMAN GALVIN: I'd certainly hope that we would get a title search strictly to know exactly what problems, if any, exist on the property before we accept it. Since the next point that I have is, I am quite concerned about the properties being conveyed as is, where is, the fact that we can return them to the Federal Government at any point in time, still leaves us in the chain of title in the event any contaminants are found at any point in time. Since they are not willing to stand by their attorney's report, I don't know why we should be.

SUPERVISOR RINGLER: I guess cause they are giving us the land for nothing.

COUNCILWOMAN FULLER: With the option of returning it.

SUPERVISOR RINGLER: With the option of returning it to them.

ATTORNEY KAPLOWITZ: It is a crazy situation, it is a little unusual I would think but they must do this frequently, I guess. But, they did make it very clear there would be no hold harmless agreement or indemnification agreement, no warranties, no representations, no nothing. Take it as it is, if you want it. We could have a title search done if you want, we will spend whatever it costs to get it done. But, that is not a big deal either way but...

COUNCILMAN GUNNER: Title search wouldn't reveal any possible company or corporation or group of people that would... may indicate that they would have done something that would have...

ATTORNEY KAPLOWITZ: Basically, it is going to reveal anyone who claims a lien on the property.

COUNCILWOMAN GALVIN: It would also... the chain of title.

ATTORNEY KAPLOWITZ: First of all, it does other things.

COUNCILMAN GUNNER: Just liens, chain of title?

ATTORNEY KAPLOWITZ: The chain of title, who owned it before, yes. But, remember it is rural property. It was a seminary for many years before this. It is unimproved property, there is no buildings on it or anything.

COUNCILMAN GUNNER: Well, I guess I am going back further than that.

ATTORNEY KAPLOWITZ: Yes, it depends on how far you go back. Normally you get a search back 40 years. You can go back further.

COUNCILMAN GUNNER: That would cover it, 40 years.

ATTORNEY KAPLOWITZ: You can go back further but normally -- well, there aren't many things there would be liens on after 40 years so that is why we pick 40 years -- as a general rule. It is easy enough to do. The only problem is that you are talking about having a deed to us very shortly and they expect us to take -- actually we have

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constructive possession in their minds, so that we would have to move quickly.

SUPERVISOR RINGLER: But, your recommendation is that we don't really need it.

ATTORNEY KAPLOWITZ: I don't think we do.

SUPERVISOR RINGLER: Because we are not going to build on this. I mean, if we were going to put a big building on there, I would be very concerned about that.

ATTORNEY KAPLOWITZ: Well, you are not going to get it... you wouldn't build on property that you own under those circumstances. First of all the government is giving it to you on the condition it be used only for parks and recreation purposes.

SUPERVISOR RINGLER: But, I am talking about, we wouldn't put permanent structures even for recreational purposes.

ATTORNEY KAPLOWITZ: Then, I would certainly think you are talking about either title insurance or title searches. Sure, before you would do something like that. And, I am not opposed to a title search, if you feel you want it, I just don't think it is necessary. The basic thing you are usually looking for is liens. Liens of judgement, creditors, hospital liens, all kinds of liens.

SUPERVISOR RINGLER: You are only talking \$200 or \$300?

ATTORNEY KAPLOWITZ: Yes, well, I won't guarantee it. I will get you a price, if you would like.

SUPERVISOR RINGLER: Well, I mean we are not talking \$10,000, we are talking under \$500.

ATTORNEY KAPLOWITZ: I would certainly think so for a 40 year search.

SUPERVISOR RINGLER: Then I would suggest that just, you know, if everyone feels they would like that -- you know, we are not talking a lot of money that we get a title search done. But, I would also like to authorize me to take possession. I think we have possession of it anyway by the sounds of things but I would like to... telling them that we will take possession of it.

The motion was made by Mrs. Fuller....

COUNCILMAN GUNNER: Does not include the title search?

SUPERVISOR RINGLER: And, then we will have the title search done.

COUNCILMAN WEBSTER: Yes.

The motion was made by Mrs. Fuller and seconded by Mr. Webster that the Supervisor be and he hereby is authorized to sign an agreement to take possession of the surplus lands at the Job Corps. site on Route 144 and that a title search be done.

Further discussion?

COUNCILWOMAN GALVIN: On further discussion, I would like to make one comment. I still am concerned about the lack of some form of either indemnification or hold harmless with respect to the possible contaminants on the site. However, I do want to see the title search -- which as Charlie has pointed out, among other things will point out the chain of title and give us a far better grasp on exactly what we are talking about in terms of potential liability. So, with that reservation, and with the understanding that we want to see the chain of title, I will agree to the signing at this time and vote yes.

SUPERVISOR RINGLER: Okay, all in favor.

The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin, Mrs. Fuller.
Noes: None.

SUPERVISOR RINGLER: Okay, next I have a request from Richard LaChappelle, Chief of Police, for Officer Vunck to attend an instructor course for Occupant Protection, Use and Enforcement at the NY City Police Academy, November 17-19.

Approve Instructor Course Occupant Protection Police Dept.

The motion was made by Mrs. Fuller and seconded by Ms. Galvin that Officer Jeffrey Vunck be and he hereby is authorized to attend an instructor course for Occupant Protection, Use and Enforcement to be held November 17-19, 1992 at the New York City Police Academy, New York, New York with use of police vehicle. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin, Mrs. Fuller.
Noes: None.

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COUNCILMAN GUNNER: You know, I have a question on that one, is that the one transportation... vehicle will be kept in a secure location. The very next one doesn't even... they just park the car.

SUPERVISOR RINGLER: Well, this one is going to New York City.

COUNCILMAN GUNNER: I know, and I guess that is my comment. These are sad times when we have to face that all the time and that we have to indicate the place of my birth to be such a...

COUNCILWOMAN GALVIN: Mine too.

COUNCILMAN GUNNER: I thought it would be safer after I moved out.

SUPERVISOR RINGLER: Well, let me tell you a friend of mine went to the airport a couple of weeks ago, parked his van in front of his mother's house and it was gone when he came home.

SUPERVISOR RINGLER: Next a request from Chief of Police, for Officer Haker to attend the instructor/facilitator program at the Neville Hotel, November 16-20.

Approve Instructor/Facilitator Program Police Dept.

The motion was made by Mrs. Fuller and seconded by Ms. Galvin that Officer Haker be and he hereby is authorized to attend the Instructor/Facilitator Program at the Neville, Hotel, Ellenville, NY, November 16-20, 1992 with transportation provided by police vehicle. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin, Mrs. Fuller.
Noes: None.

SUPERVISOR RINGLER: Next there is not a document on this but last year it was pointed out to me and rightfully so that the week of Thanksgiving many people travel on that Wednesday evening for the holiday and so forth and that some Board Members have responsibility for preparing turkeys that I would like to suggest that our meeting of November 25th be moved to Tuesday, November 24th.

Town Board Meeting Date Changed

The motion was made by Mrs. Fuller and seconded by Mr. Gunner that the second Town Board meeting in November be changed from November 25th to November 24th at 7:30 p.m. The motion was passed by the following vote:

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Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

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COUNCILMAN GUNNER: I do want to suggest we make sure we get notice
in the newspapers.

SUPERVISOR RINGLER: We have done that for our next meeting as well,
as you know, it will be on Tuesday because Wednesday the 11th is a
holiday. We have already changed that to the 10th. Is the Spotlight
still here.

TOWN CLERK NEWKIRK: No, he left.

SUPERVISOR RINGLER: Well, we will remind him this week.

SUPERVISOR RINGLER: Next discussion from response from Jeff Lipnicky
pertaining to subdivision pre-preliminary checklist. This was brought
up at a previous meeting, Mr. Lipnicky had replied in writing and Ms.
Galvin has asked to have this put on the agenda for discussion. So,
as she has requested this, Ms. Galvin.

Discussion
Pre-preliminary
Checklist

COUNCILWOMAN GALVIN: Are you sure you want to do this? You are
looking at the clock.

SUPERVISOR RINGLER: I am not sure I do but I do try to honor your
requests.

COUNCILWOMAN GALVIN: Thank you. Jeff, thank you for your memo of
October 1st on the checklist. I have been over it and I have a
problem with several of the items that you have set forth in there.

When you talk about the items that have been specifically adopted and
not adopted, can you tell me exactly what the Planning Board and the
Planning Department are using now?

MR. LIPNICKY: In terms of...?

COUNCILWOMAN GALVIN: The checklist.

MR. LIPNICKY: We are using a pre-preliminary checklist which I
assume that you have a copy of.

