

TOWN BOARD
SEPTEMBER 10, 2003

A public hearing 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: Sheila Fuller, Supervisor
George Lenhardt, Councilman
Daniel G. Plummer, Councilman
Thomas Marcelle, Councilman
Kathleen A. Newkirk, Town Clerk
Robert J. Alessi, Esq., Town Attorney
ABSENT: Doris M. Davis, Councilman

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SUPERVISOR FULLER: Good evening and welcome to a meeting of the Bethlehem Town Board. I invite all of you to join us in the pledge of allegiance. Doris Davis is not with us this evening, she is away on vacation. She will be back in Town on Friday. She asked that I let everyone know why she is not in attendance.

I will ask the Clerk to read the call of the hearing.

TOWN CLERK NEWKIRK:
NOTICE OF PUBLIC HEARING
TOWN OF BETHLEHEM, ALBANY COUNTY

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing on September 10, 2003 at 7:30 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, NY to consider a proposed Local Law amending Section 128-23A(12), Zoning, of the Code of the Town of Bethlehem dealing with Permitted Uses in Rural Districts Not Zoned.

All parties in interest and citizens will have an opportunity to be heard at the said hearing.

The Town of Bethlehem provides reasonable accommodations for the disabled. Disabled individuals who need assistance in order to participate should contact Nan Lanahan at 439-4131. Advanced notice is requested.

BY ORDER OF THE TOWN BOARD
TOWN OF BETHLEHEM
Kathleen A. Newkirk, CMC, RMC
TOWN CLERK

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State of New York)
County of Albany)

BRENDA WIERZBICKI of the Town of Bethlehem, being duly sworn, says that she is the RECEPTIONIST for THE SPOTLIGHT, a weekly newspaper published in the

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955, extension 158.

Town of Bethlehem, County of Albany, and that the notice of which the annexed is a true copy, has been regularly published in said THE SPOTLIGHT ONCE A WEEK FOR 1 WEEK consecutively, commencing on the 27th day of August 2003.

/s/ Brenda Wierzbicki

Sworn to before me this 4th day of September 2003.

/s/ Sharon A. Doldo

Notary Public, Albany County

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STATE OF NEW YORK)

COUNTY OF ALBANY) ss.:

KATHLEEN A. NEWKIRK, being duly sworn, deposes and says that she is the Town Clerk of the Town of Bethlehem, Albany County, New York and that I posted on August 27, 2003, a Notice of Public Hearing, a copy of which is hereto attached, on the sign board of the Town maintained pursuant to subdivision six of Section thirty of the Town Law.

/s/ Kathleen A. Newkirk

Town Clerk

Sworn to before me this

10th day of September 2003.

/s/ Catherine T. Picarazzi

Notary Public

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The motion was made by Mr. Plummer and seconded by Mr. Marcelle to indent the Notice of Public Hearing, Affidavit of Publication and Affidavit of Posting on the minutes of the meeting. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.

Noes: None.

Absent: Mrs. Davis.

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SUPERVISOR FULLER: As all of you that are here tonight, I assume most of you and to the students, welcome. Tonight is the public hearing to add existing commercial, industrial and retail uses to the list of permitted uses in our rural districts. I will open the public hearing and ask you to come to the microphone. Please state your name. Just your name and speak in favor or in opposition, questions, comments, whatever is on your mind. So, I would ask you to begin. The floor is yours, whoever is ready to start.

MR. MILLER: My name is James Miller. I have a one or two, possibly three or four questions, regarding this proposal. Number 1 is, existing businesses. Existing as of when?

SUPERVISOR FULLER: August 7, 2003.

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955, extension 158.

MR. MILLER: Okay. Also, if an existing business from August of '03 wishes to expand or has expanded but wishes to expand, what mechanism is in place... would be in place for that expansion of a business?

SUPERVISOR FULLER: That will be an attorney response.

TOWN ATTORNEY ALESSI: The answer to your question, sir, is under the proposed draft law, that person would be able to expand his or her business as of right, meaning not having to come for any approval other than, perhaps, a building permit if their expansion warrants that.

MR. MILLER: And, if there are is no land use approval for that business as the expanded business, what would be the mechanism?

TOWN ATTORNEY ALESSI: Exactly as I just stated.

MR. MILLER: Zoning Board of Appeals doesn't get involved or the Code Enforcement officer or anything like that?

TOWN ATTORNEY ALESSI: That is correct, unless of course there's a question as to whether or not that business was in existence on August 7th or something relevant to being outside the law. But, otherwise, if they are within the law, all they have to do is to make sure they don't need a building permit and if they don't need a building permit, they can do whatever expansion they want to do.

MR. MILLER: Thank you.

COUNCILMAN PLUMMER: Can I just ask a point of clarification, Bob?

TOWN ATTORNEY ALESSI: Sure.

COUNCILMAN PLUMMER: As it relates to that question, prior to the Benza decision, if a business was going to expand, would anything change as to what you just said?