COUNCILWOMAN GALVIN: Yes and as far as I can tell...

MR. LIPNICKY: Dated 3/92.

COUNCILWOMAN GALVIN: The 3/92 pre-preliminary checklist has never
been approved or even reviewed by the Town Board. Is that right?

MR. LIPNICKY: That is correct.

COUNCILWOMAN GALVIN: And, when you use that, you have specific
requirements that you set forth to people who are making application
and you will not review their application unless they fulfill the
requirements of your checklist.

MR. LIPNICKY: No, I don't think that is correct. I think if you
look through Planning Board meetings when it was discussed, the
Chairman specifically said at that point in time that failure to
comply with the checklist will not bar anybody from appearing on the
agenda.

COUNCILWOMAN GALVIN: Has anybody who did not comply with the
agenda... not complied with the checklist appeared on the agenda?

MR. LIPNICKY: I don't know off hand.

COUNCILWOMAN GALVIN: You can't think of any specific instance? For the most part though, you're requiring the applicant to meet the terms of the checklist as opposed to the provisions of the town law.

MR. LIPNICKY: What we do is -- when we receive an application what we do is we send out a copy of the checklist along with the letter that requests that the applicant provide the information that is on the checklist which is requested. There is nowhere within that checklist itself or within the letter that says that you will not be put on any agenda.

COUNCILWOMAN GALVIN: Have you rejected any specific applications for going before the Planning Board or sent them back because they didn't meet with that checklist?

MR. LIPNICKY: Well, we certainly sent letters, as I said, on a number of occasions to applicants that request the information.

COUNCILWOMAN GALVIN: And indicated to them that if they did not comply with the checklist, they wouldn't move forward?

MR. LIPNICKY: Not to my recollection. We said that they could not move forward.

COUNCILWOMAN GALVIN: What have you told them?

MR. LIPNICKY: What have we told them?

COUNCILWOMAN GALVIN: That is right.

MR. LIPNICKY: Do you have a specific case in mind? If you do, I can look it up for you.

COUNCILWOMAN GALVIN: No, there are many instances where I have questions rather than going through item by item by item. I'm trying to find out if there are specific... if you have a reason.

MR. LIPNICKY: I can tell you specifically that what we essentially do, is tell the applicant that the Planning Department cannot recommend unless we have the information that is provided on the checklist -- cannot recommend that the item be placed on the agenda.

COUNCILWOMAN GALVIN: If they don't comply with that checklist?

MR. LIPNICKY: That's right.

COUNCILWOMAN GALVIN: So basically, the checklist that has not been approved by this Board has been used as a determinate in whether or not somebody goes on the Planning Board agenda despite what the town code says.

MR. LIPNICKY: That is right.

COUNCILWOMAN GALVIN: Despite what the Town Code says.

SUPERVISOR RINGLER: Well, now we have...

MR. LIPNICKY: Mr. Alessi is here to address issues of law. As I said in my memo, I'm not an attorney and that is a legal determination and I am not... well, I guess from a layman's perspective I have opinions on it, but I would much prefer that an attorney address the questions of law.

COUNCILWOMAN GALVIN: Before we get into legal questions - I don't know whether anybody else has any specific questions.

SUPERVISOR RINGLER: Any questions? No one had any. O.K. Bob, perhaps you can address the legal issue here.

MR. ALESSI: I'll be happy to. Are you provided with copies of our subdivision regulations?

SUPERVISOR RINGLER: I have been asked by Bob this afternoon if I would bring a copy of the subdivision regulations for every person so that he can lead us through the hymn.

MR. ALESSI: What I am going to try to do is -- I think you can make a legal issue out of anything that you do on any agenda item you can pull out.

SUPERVISOR RINGLER: Quite obvious.

MR. ALESSI: But what I would like to do is to try -- and both the boards don't do that. And, what I'm going to try to do here tonight to help you answer the question is to give you information so you can perhaps answer it yourself, rather than having some attorney come up here and say what your answer ought to be.

COUNCILWOMAN GALVIN: Well Bob, let me ask you a couple of questions to start with. First of all, is there a checklist that's used by the Planning Department for applicants?

MR. ALESSI: I'm not here to answer questions. I just want to go through and go through my reading of the Code. If anybody has any questions about what I go over, I'm happy to... but I'm not going to be here and answer any questions about the Planning Board's procedures if the Chairman is here.

COUNCILWOMAN GALVIN: Well then, why don't I ask the Chairman those questions first before you get into the specifics on this because what I thought you were going to address was the issue of the checklist which is what I ...

MR. ALESSI: That is what I am going to do.

SUPERVISOR RINGLER: The issue of the checklist in line with the code.

COUNCILWOMAN GALVIN: Is there a checklist?

MR. LIPNICKY: Yes, we have already established that there is a checklist.

COUNCILWOMAN GALVIN: You've established that there is a checklist. Is it a checklist that is used by the Planning Department or the Planning Department and the Planning Board?

CHAIRMAN BARR: And the Planning Board.

COUNCILWOMAN GALVIN: Was the checklist adopted by the Planning Board?

CHAIRMAN BARR: Yes.

COUNCILWOMAN GALVIN: When was it adopted by the Planning Board?

CHAIRMAN BARR: It was approved at a March 3, 1992 meeting and previously approved by the Planning Board sometime in 1988.

COUNCILWOMAN GALVIN: Was it the same checklist...

CHAIRMAN BARR: I'm not going to answer anymore questions. I think the assumption of your questions is that this checklist is opposed to the Town Law, is opposed to the Town Code, and I disagree completely with you and Bob here, is here to answer that. I think all of the questions that you're asking relate to... your assumption that the Town Code, that the checklist is opposed to the Town Code and that's what Bob is here to answer and I would respectfully submit that the Town Board listen to Bob Alessi's legal opinion about that question.

SUPERVISOR RINGLER: Counsel.

MR. ALESSI: Thank you. The question as I understand it that is before the Board is the checklist. And the question becomes for the Board is, does the Town Code speak to whether the checklist is authorized. If you look at the Town Code you don't see the word checklist in it, so you don't have a ready answer, either way. There's no black and white answer on the checklist. What I'm going

to do is just go through a framework for you to analyze that, so that again you can come to your own logical conclusions.

In any type of construction of the local statute, which this is, if the plain language doesn't answer it, you go to the language and see if you can get the meaning from the general language used in the Code. The question then becomes -- does that language in the subdivision regulations, other provisions speak to similar items about what the Planning Board can do. I think there are several provisions of the Town Code which address the issue, generally, about what the Planning Board can ask for. It doesn't speak of checklists so you're not going to find the answer -- if you can have a checklist or require information off of it.

So, if you can just follow me, what I'm going to do is point out one significant fact on page 10304, Section 103-1. The Town Board authorized the Planning Board to regulate subdivisions. That's essentially what that provision says. With that adoption you delegated your authority of subdivisions to the Planning Board. The next significant provision comes in on page 10307, Section 103-6. When you try to ask yourself, what can the Planning Board regulate and how far with subdivisions, one of the provisions you look at is 103-6. It says, notwithstanding the foregoing provisions of this Article, that means any other provision in the subdivision code, the Planning Board may waive, subject to appropriate conditions, the provision of any or all such improvement and requirements as in its judgement are the special circumstances of a particular plat or plats are not requisite in the interest of the public health safety, etc. So the Planning Board authority is broad with regard to all the requirements. You can't have any broader authority than to waive any requirement that is in the Code. That's what the Town Board put in in its regulation. I think that's a provision you ought to be looking at with regard to answering your questions.

Next one is on page 10309 -- definition of a preliminary plat. This speaks to this Appendix A that I've read about. It says a drawing showing the layout of a proposed division including but not restricted to and it goes on to name some things and then it says, including preliminary plans and profiles prepared in the manner and detail prescribed in Appendix A. So that's a provision you ought to look to in answering the question.

Next provision comes in on 10311, Section 103-12a. This provision mandates that the Planning Board apply the State Environmental Quality Review Act. No choice. They must apply. The Planning Board 100% of the time, as regards the Town Board, is always the lead agency on subdivision approvals. There are no instances where the Town Board is an involved agency in any way. The only time where you have a relationship is in planned development districts. SEQR states, Section 617.6 C2 that the lead agency shall determine the need...

Can I have a drink of water? I have been in a trial for 6 days and I lost my voice at the end of it and I will probably loose it again. Sometimes that is a good thing for lawyers. Not when you are working on behalf of a client, though.

ATTORNEY KAPLOWITZ: I take offense.

SUPERVISOR RINGLER: Offense intended.

MR. ALESSI: The SEQR law says that the Planning Board has the duty to act as lead agency in subdivision regulations in that according to the provision I have just cited, they cannot make a determination of significance if there is information it may reasonably need to make that determination. So, there is another provision, that is a State law, not a Town Law, where the Planning Board has a mandate to request information it needs to make a SEQR determination. And, that finds its way right into your own Code.

The next provision that is relevant, is on page 10314, sub paragraph 2 at the top, it says one copy of the preliminary plat -- you go down to the middle, it reads all copies of the plat are to be clearly marked preliminary plat and are to be prepared in the manner and detail prescribed in Appendix A. And, from that you get the

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indication that Appendix A gives you a reference as to what is to be on the plat. Speaks just to what is to be on the plat. Then again down in 6 it talks about the State Environmental Quality Review Act and then it says -- and I am cutting into the sentence -- it talks about the requirements of SEQR, it shall be the responsibility of the owner to furnish such statement in the form and manner prescribed by the Board. There is no reference there to any document you are referred to for what the form and manner it should be. Under SEQR there is no limitations given to the Planning Board because there can't be. A lead agency has to make its own determinations of significance.

The next provision and if I had to be leaning a certain way on this issue, I think if anybody... I think it becomes almost obvious in this particular section -- and I am leaning a little bit because I think the plain language talks about it. If you look at page 10316, paragraph 13 -- and now, just to refer you back to what... because it has been some pages, if you go back to 10313 -- gives you the heading that we are talking about when we come to here -- it talks about formal application for preliminary plat approval and it says materials included in application. That is our frame of reference for what is... now if you turn to 10316, 13, follow me on that? 13 says that for information that can be required, such other drawings, maps, documents, reports or other data which the Board may require for proper consideration of the preliminary plat. It lists a whole bunch of things that the Board can ask for and what must be presented and then paragraph 13 is just as you have seen it.

There are other provisions that I will just point to that talk about additional information that the Board can ask, 10317 at the very top B, notify the owner of any additional information, maps or data it requires prior to the public hearing. Page 10321, all the way down at the bottom number 6, such other drawings, maps, plans, profiles, documents, reports, or other data which the Board had previously requested, etc. Finally page 10326, under Section 103-29, talks about there are certain minimum requirements for final plat approval which apply to any plat.

Again those are, I think, the provisions to answer a broad question of what can the Planning Board ask and what has this Town Board or your predecessors empowered the Planning Board to do. Then the final point you do, is when you look at the other language -- because our original premise is, there is nothing that speaks to the checklist. Whether you can have... whether Planning Board can have one or not. You ask yourself, reading the language that speaks to what the Planning Board can ask for -- what was the intention in the Town Code.

There are... there is one other point to be made and that is, when you look at a question like this, you look at -- in the checklist -- what is being asked for. If you find things in the checklist that are not within the scope of the Planning Board's jurisdiction-- things that they are precluded by law from looking at, or for example, only the Zoning Board of Appeals could look at -- that is something that although it could be read to be authorized by this section, there is some law that would prevent boards from overlapping -- its a doctrine of primary jurisdiction. But, that is what the Town Board regulations say. And, I am prepared to answer any questions that relate to my analysis of these provisions. But, what I want to do here is not to be here to be asked questions about what the Planning Board does and what it doesn't do, I was just here to walk you through the regulations, so you can take a look at provisions that speak to the question of what the Planning Board can ask for and what it can't.

SUPERVISOR RINGLER: Well, actually, I am not so sure legally we should be asking what the Planning Board, what it is doing on a regular basis. There is questions of law that we have to deal with but I mean...

COUNCILWOMAN GALVIN: Excuse me... on that particular point.

SUPERVISOR RINGLER: Could I finish, please, okay?

COUNCILWOMAN GALVIN: Go right ahead.

SUPERVISOR RINGLER: You know, I think that, you know, one of things that this is all about when these laws were designed is to have a separation of the Planning Board from the Town Board. The Planning Board was delegated the responsibility to do this and they are doing it. There is a fine line here as to where we go over when we start interfering in what they are doing. And, I am not saying we are moving in that direction but I don't want to move in that direction. But, the question came up and as whether or not what they were doing was taking away legislative authority of the Town Board and from what Bob says, he says he doesn't think they are.

COUNCILWOMAN GALVIN: With respect to the point that you raise that we don't have any business looking at what the Planning Board is doing, we have the power to appoint the Members of the Planning Board and under the law, as it currently exists, we are responsible for our appointments. And, we are responsible for the Board that serves at the pleasure of the Town Board. We have a legal obligation to keep ourselves advised in terms of what is going on. That is not interfering, that is doing our job.

SUPERVISOR RINGLER: Well, what I am saying is, we appoint these people, they are given terms, and they are there as the representatives to carry it out. Again, they have certain jurisdictional requirements, attorneys can respond to this, as required by State Law, Town Law, and so forth and you know, I don't know where we are going with this.

COUNCILWOMAN GALVIN: Now that we have taken our walk through the Code, I would like to stop at a few of the bushes we passed on the way by.

I have some questions about specifics. Bob, you picked up on the reference to the Appendix A -- which doesn't seem to exist. Now, however, there does appear to be a document that was dated 1968 that was titled, Tentative Specifications for Drawings required for subdivision approval -- which appears to be what we are referring to when we are talking about Appendix A. Again, this is all subject to interpretation. According to Jeff's memo, he went through the Town Board minutes from -- looks like close to the beginning of the world on this one, to the present date and you can't find anything any place where Appendix A was ever adopted, is that right?

MR. LIPNICKY: What I am saying is that we went through the meetings when... around the time where Appendix A is dated and later revisions to the subdivision regulations and we found nothing in the minutes that makes specific reference to adoption of Appendix A.

COUNCILWOMAN GALVIN: What my concern is, is that what is adopted in the Town Code is the responsibility of the Town Board. Will you agree with that, Bob?

MR. ALESSI: Pardon me, I wasn't listening.

COUNCILWOMAN GALVIN: Will you agree that what is adopted in, as part of the Town Code, is the responsibility of the Town Board?

MR. ALESSI: I think that is a fair proposition.

COUNCILWOMAN GALVIN: Okay. When I find something that refers to an Appendix A and I can't find Appendix A and they start talking about tentative specifications for drawings and I am subsequently able to find something that appears to be a "checklist" that was in some way, some how or other incorporated into the Town Code in 1968, I believe that as a member of the Town Board I have some responsibility for what is being used because it is part of the Town Code.

CHAIRMAN BARR: It's... tentative specifications is only... the only reference to the tentative specifications is the editor's note and I don't believe the editor's note is a legal part of the Town Code.

COUNCILWOMAN GALVIN: Well, see this is why I am trying to clarify, Martin, is what we are talking about when people ask questions.

CHAIRMAN BARR: I would like you to clarify what you are talking about. Yes, that is a good question.

COUNCILWOMAN GALVIN: Okay, that is what I am trying to clarify. That is exactly what I have been trying to do, is get a clarification. Is there an Appendix A? Yes or no. If Appendix A is a checklist, has it ever been formally adopted by anybody because it would appear that if we are talking about an Appendix A, it must have been adopted by a Town Board somewhere along the line to be part of the Town Code. But...

CHAIRMAN BARR: Not necessarily. The tentative specifications may have been something put together back in the 60s by the Planning Board and the Planning Board has been using it... it appears as though there was never any Appendix A adopted by the Town Board.

COUNCILWOMAN GALVIN: Yes, John.

MR. FLANIGAN: Having been around a long time, I might be able to shed some light on this. I think you should talk to Mr. Worth. I remember him over the years talking about that Appendix A. That is all I can tell you.

MR. ALESSI: Just to answer your question, Sheila, you have an equal footing to have the answer to that -- is the Planning Board.

COUNCILWOMAN GALVIN: I haven't been able to find an answer to it in the material I have.

CHAIRMAN BARR: Well, neither have we.

COUNCILWOMAN GALVIN: If we have an Appendix A...

MR. ALESSI: That is why I say you have an equal footing.

COUNCILWOMAN GALVIN: If we have something that we are using, it should be either adopted or taken out or dealt with because what you have referred to is, you took us on our walk through this, Bob, at page 10320 that is where the reference to Appendix A appears. That is talking about the application for final plat approval and what the application shall include. But, we have been talking about, is something entirely different. We are talking about how the applicant gets to the Planning Board in the first instance. We are not talking about somebody who is in front of the Planning Board. We are talking about somebody who has made an application that is before the Planning Department. It hasn't even been presented to the Planning Board. That means, it is the problem of this Board.