TOWN ATTORNEY ALESSI: No, that's a good question. And really, as I understand the intention of the Board in this draft local law is to do just that. To restore what the situation was before for existing businesses and the answer, Dan, to your question is that is the exact same result that would have occurred before Judge Benza's decision.

COUNCILMAN PLUMMER: Okay, all right, all right. Thanks.

MRS. CAPONE: If that business is something that is hazardous to the community, would you still approve it?

TOWN ATTORNEY ALESSI: The answer is that the Town of Bethlehem Local Laws

are not the only laws that apply to certain uses in New York State. Indeed, there are State laws that do apply and you usually will have... if there is a use that is potentially hazardous to a community, there's usually a State permit and/or a Federal permit that one has to get. So, the answer is there are other laws that are in place to address that situation.

MRS. CAPONE: Okay. If they blast on Feura Bush Road and affect the welfare of the community and there well and all that, do they have the right to do it without coming to you?

TOWN ATTORNEY ALESSI: The answer is, I can't answer the question in the abstract. The answer is we're here for a hearing tonight on the rural not zoned district and in a rural not zoned district if someone wants to blast in that area, it is much more likely than not the case that they are going to have to demonstrate to the Department of Environmental Conservation of the State and the experts and the scientists there that that activity is, in fact, safe and protective of the residents. And, if they can do that to the experts that deal with that law every day, they will get a permit. And, if they can't demonstrate it to those experts who do that every day, the permit application will be denied.

MRS. CAPONE: I will be against it to protect the people who live in that area. Thank you.

SUPERVISOR FULLER: Just for some clarification, I'm quite sure that most of you remember that we did reinstate the residential uses back in August and at that meeting we also pointed out that we needed to deal with the commercial property, commercial, industrial and retail. And, that's what we are doing here this evening. This is about all business in the Town of Bethlehem in the southern end of Town.

Please come forward.

MR. STOCKLI: John Stockli representing Waste Management. Just like to make a few comments for the record. First as we've stated before at the staged amendment of this zoning amendment, we think it's improper segmentation under SEQRA. We also fail to see how it's in accordance with the comprehensive plan when taking these steps and allow the Benza decision to stand without appealing it runs contrary to 8 years of the LUMAC process, 2 Building Inspector decisions, your own Zoning Board of Appeals decision and we'd like to again remind everyone that the Zoning Board of Appeals wanted to appeal Judge Benza's decision but the funding for that was cut off. I just think it's important that we all understand the context within which this zoning amendment is being considered.

Also, we think it's a Type I action under SEQRA. It affects more than 25 acres, in fact it affects thousands of acres. We did make a request to the Town and the Town Clerk was very gracious in sending us the draft law and the EAF filled out for this amendment. We received a short form EAF. We think that's an improper form to consider this

project. We think you should have had a long form EAF filled out. We think it's a Type I action. And, given the magnitude of the affect of the surrounding areas that it probably requires environmental impact statement. Frankly, the information on EAF is so cursory that it's hard to really evaluate or take a hard look at this project.

Those are our comments for the record on this proposed amendment.

SUPERVISOR FULLER: Thank you.

MR. JASINSKI: Robert Jasinski. I would like a little clarification on this expanding your business. My question to you is if you have a business on a rural 14 acres but you own an adjacent property that adheres to it, and you want to keep your business there but you want to go with another building on the adjacent property you own, now, I understand you'd have to have a permit from the Building Department but are you allowed to do that or are you considered a brand new operation in a sense for building this other building because you are not adjacent – the buildings aren't adjacent?

TOWN ATTORNEY ALESSI: In your hypothetical, the land is adjacent though, correct?

MR. JASINSKI: That's correct.

TOWN ATTORNEY ALESSI: And, it's common ownership, that same ownership?

MR. JASINSKI: That's correct.

TOWN ATTORNEY ALESSI: You'd be allowed under this law to expand as proposed.

MR. JASINSKI: Although you have 2 different deeds?

TOWN ATTORNEY ALESSI: That's correct, as long as there's common ownership and it's adjacent.

MR. JASINSKI: And it was owned before August 7 of 2003.

TOWN ATTORNEY ALESSI: If it's owned on August 7th or before. You're okay.

MR. JASINSKI: Thank you.

TOWN ATTORNEY ALESSI: You're welcome.

MR. BOWERS: I'm Paul Bowers. I'm a representative of Berke Distributing. They own property on River Road at Exit 22 of the Thruway. The parcels that they own are 10.8 acre parcel and also a 29 acre parcel currently we lease to the Thruway Authority. Couple questions that we're anticipating more than anything else is, if that is the property was sold and another user wanted to use the property, it's my understanding from reading

what the law says, is that we could put another business in there... for example, you said cars... you could sell cars there and trucks but it doesn't say anything about a dump truck. It doesn't say anything about bulldozers or anything of that major... are you going to use that interpretation as a motor vehicle as part of that law?

TOWN ATTORNEY ALESSI: The answer to your question sir, is that...

MR. BOWERS: And, this is a new application now. They're going to use a part of the property.