MR. ALESSI: Why? I don't...

COUNCILWOMAN GALVIN: Because the Planning Department is a department of this Town and this Town Board is responsible for its departments.

MR. LIPNICKY: The Planning Board is also an agent acting for the Planning Board.

COUNCILWOMAN GALVIN: But, if the application has not even been presented to the Planning Board, the Planning Board hasn't seen it to be responsible or to act on it.

MR. ALESSI: I can address that. I think that there may be a gap in information here. The Planning Board has addressed that very issue with respect to the planning staff about the very topic you are dealing with and the Planning Board is satisfied with regard to how that system works.

COUNCILWOMAN GALVIN: How does it work?

MR. ALESSI: Pardon me.

COUNCILWOMAN GALVIN: How does it work?

MR. ALESSI: I think what we ought to do is, if... you know, Planning Board procedures, more than happy to sit down with you and discuss

them. We just are uncomfortable about the form in which it is done. You ought to discuss it with us and then we will have...

COUNCILWOMAN GALVIN: I tried.

CHAIRMAN BARR: No, you didn't.

COUNCILWOMAN GALVIN: I discussed with Mr. Alessi...

CHAIRMAN BARR: You have never called me about anything on this. You have never asked me one question.

SUPERVISOR RINGLER: Wait a minute. Let's not get rancor here. I would suggest...

MR. ALESSI: You want to set up a meeting on it, I would be more than happy to.

SUPERVISOR RINGLER: I would suggest that that is the way to go. Sheila you are liaison for the Planning Board.

COUNCILWOMAN GALVIN: I am sorry. I also believe that the public has a right to know and the other Members of this Board have a right to know.

CHAIRMAN BARR: I agree with that whole heartily and our Planning Board meetings and our Planning Board minutes are available and a lengthy discussion of the checklist was conducted by the Planning Board at its meeting of March 3, 1992. A number of questions were raised regarding the relationship of the Planning Board to the Planning Department. The Planning Department is willy-nilly, the staff of the Planning Board -- and like any staff, it's appropriate to have them review material and report to the Board when the Board first considers the matter. I don't know of anybody who objects to the procedures that have been in effect -- vis-a-vis the Planning Board and the Planning Department in the last few years.

COUNCILWOMAN GALVIN: Well, since I don't know what the procedures are and since no one seems to be willing to discuss them here tonight, I can't comment.

CHAIRMAN BARR: I am not going to discuss them here tonight other than to invite you to get in touch with me or to discuss this matter. I consider this inquiry inappropriate.

COUNCILWOMAN GALVIN: I think it is a matter that certainly is something that should be discussed in a public forum. I think this is not just something...

CHAIRMAN BARR: You made a motion for a legislative inquiry of the Planning Board several months ago. No one seconded it. I believe this is an attempt to have a one person legislative commission. If the Town Board wants to institute an investigation of the Planning Board and its procedures it is... it can do so by adopting a resolution to that effect. This kind of inquiry, I think, is out of bounds.

MR. ALESSI: Let me just offer this, Miss Galvin. I think the Planning Board considers the questions to be appropriate. We just think that any questions about the Planning Board that anybody has -- a Town Board member, a member of the public -- we are very happy to discuss them but we would like to have it happen at our meetings. We are more than happy to have anybody come to our Planning Board meetings who wants to come on our agenda. If you want to come on our agenda and discuss it, we are happy to have that and answer any questions about our procedures. We have nothing to hide and we are more than happy for anybody who wants to learn more about the Planning Board. Just come to our meetings and discuss...

COUNCILWOMAN GALVIN: If there is nothing to hide, is anyone willing to make a report on behalf of the Planning Board to this Board so that we can discuss it?

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MR. BARR: I resent the... I resent the implication of that statement. I... I completely resent it. That you would introduce your inquiry if there is no... if there is nothing to hide...

COUNCILWOMAN GALVIN: Excuse me, excuse me Mr. Alessi...

MR. BARR: ... there is nothing to hide.

COUNCILWOMAN GALVIN: Mr. Alessi used those words...I merely paraphrased them.

MR. BARR: There is nothing to hide. Come down to the Planning Board and we'll discuss it with you.

COUNCILWOMAN GALVIN: I think it's totally inappropriate for the Planning Board to require the Town Board to appear before it, in it's forum, to obtain answers to question regarding the Town Code. I would make my motion again at this point based on Mr. Barr's recommendation that we institute an investigation.

MR. BARR: I made no recommendation. I said that that would be the only appropriate way to do it.

COUNCILWOMAN GALVIN: Well, based on Mr. Barr's position it's the only appropriate way to do it. I would move the investigation to the Planning Board.

MR. BARR: If there has in fact been any basis shown by anybody that such an inquiry is necessary.

COUNCILWOMAN GALVIN: Since I can't get the answers to my questions...

MR. BARR: What are your questions?

COUNCILWOMAN GALVIN: I have asked them repeatedly. I asked what is the procedure and, I was told it was discussed at the March 3rd meeting but nobody is willing to sit here and tell me what the procedure is in terms of the relationship between an application coming in...

MR. BARR: Why is it necessary... why is it necessary to make that inquiry in a public meeting?

COUNCILWOMAN GALVIN: Because I am responsible as a Member of the Town Board and if I am to be held responsible, I want to know what the procedure is.

CHAIRMAN BARR: I am responsible as Chairman of the Planning Board, a body that has been delegated broad powers by the Town Board to... to review subdivision applications and determine subdivision.

COUNCILWOMAN GALVIN: Mr. Barr, I agree completely that you have broad powers once the matter is before you. Where the issue comes is when a matter had not come before the Planning Board and where it is...

CHAIRMAN BARR: When has it not come before the Planning Board?

COUNCILWOMAN GALVIN: As I... and that's what I have been asking about the procedures.

CHAIRMAN BARR: The Planning Board treats the... and we have told you over and over again. The Planning Board treats the Planning Department as if it were the staff of the Planning Board. An application is filed, some kind of preliminary plan is filed, the matter is reviewed by the staff before it is submitted to the Planning Board. There is nothing arcane about it. There is nothing secretive. There is nothing that should raise any... any doubts about what's going on.

SUPERVISOR RINGLER: And based upon Mr. Alessi's tonight, I don't think there is anything that can be considered illegal.

COUNCILWOMAN GALVIN: I wasn't questioning whether anything was illegal or not, Ken.

SUPERVISOR RINGLER: But I... I guess...

COUNCILWOMAN GALVIN: What I was questioning is this business about appendix A, I was questioning the document title, tentative subdivision approval -- which even appears back on page 10309 under preliminary plat. That also refers to appendix A.

SUPERVISOR RINGLER: I guess...

COUNCILWOMAN GALVIN: Which this board is responsible for...

SUPERVISOR RINGLER: I guess...

COUNCILWOMAN GALVIN: ...if was adopted.

SUPERVISOR RINGLER: I guess... I guess I have to go back to when you originally brought this discussion up. And... and I'll try to paraphrase -- and correct me if I am wrong which I know you will do. Okay?

COUNCILWOMAN GALVIN: Don't worry.

SUPERVISOR RINGLER: It was my understanding, that your concern, was that a check list that the Planning Department was using, might not be in line with this Code.

COUNCILWOMAN GALVIN: That's correct. That's part of the issue.

SUPERVISOR RINGLER: Okay, okay, all right. Now I believe that Mr. Alessi addressed that this evening. I think that the Planning Board has...

COUNCILWOMAN GALVIN: No...

SUPERVISOR RINGLER: ...what it says in here, the Planning Board can request any information they want and that's what they have instructed the Planning Department to do.

COUNCILWOMAN GALVIN: At what... I have many questions about that procedure. At what point in time the Planning Department is solely the responsibility of the Planning Board and acting as their agent?

SUPERVISOR RINGLER: When they are reviewing subdivisions that we are not responsible for.

COUNCILWOMAN GALVIN: If the subdivision has come before the Planning Board. If the Planning Department is holding it and not presenting it to the Planning Board because it hasn't been....

SUPERVISOR RINGLER: Let me, let me...

COUNCILWOMAN GALVIN: Let me...

SUPERVISOR RINGLER: Let me just say...

CHAIRMAN BARR: On what basis do you pose that hypothetical?

COUNCILWOMAN GALVIN: I pose it on the basis of the existence of the Town Code and...