TOWN ATTORNEY ALESSI: As long as the property -- this law is not personal, it's not to an individual owner, it goes to the land.

MR. BOWERS: I understand that.

TOWN ATTORNEY ALESSI: So, to answer your question, as long as that land was imbued with, has the uses on it of commercial, industrial or retail and you sell it, the person as long as they are going to make an industrial, commercial or retail use out of it.

MR. BOWERS: Yep, they're covered.

TOWN ATTORNEY ALESSI: They're covered.

MR. BOWERS: That's my question and that's why they sent me here.

TOWN ATTORNEY ALESSI: Right. And, what's applicable to everyone is we still have the list of 32. So, if it hits the proposed use on that list of 32 – is it 32 Jeff, the number?

SUPERVISOR FULLER: Yes.

MR. LIPNICKY: I do not know the exact number.

TOWN ATTORNEY ALESSI: About 32, you may also have to go for a Planning Board site plan approval.

MR. BOWERS: But, my question then is, I mean... I don't mean to split hair but I am. You will use the word motor vehicle – is a bulldozer considered a motor vehicle? I mean, you have to register the darn thing but is it considered under the guise of the law? Under your law, proposed law, is it considered a motor vehicle? Because it's really not... you know, you're not driving it down you know here on Delaware Avenue, okay. And, I'm using that as a specific target because there are circumstances, the same thing with a motor coach. Okay, if you wanted to sell RVs, is that going to be considered? But, it's not specifically stated in that request, it just says motor vehicles. So, is that a broad enough statement or... I'm asking because, you know... my people are asking me.

TOWN ATTORNEY ALESSI: So, your question goes beyond, really, what this local law is about. This is just to restore commercial, retail and industrial. I'm understanding your question to be a specific interpretation of other provisions of our Code and that is something for the Building Inspector to answer, not for the Town Board. This Board is certainly well within its jurisdiction and should tell you what it believes this law means and what it does before it is passed.

MR. BOWERS: Right.

TOWN ATTORNEY ALESSI: Once laws are passed, then it becomes the Building Inspector's determination and interpretation. So, I respectfully refer you to the Building Inspector for the application of other sections of the Code.

MR. BOWERS: Okay, thank you much.

MR. ORSI: My name is Richard Orsi. I want to speak in favor of this amendment to the Town Code. I think what you are trying to do here is fix a problem. There are many businesses that don't fall into the 32 uses that have been in the area for years and years. They are necessary to the community. They are important businesses and we have no gripes with any of the other existing businesses. If it requires doing the environmental impact, if under further review, I think Waste Management has a lot of experience with cursory environmental impacts so they are probably the experts in that and I think we should just get it done if it needs to be done. Thank you.

MS. JASINSKI: Linda Jasinski. I want to make it known that the Town Board still has to address future commercial, industrial and retail uses there. And, hopefully they'll be doing it soon because we don't want to lose track of that. If someone has an existing business and wants to move it to completely another parcel of land, I mean you're talking huge area that is unzoned at this point but let's say they want to move it from one parcel to a non-adjacent parcel somewhere else in this unzoned area, how does that affect it?

TOWN ATTORNEY ALESSI: Under the draft local law, that would be considered a new use and would not be covered under this and under the current law would not be allowed absent a use variance.

MS. JASINSKI: Okay, so you're kind of restricting the people that are.. at this point with the coding that you are wording... you are restricting the people that have a business to what they have.

TOWN ATTORNEY ALESSI: I appreciate your view that that could be viewed as a restriction but I would say as the law stands now, the existing businesses are prohibited and that what we are doing with this law from where we are now is to greatly address a situation to revalidate that. So, I could understand your perspective, you might find it restrictive on business but we might look at it just a little bit differently.

MS. JASINSKI: I just have concerns about the future uses that may want to come into the area and allowing them because it is an area that should be for that. Thank you.

SUPERVISOR FULLER: I'm sure that will be dealt with at another time, Linda. You are talking about the development ahead for economic development. For tonight's public hearing it's about the existing businesses in the Town of Bethlehem.

MS. HALEY: For the record, my name is Carol Haley. I've lived in my present location on Rarick Road next door to the NYS Audubon in the Township of Bethlehem for 33 years. I want it to be clear that the intentions of the proposed law... local law is to protect the existing legitimate businesses and not to expand the list of land uses which are rural not zoned district. The existing legitimate businesses are seeking protection only to continue its operation at the level established prior to the effective date of the proposed local law. It's a great concern to me as a citizen in the Town of Bethlehem that the area in which I have enjoyed and taken pride remain unharmed. In memory of Dr. Robert Reinow and his wife, Leona, who established a sanctuary and understood the importance of the sensitive nature of the area, I want to ensure that their dream continues to be fulfilled. Thank you.

SUPERVISOR FULLER: Thank you.

TOWN ATTORNEY ALESSI: I just want to clarify that the purpose of the law is not to allow commercial, industrial, retail at their existing level of operation. It is to again go back to Judge Benza's... before his decision for that existing businesses could expand beyond their existing level of operation and that's what this draft proposed local law would do.