CHAIRMAN BARR: No, No, No, No, No, No...

COUNCILWOMAN GALVIN: and what, and what Mr. Lipnicky...

CHAIRMAN BARR: No, No, No...

COUNCILWOMAN GALVIN: ...what Mr. Lipnicky has told me.

CHAIRMAN BARR: You have, you are making... you can't possibly on the basis of the Town Code.

SUPERVISOR RINGLER: No.

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CHAIRMAN BARR: Pose a hypothetical that the Planning Department has held things up and not permitted it to go...

COUNCILWOMAN GALVIN: I didn't say that Martin. What I said...

CHAIRMAN BARR: What are you saying?

COUNCILWOMAN GALVIN: What I said...

CHAIRMAN BARR: What are you saying then, what is your question?

COUNCILWOMAN GALVIN: If you let me state it, I'd tell you. What I am saying very simply, is according to what Jeff said here tonight, put everything else aside and start from square one of what Jeff said here tonight. Jeff... if I could finish please, Jeff said that there are instances in which application are made with the check list. The check list has not been satisfactorily completed. The Planning Department sends it back to the applicant for further information, for further documentation, for what ever. At that point in time, the matter has not come before the Planning Board as an application, because the Planning Department has not received everything that they wanted under the check list. Based upon that, the matter is not pending before the Planning Board. It's in the Planning Department.

CHAIRMAN BARR: May I... may I... may I just suggest that this whole procedure was discussed thoroughly by the Planning Board on more than one occasion. And the Planning Board has approved such a procedure. The... I... I would also suggest, that the Planning Board has the full authority to approve such a procedure. And that the such... and I would finally suggest that such a procedure is not in any way violative of any provision of the Town Code. As far as I am concerned that's, that's...

SUPERVISOR RINGLER: I thing that sums it all up.

CHAIRMAN BARR: ...that's the proper response.

SUPERVISOR RINGLER: I would suggest that if there are further questions on this, then perhaps an agenda item, as you have suggested with the Planning Board, will be appropriate or a meeting with this group would be appropriate. But, it appears that... I know that the Planning Board has been doing a super job. There has been a transition period here now that we do have support staff. Where... where the Planning Board has changed and the manner in which they conduct themselves and it's all to the betterment of the residents of this Town to have a thorough review of the project. And from what I hear from individual Planning Board members and I have to admit, when I was Chairman of the Planning Board some of those board members who had been doing this without professional support for years didn't care for it. But now, as I talk to Planning Board members they are very enthused about the support service that the Planning Department is providing and it's working very well and it appears, that it's... it's totally within the Code of the Town of Bethlehem.

COUNCILWOMAN GALVIN: Is it correct then that no one is willing to discuss the matter of appendix A and the document dated January, 1968 entitled "Tentative Subdivision Approval"?

SUPERVISOR RINGLER: I would suggest you sit and talk to the Planning Board.

COUNCILWOMAN GALVIN: No, I'm talking about the other members of this Board.

SUPERVISOR RINGLER: I have... I have no interest in discussing it.

COUNCILMAN GUNNER: Well, I have a question. If it states in here, and I did read it but I forget where it was, what page...

COUNCILWOMAN GALVIN: Page 309.

COUNCILMAN GUNNER: 309?

COUNCILWOMAN GALVIN: And it's also on 314, too.

COUNCILMAN GUNNER: Yes, on the... okay, I just want to find them... 103-8 it does state in the manner and detail prescribed in appendix A, and what I hear, which I think is a legitimate question, at least if I wanted to know, I would like to have an answer to...

MR. BARR: You got the...

COUNCILMAN GUNNER: Wait a minute, I didn't finish my question, okay

MR. BARR: I am sorry, I beg your pardon.

COUNCILMAN GUNNER: I'm sorry it's taking a little bit of time. But you know -- where does... I guess I heard that appendix A may no really exist, although it must of existed at one time.

MR. LIPNICKY: No, appendix A exists.

COUNCILMAN GUNNER: No, just...yes, okay, it exists where?

MR. LIPNICKY: It exists -- the Board members have a copy of it, staff has a copy of it.

COUNCILMAN GUNNER: Oh, it does exist.

MR. LIPNICKY: It exists.

COUNCILWOMAN GALVIN: I was just told it didn't.

COUNCILMAN GUNNER: I thought I heard it didn't, too.

MR. LIPNICKY: Nobody said it didn't exist.

COUNCILMAN GUNNER: Do you have a copy of it?

MR. BARR: I would not characterize it that way. We have a document that everybody agrees probably is appendix -- what was intended as Appendix A. And that's the tentative specifications as preferred...

COUNCILMAN GUNNER: You treated as Appendix A.

MR. BARR: That's... that's referred to in the editor's note. Because, obviously, at the time this was printed, the editor could not find anything called Appendix A. None of the resolutions of the Town Board have an Appendix A. Although the subdivision regulations which the Town Board adopted refer to Appendix A. Apparently by general agreement a document that the Planning Board uses called "Tentative Specifications" is... is the... has been treated as Appendix A.

COUNCILMAN GUNNER: For a long period of time.

MR. BARR: For a long period of time. Bob Alessi's... Bob Alessi's discussion with you, I respectfully submit is... was... was an effort to try to explain that the... that the authority of the Planning Board to approve and use the preliminaries.. the the preliminary approvals check list is not affected by the provisions of the specifications. Is... is that the authority of the... his, his position -- as least I interrupt what he was saying and what the Planning Board interrupts what he was saying -- I respectfully submit, was that the specifications do not limit or... or define the authority of the Planning Board in so far as the check list is concerned. And that's our position.

COUNCILMAN GUNNER: I have no problem with that position, okay?

MR. BARR: Okay.

COUNCILMAN GUNNER: But I guess their is a piece of semantics or research that bothers me. If I were researching, I am looking for Appendix A and not going to accept anything else until I see Appendix A. That's my problem, and some way or another we should clean that up if that's possible.

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MR. ALESSI: Mr. Gunner, I agree...

COUNCILMAN GUNNER: Even... I think you gave an explanation for it, that there may be something existing. Mr. Flanigan here suggested we contact Mr. Worth, he may have the answer or at least some recommendation for it. I have no real problem... I am not questioning that authority Planning Board, Martin, at all. I am just trying to clarify what I think I hear Ms. Galvin say. Okay?

MR. ALESSI: Mr. Gunner, if I can address your point. It's to me just a formal over substance issue and maybe this would help. If you take a look... perhaps you don't have it... If you look at the document that's been talked about, Tentative Specifications for drawing required per subdivision approval and you compare it to the editor's notes, you can almost glean that they were talking about the same thing. It was a labeling problem, that something got dropped through the process. It's understandable that somebody could raise the question. No doubt, about Appendix A, where is it? It's just the forum of raising it -- I think could be a little different, but I think it's a legitimate question and I think it deserves to be resolved.

COUNCILMAN GUNNER: That's my whole point.

MR. ALESSI: Yes, and I agree with you on that.

COUNCILMAN GUNNER: Martin do you...

SUPERVISOR RINGLER: Anything else. Thank you all. Let's move on to our next item.

Amend
BPA
No. 26
Beverwyck

SUPERVISOR RINGLER: Next, a recommendation from Jeff Lipnicky, the Town Planner for consideration to amend the Building Project Approval No. 26, Beverwyck.

COUNCILWOMAN GALVIN: I have a question.

SUPERVISOR RINGLER: Okay.

COUNCILWOMAN GALVIN: I have a question on that and it's going to come up again. We were provided with something just late the other day on these which indicate on this and also on Delmar Village -- which indicated the end of the submission that, the changes approved by the Town Board were not considered a sufficient magnitude to require a public hearing to be held to consider such changes. After looking over the sketchy material that's included, I can't make that determination one way or another.

SUPERVISOR RINGLER: Jeff, could you explain what these changes are.

MR. LIPNICKY: Yes, excuse me, the first Beverwyck...

COUNCILMAN GUNNER: Are you on Beverwyck.

MR. LIPNICKY: Pardon.

COUNCILMAN GUNNER: Are we talking about Beverwyck?

SUPERVISOR RINGLER: Yes, we are.

ATTORNEY KAPLOWITZ: Yes.

COUNCILMAN GUNNER: Yes, go ahead.