SUPERVISOR FULLER: I forgot to mention rule number 1. Before anyone speaks a second time, I need everyone to at least have their chance at the mike. Go ahead, sorry.

MR. REINHART: Garry Reinhart. Like to read a brief statement to the Board regarding the proposed amendment.

My property borders the rural not zoned area. I'm asking the Board not to make a decision on a proposed amendment this evening. I believe that in its current state, the proposed change would leave the law open to misinterpretation as it had been in the past before Judge Benza's decision on March 18, 2003 which clarified what the law meant at that time. I do not believe it will be responsible for the Board to leave its local laws up for open interpretation and that's a lesson that should have been learned from recent history. Careful consideration must be given to assure that any future changes to this section are written clearly enough to specify their intent and make sure the people reading the law years from now understand its intent. A process should be determined to show the proof that the businesses were in lawful existence and to show the capacity to which those businesses operated. Once this process is completed, those business types should be included as of right and clearly defined in the local law.

While I understand that the Board needs to move forward to allow businesses to continue to operate in lawful existence and to consider new business uses in the future, no action should be taken by the Board at this time. I would propose that the Board have someone, possibly code enforcement division with the Zoning Board of Appeals determine which businesses were in legal existence and what capacity these businesses operated before March 18, 2003 and determine which are not currently covered by the local law as it is written today. The reason why I believe that March 18th, 2003 is the date the Board should use is that no additional commercial, retail or industrial uses could have lawfully started after March 18th, 2003 when Judge Benza's decision rendered that only permitted uses were the 32 which were outlined. Because of that any uses that came into existence after that date would have been non-permitted and should not be permitted at this time.

If a clear process and appeals process are carefully considered by this Board, then we should not see ourselves and our Town in the same predicament which was created by previous interpretations of 128-23. Therefore, I respectfully ask no further consideration be given to changing Section 128-23 of the local law until such a time as a process can be determined which businesses and in which capacities these businesses operated before March 18th. Thank you.

SUPERVISOR FULLER: Is there anyone else who wishes to come to the mike, if you would please come forward.

MR. GERTZMAN: Good evening, my name is Marc Gertzman. Mr. Orsi, who I represented in the appeal before the Zoning Board of Appeals and the Supreme Court, has already spoken in support of the regulation of the proposed local law.

I also represent the Feura Bush... Feura Bethlehem Heights Alliance and I've submitted written comments to the Board on September 8th. I hope you have had an opportunity to look at them before tonight's meeting.

I've a couple of comments that I would like to request the Board consider as it deliberates on whether or not to enact this local law tonight. My clients are very concerned about one particular land use that has been proposed to DEC in their community... in their neighborhood and that's the Frueh mine. This law will have a significant impact on whether or not that mine is allowed to be permitted by DEC. There's been some contention as to whether that's an existing mining operation or whether that mining operation ... whether the proposed mine has had, in fact, been based on any pre-existing activities. Those are factual questions, we believe that... we don't expect this Board to answer this evening.

We would request, however, that the law be clarified so that an expansion of existing uses not be permitted, not be authorized, under this proposed law. Judge Benza's ruling indicated that, in fact, the Town's understanding or application of its zoning law was incorrect in the rural not zoned district and that, in fact, there were no uses which were of right prior to his decision. What we would request the Board to do is to establish that those existing uses and we don't intend in any way to penalize those legally established

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existing uses that were established prior to Judge Benza's decision. But, we think the more appropriate category for those industrial and commercial uses would be as non-conforming uses subject to accepted procedures and standards that are set forth both in your own Town Code and in the State law. What's being created here is a category of permitted use that ordinarily would have gone through some sort of review process according to the Town, whether it be site plan review or other building review process where limits on the operation and the aerial extent of the operation would have been established through some Town authority. We're not receiving is any opportunity to understand the nature and extent of the operations which would be considered permitted uses under this proposed local law. So, rather than established them as permitted uses, we believe what's more appropriate, in fact, what's legally required would be that these be established as non-conforming uses that is legally established, required to be undertaken pursuant to those parameters that are set forth in your own Code. No significant expansion once an operation... once an operation ceases to exist or is abandoned, it would not be allowed to be restarted. That would be consistent with Judge Benza's decision as far as we can tell.

We do agree that moving forward to protect legally established uses, however, is a legitimate exercise of this Town Board's authority and we would only ask in addition that you add the term legally established. We believe that those activities which were undertaken pursuant to State law which were required to get a building permit and did obtain a building permit from the Town which were otherwise in conformance with the legal requirements, whether it be State or local law, be the ones that be entitled to this protection and those that were not so undertaken should not be entitled to this protection.