MR. LIPNICKY: With... with Beverwyck the changes and modifications include, for example, final engineering modifications for road profiles, for sewer profiles, for water profiles, for drainage location of easements, things of that nature, which the Engineering Department takes a look at... takes a look at... takes a look at after post approval to make sure the final design works from the point of view of the Town of Bethlehem's sewer, water, drainage standards and specifications. The second modification that was made

was -- one of the requirements of the Building Project Approval, for example, was for the change of the name of the access road that lead between Krumkill Manor in Beverwyck -- the specification or location of walk-ways on the plan and also the detailing of the court yards on the Beverwyck plan. So there is no really significant change to the plan itself, all it does is provide modifications in line with what the Building Project Approval required and also, with Town Engineering requirements are.

SUPERVISOR RINGLER: Other questions?

COUNCILWOMAN GALVIN: I'm still confused as... as to specifics, when we go through and we have 21 different items. Now, I can understand that some of them are very simple and don't have many major impact. But, I'm still not clear as to exactly what's been changed in each one of them.

MR. LIPNICKY: Most likely numerous changes from the terms of point of view of engineering, in terms of, you know, what elevation a manhole is at, in terms of the elevation...

COUNCILWOMAN GALVIN: For example...

MR. LIPNICKY: ...and grade of piping and things of that nature.

SUPERVISOR RINGLER: These are not normally things that we even get involved in the original approval. This is referred to Engineering for them to handle it and delegate it to them and this is just the approval to file the maps -- as I understand it.

COUNCILWOMAN GALVIN: Which ones are specifically the Engineering items?

MR. LIPNICKY: In terms of the drawings themselves?

COUNCILWOMAN GALVIN: In terms of what you've got listed on here.

MR. LIPNICKY: I assumed there is some aspect to do with most of them.

COUNCILWOMAN GALVIN: Since Bruce is here, maybe he can clarify?

COUNCILMAN GUNNER: Do you want the list?

MR. LIPNICKY: I have it here.

MR. SECOR: I can just quickly take off a few of them if you go down through the grading plans, I'd have to look exactly what they changed there. The utility plans, we provided a stub utility for the property to the south which would be the Holy Names or the southeast, I think it is. We also provided a utility connection. We wanted the water main to loop between the Beverwyck project and the proposed extension of -- what's the one next door?

MR. LIPNICKY: Krumkill Manor.

MR. SECOR: Krumkill Manor, so again those are some minor utilities things. The profiles I would have to check with Terry on and again they were just making center lines match up and they changed...

COUNCILWOMAN GALVIN: It's not changing the location of them.

MR. SECOR: No, these are just lighting and planting plans, I would have to look at that, I don't know that one. Building entry, loading area, detail plan -- this is minor stuff. The court yards are just detailed... the cottage used typical plan, that was just something... something was required to be added to the drawings, construction details. The force main profile intersection details -- again, that's a real... you are getting into the real nitty gritty of stuff there. That's just where the sewer main...

COUNCILWOMAN GALVIN: Making the roads line up.

MR. SECOR: Well, the sewer main, force main had to line up with the existing line, that's all I can tell you.

COUNCILWOMAN GALVIN: It works better.

MR. SECOR: Yes it does. Beverwyck sanitary sewer pump station, and again some typical details. There's... They added no units, they took away no buildings...

COUNCILWOMAN GALVIN: They didn't move the placement of...

MR. SECOR: ...the place didn't move to the other side of the road.

MR. LIPNICKY: The roads are all in the same place. Everything is in the same place.

COUNCILWOMAN GALVIN: Okay.

MR. LIPNICKY: This is really, on this one, it's the details and additional information for engineering implementation.

MR. SECOR: The only... the only thing that I can remember in here, there was a easement shown... there was an adjoining property owner that they had to get a drainage easement from. On the original plans it showed a driveway and they now want to show that as a stub street. It's still 50 feet wide, it's still -- it's only 50 feet long, but they wanted.. they changed it from a driveway to a stub street.

COUNCILWOMAN GALVIN: Does it affect anyone?

MR. SECOR: No. Just that one property owner.

COUNCILWOMAN GALVIN: And, has that one property owner been contacted about this?

MR. SECOR: Well, but again, they were the one who requested the change.

COUNCILWOMAN GALVIN: Okay.

MR. SECOR: Otherwise, they would have been a...the street would have gone by and there would have been a gore of property between that street going by and their land. So, they just wanted access to a Town street, so that if they ever wanted to build a house, they would have access to it.

COUNCILWOMAN GALVIN: So it's not harming anyone?

MR. SECOR: No, it's helping them.

SUPERVISOR RINGLER: Further questions? I would entertain a motion to authorize the Supervisor to sign the change.

Motion was made by Mrs. Fuller, and seconded by Mr. Webster to authorize the Supervisor to sign the change for Beverwyck. The motion was passed by the following vote:

- AYES: Mr. Ringler, Ms. Galvin, Mr. Webster, Mr. Gunner, Mrs. Fuller.
- NOES: None.

Approve SUPERVISOR RINGLER: Next is recommendation by Mr. Cirillo,
 Release Engineering Department, for approval of release of temporary turn
 Temporary around easements in the Indian Hills Subdivision, Section 3 for
 Turn Around Oneida Court and Iroquois Trail. These streets are now connected
 Easements through and the turn around is no longer needed.
 Indian Hills

The motion was made by Mr. Webster and seconded by Mrs. Fuller to approve the release of temporary turn around easements in the Indian Hills Subdivision Section 3 for Oneida Court and Iroquois Trail. The motion was passed by the following vote:

AYES: Mr. Ringler, Mr. Webster, Mrs. Fuller, Ms. Galvin and Mr. Gunner.
NOES: None.

Approve
Extending
Employment-
Assessor

SUPERVISOR RINGLER: Next, consideration of Supervisor Ringler's request to extend the employment of Brian Lastra.

COUNCILWOMAN GALVIN: So moved with enthusiasm!

SUPERVISOR RINGLER: Well, I have to do this technically, okay, because Brian submitted a resignation effective today. I have to have a motion that authorizes me to rehire effective midnight. And it will be until... I hope a long time. Brian has accepted a position in private industry and their starting date -- they asked if we could be flexible because of some of their projects and I was more than happy to say we could be flexible -- but if they get some approvals Brian could leave in a couple of days or he may leave in two weeks or he may leave in a month. But, I would like to keep him as long as we can. So,...

COUNCILWOMAN GALVIN: So moved.

COUNCILMAN GUNNER: I would suggest rather than to sometime in the future, like 30 days, which would give you five weeks.

SUPERVISOR RINGLER: Why don't we make it 60 days and then we don't have to come back to the Board?

COUNCILMAN GUNNER: Okay but then you should have to say...

COUNCILWOMAN GALVIN: Make it January 1st...

SUPERVISOR RINGLER: Rehire him effective tomorrow for 60 days, okay?

COUNCILMAN GUNNER: Yes, okay.

SUPERVISOR RINGLER: At the same salary that he has been getting. Is that part of your motion? I knew you would say that.

The motion was made by Ms. Galvin and seconded by Mr. Gunner to rehire Brian Lastra for 60 days starting October 29, 1992 at his present salary. The motion was passed by the following vote:

AYES: Mr. Ringler, Ms. Galvin, Mr. Gunner, Mrs. Fuller and Ms. Galvin.
NOES: None.

COUNCILMAN GUNNER: He certainly would like a little more, I am thinking.

SUPERVISOR RINGLER: I have a feeling we are not going to have him.

Amend
BPA
No. 24
Delmar
Village

SUPERVISOR RINGLER: Okay, next a recommendation by Mr. Lipnicky to authorize the Supervisor to sign an amendment to Building Project Approval No. 24, Delmar Village, this one is a little more complicated...

COUNCILWOMAN GALVIN: Same questions.

SUPERVISOR RINGLER: ...and Jeff is going to explain what these changes are.

MR. LIPNICKY: I am not so sure I can go over every change that was made on this because there are hundreds, okay? Most of them are very minor and they involve things again, like final grades, things like final profiles for sewer and water, and things of that nature.

There is also a lot of additional notes that have been added to the plans, okay? Most of those notes concern things like, implementation of the SEQR mitigation measures, okay? When this plan was approved

and the Building Project Approval was adopted, at that point in time, the plans that were listed in the approval document did not contain implementation of the SEQR findings, or the final FEIS for the project, etc., etc.. So, again, it amounted to literally, I would guess, hundreds of changes to the plan, okay?

Now, they are not changes that really affect -- again, things like the location of buildings, things like the location of roadways, etc. What I will do in a minute is pull out the plan and show you where there have been changes made in things that you should look at, okay? But just to go through a couple of the things, for example, notes were added to the plan concerning the implementation of various things such as construction activity on the site limited in hours from 7 to 6 p.m.; access had to be to the site from Delaware Avenue; notes regarding dust control; notes regarding conformance with the extensive soils engineering report that was done on this project.

COUNCILWOMAN GALVIN: Jeff, which one of the 34 items can we blip off with those items?

MR. LIPNICKY: It is most in the plans, okay? But, there are two things that...

MR. SECOR: Let me just interrupt for a second. When this went through the whole process, the findings statement was adopted when the Building Project Approval was adopted. We are not making... we are not adopting anything new, all that has happened is that the drawings had been brought up to speed to what the Board adopted in the Building Project Approval.

MR. LIPNICKY: Right, for example, the approval required a sidewalk and bike path on Fisher Boulevard -- so, that is shown on the plan. The approval required a path from the end of what is known as "Captain's Cove" to Delaware Avenue -- so, that is shown on the plan. Most of the changes that have been made are changes of that nature. Another type of change that was made, for example, had to do with the wetlands, okay? One of the requirements of the approval was that the developer go and get a wetlands permit from DEC and also from the Town. Well, DEC had some requirements, DEC required for example, because some of the wetland -- it was a very minor amount -- was being affected by road placement and side slope from the road down that couldn't be avoided, DEC required the developer to create wetlands on another portion of the site that wasn't wetlands. So, there is implementation of that into the project also, okay. But, those types of things -- let me just, if I can just quickly go through some of those. There were such things as final delineation of the buffer areas, note saying that these buffer areas are restricted by covenants that were required by the Board.

COUNCILWOMAN GALVIN: What I am interested in, is anything that makes a change to what the people in the community would be expecting based on what was approved.

MR. SECOR: This is implementation of what was approved.

MR. LIPNICKY: The changes are implementation of what the members of the community fought for, I guess, although they didn't get everything they wanted -- I guess is the best way to put it.

COUNCILWOMAN GALVIN: Well, all I want to make sure is that we are not doing something to in any way change that without having a public hearing and giving them an opportunity to speak.

MR. SECOR: No.

MR. LIPNICKY: There is also -- you know, the significant thing from the time of approval -- the most significant things concern, for example, the wetlands area. Although at the time of approval it was recommended that the road be shifted, okay, it wasn't known exactly how much impact it would be on the wetlands area. The wetlands area is delineated like this and this is the 100 foot buffer, okay. One of the requirements in the Building Project Approval was that the wetlands area not be disturbed and that the buffer area essentially be disturbed as minimal as possible -- well, in designing the project

the other requirement was that it had to go through DEC. Well, there is just a little bit of the wetlands that is going to be disturbed by the location of a storm drain, down here. DEC reviewed all this, DEC issued a permit, the Town Planning Board under its local wetland permit authority also issued a permit. One of the mitigating measures to the wetland situation is for location and creation of a wetland area on this portion of the site over here, okay, in order to mitigate the wetland impacts.

The plan shows such things as, again, sidewalks and bike paths along Fisher Boulevard which were required and the other things that were required, the other significant things -- and I can pull out the planting plans if you want me to, is there was a requirement for moving existing vegetation into the buffer area with Richardson over here, and it is shown on planting plans that I have and also for a planting plan along Fisher Boulevard here and other plantings within the purported complex areas. Other requirements that were changed, for example, was the roadway, the utilities were located in the buffer area, they were required to be moved out of the buffer area. You know, it is things of that nature which were changed on the plan, all in conformance with what the requirements of the Board were.

COUNCILWOMAN GALVIN: Jeff, if you don't mind, I know John Smolinsky is here tonight and was very active and is a member of the community in that particular area -- John, from what you have heard tonight does this sound like a significant deviation that would be of concern to the people in the immediate area?

MR. SMOLINSKY: Not any of those items, although there are some things on the list like the grading and planting plan on the northwest side, the erosion control plan and storm drainage plan which were all things of concern during the hearing process. There is not enough information on here to judge whether there is a significant change or not. And, if in fact, they are implementation of the SEQR requirements and the other conditions, then they should be perfectly consistent with, you know, what was approved. But, the 4 page letter that I looked at, doesn't provide that amount of detail. You know, what Bruce and Jeff are saying is that that in fact is what they did.

MR. LIPNICKY: What you really have to do, in order to see whether it does or not, what you really have to go do is go through the 38 sheets of drawings and read every note on those drawings. Okay, to see that all the implementation measures have been implemented. Now, I don't know if the Board wants me to go through 37 pages and read every note -- I would assume not. But, a lot of this stuff is implemented in terms of notes on the plan, in terms of reference to the soils report and soils requirements, in terms of the erosion control plan -- things like, you know, for example one of the requirements was to mitigate soil or erosion onto the public roadway that gets dragged by trucks, okay. So, one of the things that is in the plans now, is the design of a mudrack, okay, to prevent that from happening. It's things like that, okay.

MR. SECOR: But, again, very specifically in the findings statement that the Board adopted at the times this was done, a mitigation measure was listed, a mudrack. All this is the drawing of the mudrack that was already required.

COUNCILWOMAN GALVIN: Again, as John said, from the letter that we have to look at, it is very hard to tell. Would there be any detrimental effect to a delay if we were to have a public hearing on this -- since Delmar Village was such an issue of concern to the residents -- what would be the problem with having a public hearing on it?

MR. LIPNICKY: I don't think it is necessary to have a public hearing from the perspective that all these drawings do is implement what was the requirements of the Town Board.

COUNCILWOMAN FULLER: How many public hearings were held on it?

MR. LIPNICKY: Many, many.

MR. SECOR: This has gone through 5 or 6 years of work.

COUNCILWOMAN FULLER: I understand that. Sheila, what is your question?

SUPERVISOR RINGLER: I think that if there was a change to what the Town Board had approved and it was a major change, we would have to do it. But, if the staff is telling me that this is not a change and only an implementation of what was already approved, I do not see the need for a public hearing.

MR. SECOR: There are no changes here. This is simply... the Board adopted a package which was like plans and specifications. The specifications required certain things which they had to implement. This is just the implementation of that. They are still a package, they are still married together and these are just revised drawings.

COUNCILWOMAN GALVIN: But, what Jeff has just told us is that there are certain things that are being changed. You have just gone through certain items that are being changed.

MR. SECOR: No.

SUPERVISOR RINGLER: They are being changed on the maps to...

MR. SECOR: They are being changed in reaction to the mitigation measures required in the approval.

MR. LIPNICKY: The best way to put it, is the maps are changed, okay -- in a lot of respects, but the maps are changed in order to comply with what the Board required.

COUNCILWOMAN GALVIN: John raised a couple of specific areas, can you respond to those?

MR. LIPNICKY: Can you give them again, John?

MR. SMOLINSKY: The grading and planting plan northwest side, the planting plan in general, the erosion control and the storm drainage.

MR. LIPNICKY: The planting plan that was submitted contains these two drawings here. Basically, one of the requirements, this is a section of the roadway -- Fisher Boulevard runs through here, the single family portion of the project is located over here and some of the multi-families are located over here. One of the requirements was that lands aping be initiated along Fisher Boulevard in the vicinity of the multi-families to minimize visual impact between the 2 uses, okay. So, what we have here is a planting plan with a lot of evergreens along the roadway with street trees along the roadway spaced at about 60 foot intervals with clumps of, again, things like white pines, etc., which were first in there.

COUNCILWOMAN GALVIN: And, those have all been reviewed by you to determine that they are in accordance with the original plans.

MR. LIPNICKY: That is correct.

MR. SECOR: With the original requirements and findings statement.

COUNCILWOMAN GALVIN: The original requirements, okay.

MR. LIPNICKY: See, what was originally what was along this area was a proposal of Bagdon's -- Bagdon's Environmental Impact Statement, okay -- for low lying shrubs about this -- yews and things like that which have absolutely no visual benefit along this roadway. So, one of the requirements was -- again, this landscape plan.

COUNCILWOMAN GALVIN: So, it in effect, beefed up what was required.

MR. LIPNICKY: Well, I think what was there originally couldn't be beefed up. It had to be discarded and started over again. Similarly, also plantings along Fisher Boulevard here. But, more significantly really is the area around Richardson's property -- the requirements were for moving existing pines from the property because

there is really a lot of pines existing that could be moved with a spade and form a buffer on areas along the Richardson property where there is really no vegetation, okay? So, that is done here by 16... 15 white pines on both sides of the property in those 2 areas. So, that's... that's the other significant landscaping aspect plus again street trees along Fisher Boulevard.