We've also requested in September 8th letter that there be a procedure established to allow those uses which want to claim protection of the law to be reviewed... excuse me... to be reviewed by the appropriate Town authority, whether that be the code enforcement officer or some other designee of the Town consistent with its own authority. We also believe that that should be subject to an appeal possibly to the Zoning Board of Appeals which would then have the authority to examine fully the records of the business or the use that's claiming the protection of this local law. We believe that the Zoning Board of Appeals should have the authority and should exercise the authority to review business records of any business that's seeking entitlement to this protection to have the opportunity to call and examine witnesses who are familiar with the operations and to make a determination based upon a complete and full record as to the scope and nature of the business that allegedly was established prior to the local law. We also strongly urge the Town Board to request that an inventory of those legally established businesses be taken... be undertaken by the... either the Planning Department or the Building Department of the town in order to try and provide the community with some sense of where this law is going to have an impact and where it's not. We believe the residents should be entitled to understand which uses are permitted under this law and which ones would be excluded. And, we think that process is very important to undertake in connection with proposals for various activities in the community and also for ones which we expect to come down the road.

Thank you very much for the opportunity to speak.

TOWN ATTORNEY ALLESI: Mr. Gertzman, if you could, I have a few questions to make sure I understand fully your comments. Do you question the... this Board as a legislative body ability to zone a district as it desires, as long as that's consistent with a comprehensive plan?

MR. GERTZMAN: No, Mr. Alessi, I think the Town Board's authority as a legislative authority to legislate zoning is fairly clear in State law.

TOWN ATTORNEY ALESSI: And... so then you'd agree that this Board has the discretion as to whether to label a use as permitted as of right or as, you suggest, to deem them limited in the sense of non-conforming uses and, therefore, not able to expand... you agree that the Board has the choice in that?

MR. GERTZMAN: I don't believe I went so far as to agree to that premise.

TOWN ATTORNEY ALESSI: You didn't but I'm asking if you do now.

MR. GERTZMAN: I believe that Judge Benza's decision established certain parameters that need to be looked at and applied and interpreted. As counsel to the Town Board you, I'm sure, provided advice that this is a lawful exercise of its legislative authority to categorize those uses as permitted uses. I would suggest to the Town Board and to you that based upon Judge Benza's decision, the more appropriate categorization of those uses would be as non-conforming uses given his interpretation that the prior application of the law was not in conformance with its actual language.

TOWN ATTORNEY ALESSI: Did you read Judge Benza's decision to say that the uses we're talking about here tonight had to be established as non-conforming uses as opposed to as of right?

MR. GERTZMAN: No, I don't believe Judge Benza actually... that was the case before Judge Benza at the time.

TOWN ATTORNEY ALESSI: Is there any part of his decision that you are referring to that you could refer me and the Board to that would lead you to believe that that's what he meant even if he did not say it?

MR. GERTZMAN: No, I don't think Judge Benza was asked to address that question. I don't think that's true. I think it's a question of interpretation of Judge Benza's decision in an application to the current state of affairs and current state of facts.

TOWN ATTORNEY ALESSI: Thank you. And with regard, by the way, to the comment you made about the Building Inspector, etc., there are other provisions of the Town Code that would have it operate essentially as you have suggested it. It would occur in any event that if a person had a question over whether an existing business met

the standards that are created by this law, they could ask the Building Inspector for an interpretation and all interpretations are subject to appeal to the Zoning Board of Appeals. So, those protections that... at least that aspect of the protections you're suggesting, automatically come into play under our Code.

MR. GERTZMAN: We appreciate that clarification of the proposed local law. Thank you very much for the opportunity to comment.

COUNCILMAN MARCELLE: May I bother you for a question?

MR. GERTZMAN: Yes.

COUNCILMAN MARCELLE: I want to understand what your position is on this. Your position is that in light of Judge Benza's decision we ought to treat these industrial, commercial, retail uses as non-conforming but we don't have to treat them that way. Is that what you are saying?

MR. GERTZMAN: I would say that my position is that the recommendation is that they should be treated that way. I would need to do a further legal analysis of Judge Benza's decision as it relates to the Town's authority to try and provide you with more input as to whether it's required.

COUNCILMAN MARCELLE: So, you are questioning the Town's authority to pass this law as written tonight. Is that correct?

MR. GERTZMAN: I believe that the Town's authority is clear to legislate in its discretion how it sees fit in order to protect those uses through no fault of their own that were established as essentially, uses as of right, under the Town's interpretation. I wouldn't say that Judge Benza's decision dictates a particular result but I believe that the characteristics of the uses and the nature of the way they were established, given Judge Benza's ruling, indicates that they would be more appropriately treated as non-conforming uses.

COUNCILMAN MARCELLE: So, just to make sure I'm clear about this, I will go back. I mean it's... there's a lot of language in there. Maybe you could just answer this a simple, maybe you did and maybe I didn't understand it. Do you see any legal impediment from us passing this law now? Forget about... if you read Judge Benza's decision what he probably should intend and what we shouldn't intend...put that... pretend it never existed only to the extent of the language, is there something in law that would, in your opinion, prohibit us from passing this as is?

MR. GERTZMAN: I don't believe there is anything in Judge Benza's decision itself which prohibits you from passing this law as it is.