MR. SECOR: Again, just... I don't mean to restate it -- there was an initial planting plan submitted during the public hearing process and the review of the project and public comment, it was noted that additional work should be done and the findings statement said that they should provide a reinforced or replaced planting schedule and be submitted back in and that is what this is. John's -- the buzz word compliance filing. I mean, this is to bring the drawings into compliance with what was required as a result of the hearing.

COUNCILWOMAN GALVIN: So, everything... everything set forth in the 4 pages that we received is compliance filings. Is that what you are saying?

MR. SECOR: Yes.

MR. LIPNICKY: Some of the plans may have not changed, okay, you have to consider that the original plan contained what -- something like 26 drawings or something like that, okay -- this plan now has like 37 drawings, okay. So, just the page numbers of the drawings, some of them changed.

COUNCILWOMAN GALVIN: But these are all strictly compliance to meet the terms of what was adopted.

MR. SECOR: No new buildings, no building lots, no changes in roadways -- you know.

MR. LIPNICKY: ... by the soil location -- well for the soil locations that were required and became... were changed to ... drainage outlets and...

MR. SECOR: The rest of that is all just been the way it is.

SUPERVISOR RINGLER: Okay, thank you. Entertain a motion to approve these.

The motion was made by Mr. Gunner and seconded by Mrs. Fuller to approve the signing of Amendment No. 1 with regard to Building Project Approval No. 24, Delmar Village. The motion was passed by the following vote:

- Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin, Mrs. Fuller.
- Noes: None.

SUPERVISOR RINGLER: Next I would entertain adoption of a resolution pertaining to voting machine displace to be held October 29th, 9 a.m. to 2 p.m. and authorize the payment of a republican and democratic Election Inspector.

Adopt
Resolution
Voting
Machine
Display
and
Authorize
payment of
Republican
and
Democratic
Election
Inspector

The following resolution was offered by Mr. Webster and seconded by Mr. Gunner:

RESOLVED, that in accordance with Election Law Article 7, Section 7-130, the date of October 29, 1992 between the hours of 9:00 a.m. and 2:00 p.m. is set whereby a voting machine showing the candidates to be voted on at Election Day, November 3, 1992 will be exhibited at the Town Hall, Room 107, 445 Delaware Avenue, Delmar, NY, and

BE IT FURTHER RESOLVED, that the following persons will serve as Election Inspectors during the hours the voting machine will be on display October 29, 1992 and that they be compensated at the rate of \$6.25 per hour:

472

Kay Craft
131 Clapper Road
Selkirk, NY 12158

Republican

AND

Jane Felgentreff
14 Hudson Avenue
Delmar, NY 12054

Democratic

The foregoing resolution was presented for adoption by Mr. Webster was seconded by Mr. Gunner and was duly adopted by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.

Noes: None.

Abstain: None.

Appoint SUPERVISOR RINGLER: Next a recommendation from the Republican
Republican Committee fro appointment of Dorothy Rossman as Poll Clerk to replace
Poll Carol Leavitt.
Clerk

The motion was made by Mr. Webster and seconded by Mr. Gunner that Dorothy Rossman be and she hereby is appointed Poll Clerk to serve in the 4th Election District on Election Day, November 3, 1992 to replace Carol Leavitt. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.

Noes: None.

Accept SUPERVISOR RINGLER: Next I have a recommendation from Mr. Secor,
Deeds Commissioner of Public Works, for acceptance of deeds in Devonshire
Devonshire Hills, pending approval of the Town Attorney and approve the
Hills reduction in bonding. Bruce, I don't see a reduction in bonding
Subdiv. though. Okay.

and
Approve COUNCILWOMAN GALVIN: Neither did I.
Reduction

in Bonding SUPERVISOR RINGLER: You have \$40,000. in place now, you are reducing
it in one area but increasing in another and the net effect is still
\$40,000. in bonding.

MR. SECOR: He had a bond for an initial section which was incomplete. He has completed more of the work there. The only thing that is missing now is the top coat of blacktop. So, we can reduce the bonding requirement there and he wanted to accept some more road and we have estimated the cost of that.

SUPERVISOR RINGLER: So, the net result is we still want \$40,000. bonding for Devonshire.

MR. SECOR: Yes, we will keep the \$40,000.

The motion was made by Mrs. Fuller and seconded by Ms. Galvin that two (2) deed documents be and they hereby are accepted for the Devonshire Hills Subdivision from Sonmar Development Corporation and retain bonding in the amount of \$40,000. The motion passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.

Noes: None.

SUPERVISOR RINGLER: Next a recommendation from Mr. Secor,
Commissioner of Public Works for change in the bid opening date for
the installation of one new emergency generator for the Bethlehem

Water Purification Plant to November 19th with publication in the Spotlight, Times Union, Schenectady Gazette and Troy Record.

Change
Opening
Bid Date
Emergency
Generator

The motion was made by Ms. Galvin and seconded by Mrs. Fuller that the bid opening date for One New Emergency Generator for the Bethlehem Water Purification Plant be and it hereby is designated to be November 19th with publication in the Spotlight, Times Union, Schenectady Gazette and Troy Record. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

SUPERVISOR RINGLER: Next entertain a recommendation from the... Entertain a motion to accept the recommendation from the Democratic Committee for appointment of Poll Clerks to serve on Election Day.

Approve
Democratic
Poll
Clerks

The following resolution was offered by Mr. Webster and seconded by Ms. Galvin:

RESOLVED, that in accordance with Election Law, Article 3, the persons listed on the list from the Democratic Committee, submitted to the Town Clerk, be and they hereby are appointed as Poll Clerks for the Town of Bethlehem on Election Day, November 3, 1992, as recommended by the Democratic Committee:

The resolution was adopted by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

SUPERVISOR RINGLER: Next item was added this afternoon, you just received it tonight. Mr. Secor, who is the State President of the American Public Works Association, would like permission to attend their State conference. They pay his expenses and he needs the time off and the use of a car to get there.

Authorize
Commissioner
Public
Works to
Attend
American
Public
Works
Association
Executive
Meeting

The motion was made by Mrs. Fuller and seconded by Ms. Galvin that Bruce H. Secor, Commissioner of Public Works, be and he hereby is authorized to attend the Executive Meeting of the New York State Chapter of the American Public Works Association to be held November 5, 1992 at Buffalo, New York with the use of a Town vehicle. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

SUPERVISOR RINGLER: Next I would entertain a motion to conduct an Executive Session at the end of this meeting to discuss pending litigation.

Executive
Session

COUNCILMAN GUNNER: Second.

COUNCILWOMAN FULLER: Do you really think we feel the need to go into executive session tonight?

SUPERVISOR RINGLER: Yes, I feel the need to.

The motion was made by Mrs. Fuller and seconded by Mr. Gunner to meet in Executive Session following the regular Town Board meeting. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

SUPERVISOR RINGLER: Is there anything else anyone would like to bring to the attention of the Board?

COUNCILMAN GUNNER: I would like to thank Mr. Flanigan, and the Chief of Police and Dave Austin for the reports that they gave as a result of our work on the budget over the last week. And, we got reports on the money total of new construction and the police overtime and the concession stand, they were all favorable.

SUPERVISOR RINGLER: Thank you.

COUNCILWOMAN FULLER: That is very interesting, I am glad you received them, Mr. Gunner. I haven't gotten one of them.

COUNCILWOMAN GALVIN: I received the one from Mr. Flanigan, only.

COUNCILWOMAN FULLER: Not one.

SUPERVISOR RINGLER: I think those were because they were specific requests that he made, okay. If you want copies of them, I will get them for everybody.

COUNCILWOMAN GALVIN: Yes, please.

SUPERVISOR RINGLER: Okay.

SUPERVISOR RINGLER: I will entertain a motion to adjourn.

The motion was made by Mrs. Fuller and seconded by Mr. Gunner to adjourn the regular Town Board meeting at 10:15 p.m. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

Kathleen A. Newkirk
Town Clerk

EXECUTIVE SESSION

On a motion by Mrs. Fuller and seconded by Mr. Webster the Town Board authorized Attorney Robert Alessi to sign the stipulation allowing Gladstone Development Corporation to withdraw their appeal in the Supreme Court, 3rd Department, Appellate Division. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Mrs. Fuller.
Noes: Ms. Galvin.

It is noted for the record that Town Clerk, Kathleen A. Newkirk, who was also named in this action, has agreed to allow Attorney Alessi to sign the stipulation.