COUNCILMAN MARCELLE: Okay.

MR. GERTZMAN: Thank you once again for the opportunity to comment.

MR. FRUEH: My name is Chris Frueh. I want to thank the Town Board for proposing this amendment. I'm in favor of it. And, continue to... it will let us... I manage a 25 year or I manage a family business that's been in business in the Town for 35 years. Our current location we've been at in Bethlehem for 25 years and I just want to thank you for the opportunity to continue our business.

MR. MORRELL: My name is David Morrell and as a lifetime resident of the Town, I want to speak in favor of the proposed amendment for Code section 128-23(12). It also seems to me that if a proposed action is being reviewed under State law absent any other Town regulations, that should provide ample protection and due recognition of environmental impact for the citizens of the Town of Bethlehem. And, if I understood the one gentleman correctly, relative to not expanding current businesses, it would be my opinion that that would provide a disservice... an economic disservice to the citizens of this Town. Thank you.

SUPERVISOR FULLER: Anyone else?

MR. SELKIRK: I'm Ron Selkirk and live in Selkirk. And, I know through the papers – the Times Union, the Spotlight – that the Town has been encouraging new businesses. And, my concern is is all the truck traffic going to come down 396 or are you going to have some other method of getting them to the Thruway other than all through Selkirk? That's been the way for so many years and it needs a change. It is impossible to walk on 396. Thank you.

MS. BROWN: Hi, my name is Lisa Brown. I'm in favor of expanding the proposed amendment. I think the growth in this time for small businesses is a good thing for the community. It raises revenue for towns and I'm in favor.

SUPERVISOR FULLER: Everybody's coming from the back of the room.

MR. YOUNGS: Yea, my name is Bill Youngs. I just want to state that I'm in favor of the amendment. I've lived in a community in Oregon that didn't allow a balance between home ownership and business and it was destructive to that community for a long term basis and I hope that doesn't happen here. So, I'm in favor.

SUPERVISOR FULLER: Thank you. I'll give you the signal.

MR. CONSTANTINE: My name is Mike Constantine and I'm in favor of the amendment and I appreciate it to help our family business continue to grow and to... without it I think it could change my livelihood and it could change my children's livelihood, it could change my grandchildren's livelihood. So, I'm in favor of this. Thank you.

TOWN CLERK NEWKIRK: The other one, John, tip it down toward you. We want

them to hear.

COUNCILMAN LENHARDT: The silver one, John.

MR. MEAD: The other one, this one? I'm short I thought I'd take the short one.

John Mead and I'm the President of Rural Landowners of Bethlehem. I want to say that we think this local law goes a long way to correct our concerns that the Rural Landowners have had in regards to the rural unzoned land in the Town of Bethlehem. And, we support the passage of this and hope you will pass it tonight. Thank you.

SUPERVISOR FULLER: Is there anyone else who would like to speak that has not had the opportunity? Okay, Mr. Miller.

MR. MILLER: Thank you. I didn't voice an opinion yea or nay on this the first time I got up because I wanted to hear what was going on. It appears in my mind that there are... it's good. It's a good thing to do but it could be made better and it could be made better by defining better rather than a blanket whatever. I am in favor but I would be more in favor... well, don't write now...

SUEPRVISOR FULLER: I wanted to write in favor.

MR. MILLER: I know that, I can read upside down. It's good. It's a start but it could be made better, therefore, I would encourage the Town Board to reserve decision on this tonight until it can get looked at longer and harder and with a little more detail included into it. That's all I ask.

SUPERVISOR FULLER: Thank you.

TOWN ATTORNEY ALESSI: Make one comment. Without saying good, bad or indifferent with regard to your suggestion, sir, I think it is a good segue to something that the public needs to be aware of and the Board certainly is aware of and that is when you make a change to a draft local law, if it's a substantial change you have to come back, put it back on the desk. It has to be out there for so long a time and that process takes months... it can take weeks, it can take months. The Town Board has spoken a variety of times that it is concerned that as it sits here and since the Judge Benza decision that these uses are in effect illegal. And, it affects the ability of these businesses to finance, etc, etc. So, while in theory, working to make a law better, to button it up a little more is salutary, there are significant effects from doing so. And, as I am sure everyone knows from the public domain, you can change it where you think you're make it better and low and behold someone can come at a public hearing that night and say why they think that it's not really so much better and you can end up in a very long process. So, that is something the Board has expressed before as its desire. It's done so with residential and agricultural and it has before it tonight a law that will take into account these comments but it's also something worthy of repetition in case people who are here tonight haven't been here before.

MR. MILLER: Yea, it's not my purpose to deny somebody to make money and to have a better life for themselves, etc. etc. I mean that's something I desire to do and I don't want to take it away from anybody else. However, keeping in mind the various comments that were made here, could not this law... this proposal be effective at the date of Judge Benza's decision? Any business, any commercial or whatever prior to that date will be covered with this amended... if that is possible and that can be voted on right now as a point of order, then I would back this big time.

TOWN ATTORNEY ALESSI: I don't understand your question.

MR. MILLER: Okay. Right now... earlier I asked if there was a retroactive date. The date I was given was in August. We... I've heard Judge Benza many, many, many times mentioned tonight so that seems to be the driving force. Why could not this be, instead of the date in August, the date of Judge Benza's decision and business that was legally in existence at the time be covered and then at some future date refine it to do something... to allow for expansion, etc. etc. because right now it's just a big umbrella kind of thing.

COUNCILMAN PLUMMER: Can I just ask a point of clarification?

MR. MILLER: Sure.

COUNCILMAN PLUMMER: I'm going to ask Bob this. I thought we chose August 7th because that was the time when we made the change effective for residential and agricultural and to be consistent with that isn't that why we checked and selected this date.

TOWN ATTORNEY ALESSI: That's correct.

MR. MILLER: Okay, do what you will do and I stand neither yea nor nay. So you can note that.

MR. FRUEH: I'm Peter Frueh. I would like to thank the Board for allowing us to continue our business. My agricultural endeavors are construction company, our locker business in our Town. Thank you.

SUPERVISOR FULLER: I would like to address the... is there anyone else who wished to address the Board.

I would like to address what's before the Board tonight and that's about business in the Town. And, it is commercial, industrial and retail. I think what I've heard here tonight is more we're concerned about one business in the Town of Bethlehem. And, this Town Board cannot be in the business of having local laws relating to one business. We are here for all the business and all needs to be treated equally. I know there are concerns about the Frueh's mining and certainly I've heard it many, many times. But yet that is a business that has been in operation for 25 years and there's been a lot of other business...

AUDIENCE: No it hasn't.

MRS. CAPONE: Excavation, not mining.

LADY: That's right.

SUPERVISOR FULLER: It's an industrial use. We can call it industrial use then.

AUDIENCE: Mining.

GENTLEMEN: It's agricultural use.

SUPERVISOR FULLER: It's industrial.

LADY: Let's hear the attorney's view on it.

SUPERVISOR FULLER: Which attorney?

TOWN ATTORNEY ALESSI: Just to make clear, what I think the Board has made clear before but we'll create a clear record on this. The words in there are commercial, retail and industrial. The intent is to have each of those words be given their most expansive reading, that is the intent. You can use Webster's dictionary, whatever dictionary you would like, but that's the intention of this Board. Mining in the judgment of this Town Attorney is at least in one of those categories and may be in more than one of those categories. So, that is my perspective with regard to this matter and whether one would say that the specific sub-type of use changes, again, I will restate what I stated earlier. The Board says as long as you, on August 11th, met one of those categories, you could expand that use either in quantity, quality, type and you would still be permitted as of right. And, that's what this Board has said at the last time this came up and discussed and that's what is being indicated tonight.

MRS. CAPONE: What about the bulk of the people?

SUPERVISOR FULLER: Tom Marcelle.

COUNCILMAN MARCELLE: I guess let me start this discussion with a little... some personal observations and then talk about some of the comments that were made. You know, I've heard some talk tonight about the community, what's good for the community. I think the people who are trying to freeze this are talking about 1 particular business, a limestone operation. Now, I grew up 250 yards from a limestone quarry where they blasted continuously and lived there, drank the water from a well that was dug 200 yards from the limestone quarry. My grandfather came over from Italy with my father and started working in a mine. And, I believe that Frueh's are entitled to pursue the same American dream that my family did. And, so tonight, I don't think it's appropriate to couch community wide opposition to something that is very focused, that's on going with DEC. If you have a problem with the environment, the place to hash it out

is with the State Environmental Protection Agency and not here in the Town. As the Supervisor I think rightfully said, we should not be in the business of targeting particular businesses whether we approve or don't approve. And, for that reason in order for the Freuh's and their family and for the rest of the families in this community of Bethlehem to pursue the American dream I'm going to vote in favor of this law.

SUPERVISOR FULLER: Do you wish to speak, George?

MR. LENHARDT: Not at this point, I'll speak when the time comes.

SUPERVISOR FULLER: I would like a motion to close the public hearing.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the closing of the public hearing at 8:17 p.m. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.

Noes: None.

Absent: Mrs. Davis.

Town Clerk

Supervisor Fuller convened the regular Town Board meeting following the close of the public hearing. She stated the Board has before them a SEQR resolution which you need to vote on first and then the local law. SEQR resolution neg dec. May I have a motion

The motion was made by Mr. Marcelle and seconded by Mr. Plummer to approve the negative declaration for SEQR for Local Law No. 5 of 2003 amending the Code of the Town of Bethlehem, Zoning.

Town Attorney Alessi, noted a couple points with regard to the negative declaration. He said there was a comment with regard to how this action was listed. He put down on the record that whether it is an unlisted action or a Type I action the analysis would remain the same. He noted this action would be considered the classification of a Type I action to be conservative and the analysis would remain the same with regard to whether the short form or a full EAF were used. He said the particular form that is used is not as dispositive as it is that you review the areas of concern that are listed in the resolution.

Supervisor Fuller asked for a vote adopting the SEQR resolution:

The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955, extension 158.

Noes: None.
Absent: Mrs. Davis.

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Supervisor Fuller noted the referral has been received back from the Albany County Planning Board with a recommendation basically to defer back to the local authority.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the adoption of Local Law Number 5, amending the Code of the Town of Bethlehem, Zoning, 128-23.A(12) dealing with permitted uses in Rural District Not Zoned. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.
Noes: None.
Absent: Mrs. Davis.

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Councilman Lenhardt said prior to Judge Benza's decision, the Town of Bethlehem allowed the residents in the Rural Not Zoned area pretty much the ability to go about their business in the way they saw fit with some restrictions of site plan review. The purpose of the prior amendment, according to Mr. Lenhardt, after Judge Benza's interpretation of the Town's law being contrary to the way that it had been administered, our prior amendment was adopted to allow at least the residential community and agricultural to be recognized in that area. He said the action taken by the Board at this meeting further allows what always had been allowed prior to Judge Benza by allowing these businesses that exist to continue to operate. He noted that was why he voted in favor of this amendment. He said it is allowing what the Town has always allowed.

Supervisor Fuller thanked Councilman Lenhardt.

The next item was a request from Parks and Recreation Department, Nan Lanahan, Administrator, to award the bid for a new air conditioning/heating system to Bourque Mechanical Systems, Rensselaer, NY at the bid price of \$18,500.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve awarding the bid for one (1) new air conditioning/heating system to Bourque Mechanical Systems, Rensselaer, NY at the bid price of \$18,500 as requested by Nan Lanahan, Administrator, Parks and Recreation Department. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.
Noes: None.
Absent: Mrs. Davis.

The following item was a request from Parks and Recreation Department, Administrator, Nan Lanahan, for approval of appointment of seasonal personnel.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the appointment of seasonal personnel as requested by Nan Lanahan, Administrator, Parks and Recreation Department as follows:

Recreation Supervisor II at a rate of \$7.30 per hour.

Sandy Appleby
20 Stovepipe Road
Voorheesville, NY 12186

Josephina Jazquez
296 Route 9W
Glenmont, NY 12077.

The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.

Noes: None.

Absent: Mrs. Davis.

The following item was a request from Parks and Recreation Department, Administrator, Nan Lanahan, for approval to dispose of obsolete equipment replaced during the pool reconstruction project.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve of the disposal of obsolete equipment including 6 lifeguard chairs, 2 one meter diving stands with boards and one three meter diving stand with board as requested by Nan Lanahan, Administrator, Parks and Recreation Department. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.

Noes: None.

Absent: Mrs. Davis.

Councilman Marcelle said the soccer season was started in full swing last Saturday and practice the week before and he said the operation and the park is very nice, noting the park is well kept and maintained. He said it is a blessing for the people of Town. He thanked Mrs. Lanahan, personally, for that. Mrs. Lanahan thanked Councilman Marcelle.

The next item was a request from Engineering Services Administrator, Michael Cirillo, for approval of acceptance of five deed documents for easements required to

complete the section of sidewalk from VanDyke Road to Fisher Boulevard.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to approve the acceptance of five (5) deed documents for easements required to complete the section of sidewalk from VanDyke Road to Fisher Boulevard as requested by Michael Cirillo, Engineering Services Administrator. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.
Noes: None.
Absent: Mrs. Davis.

The next item was to approve the Town Board minutes of August 13, 2003.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to approve the Town Board minutes of August 13, 2003 as submitted. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.
Noes: None.
Absent: Mrs. Davis.

Supervisor Fuller asked if anyone wished to address the Board. Dr. Hart, Town resident, spoke regarding fluoridating the water supply. He said he has a serious concern that relates to the findings that he made at the meeting from Mr. Secor about the disconnection of water from the Town of Guilderland last December. He said this was news to him and was disturbed both personally and professionally that he was not notified. He said he made decisions for his patients based on the fact that fluoride was being introduced into the Town from Guilderland and he did not know how much. He said he was promised that in late May or early June there would be a report out to the public on the status of the water supply in general and this was a mandated report due annually to the public. He said he still has not seen this report. He would suggest that some clerical help be approved for the Department of Public Works because he has been told by Mr. Secor that he is too swamped to get this message out. He said the administration and that department as a whole has been negligent in this matter.

Supervisor Fuller noted she would have Mr. Secor get in touch with Dr. Hart the next day.

Councilman Marcelle asked Town Attorney Alessi if putting fluoride in the water would require a local law or a resolution so directing the Town Engineer. Town Attorney Alessi at a minimum it would require a resolution and it would be an action that would also be subject to SEQR. He said a SEQR review would have to be done prior to taking that action.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to adjourn the regular Town Board meeting at 8:26 p.m. The motion was carried by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.

Noes: None.

Absent: Mrs. Davis.

Town Clerk