

TOWN BOARD  
APRIL 23, 2003

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 Deputy Supervisor at 7:30 p.m.

PRESENT: George Lenhardt, Deputy Supervisor  
Doris M. Davis, Councilman  
Daniel G. Plummer, Councilman  
Thomas Marcelle, Councilman  
Kathleen A. Newkirk, Town Clerk  
Robert J. Alessi, Esq., Town Attorney

ABSENT: Sheila Fuller, Supervisor

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Deputy Supervisor George Lenhardt welcomed everyone to a regular meeting of the Bethlehem Town Board. He invited them to join in the pledge of allegiance.

The Deputy Supervisor said the first item on the agenda was a presentation of Long Range Water Supply Study by consultants, O'Brien and Gere. He noted making the presentation was George V. Rest. He noted this was not a public hearing but a presentation by the consultants to the Board. If there are questions, the public may address them at the end of the meeting he said.

Mr. Rest proceeded to introduce the rest of his team from O'Brien and Gere – Tom Dunn Hydrologic Engineer, Rick Gell Senior Engineers in charge of Water Treatment Plant process designs and Michael Gocheski in charge of town water systems. He gave a brief overview of the plan completed in the last 8 or 10 months. He said the purpose was to identify sources of water for the Town. He noted they reviewed water studies that have been done over the last 35 years and which they had access to. They then evaluated a number of alternatives.

Mr. Rest exhibited numbers showing historical trends and projections. He said their figures are very similar to ones seen in previous reports. These figures included industrial users within the system. Definition of daily water usage and how this relates to the water usage was explained. Mr. Rest noted that due to current technology and figures that were available, they had an opportunity for the first time to analyze the hydrologic conditions that existed through the droughts of the late 1990s and 2 years ago.

Mr. Rest also addressed the New Salem Water Plant in regard to their doing an assessment of the plant and its components. He said the plant is over 40 years old, lot of the equipment is beyond its normal useful life but still operating. He said from a capacity standpoint there are some limitations. He said this plant needs updating and some of these upgrades would include hydraulic upgrades, chemical system upgrades and some

expansion of the treatment processes and a number of building upgrades. He said these are some of the basics that have to occur at the plant.

Mr. Rest said relative to cost there was a relatively robust financial model developed to be used in this study so they could properly account for capital costs, as well as, a number of other costs such as taxes, power costs for pumping and water purchases. He said they looked at both operating costs, purchase water costs and capital wise because alternatives needed to be talked about.

Mr. Rest exhibited a table that shows 12 alternatives and highlights which alternatives have certain characteristics and which ones are recommended for consideration. He said there is a need for about 2.5 million gallons per day additional supply and they looked at a number of items. He said a number of the items did not have adequate capacity. Some examples mentioned were raising the dike at the dam but this does not give much more water; dredging the reservoir would be another way to increase capacity; stage 2 diversion and other another diversion but it does not pick up a lot more water. He mentioned that these were discounted pretty much immediately. There is an alternative which is a combination of the so called stage 2 diversion together with purchasing water from the City of Albany. He said this was eliminated but there is a standalone option for purchasing water from Albany which remains as an option. He said there is a stage 4 diversion which would increase the water as they would prefer. He said there is also a possibility of construction ground water wells but this was eliminated since there was not enough substantiation of the water quantity. Mr. Rest said they also looked at the Normanskill Creek but the creek continues on its way to the Hudson River and the quality of the water was not as good as they would have liked.

Mr. Rest next mentioned the Watervliet Reservoir and the possibility of getting water from this reservoir to Bethlehem. He said they also looked at the Mohawk River because this could result in construction of a Town owned source.

Mr. Rest proceeded to address the options and capital expenditures involved for the future water supply for the Town to provide an adequate water source and quantity. He said they believe the Town should retain all 5 of the option presented and would be adequate in terms of quantity and quality until future information on the agreement is better defined. He said this report provides all the information the Town needs for effective negotiations. He also stated the Town is now armed with information about the demands, the condition of the facilities and knowledge of what the alternatives are. He noted if the negotiations are successful, the Town can then develop the engineer's map, plan and report as required and develop the detailed cost estimates for the selected alternative.

Mr. Rest thanked the Board for their attention and offered to answer questions.

Deputy Supervisor Lenhardt asked if any of the Board Members had any questions. Councilman Plummer said for point of clarification that he understands the premise by 2007 if there is no longer a contract with the City of Albany. He said the Vly generates

about 3.4 million gallons a day and about 200,000 coming from the City of Albany to New Scotland. He said he understands also the 2.5 mgd deficit that the Town would need but then he commented on sizing the actual supply at 10 million gallons a day. He said he assumed this was because of peak.

Mr. Rest said this was correct.

Councilman Plummer asked where that was, asking if that was factored into the upgrades that would occur at the Vly Creek plant including the storage transmission. Mr. Rest said that was correct, noting he got the information right. He said the supply facilities, meaning the raw water supply facilities, need to be sized for an average day if you are dealing with a reservoir system – safe yield, average day. He noted they suggest getting an additional 2.5 mgd of reliable everyday water. He said this is the deficit from the current capacity of about 3.4 mgd up to 6 mgd on an average day basis and on top of the 6 mgd average day, you have this peaking that occurs usually in the summertime to around 10. He said it is about 70 percent now which is pretty typical for systems like this.

Mr. Rest said the way water systems work and the way this one works is you have a plant that is sized larger than the reservoir yield. He said there is the ability to peak and what happens when you peak is you are taking water out of the reservoir faster than it is coming in. He said on a given day it is not noticeable that you have taken out 10 mgd out of the reservoir, as long as you have the ability to treat it and pump it. He noted that if you had a contract with the City of Albany for all the water, it would have to be for 10 mgd. He said if you are taking a small amount out of that, 2.5 from Albany plus the 3.4 from the reservoir to meet the average day need, as long as the plant and the pumps and the pipes are big enough, the Town can provide that peak out of these facilities.

Councilman Plummer said he understood that and next asked what the cost is to do the upgrade at the plant to get to the point where it would take care of the peak. Mr. Gest said it is included in the numbers shown. There was about a 7 million dollar total number to take it all the way to the peaking capacity of 10 and probably 8 percent was to get it to the 6.5 mgd, he noted. Most of the cost was just to get it refurbished up to modern standards and from 6.5 mgd up to the 10 mgd.

Councilman Plummer noted he understood it all comes down to cost and that needs to be factored in as part of the equation. He suggested more water may be available from the City of Albany. Mr. Rest said that might be a possibility noting, however, that Albany does not have 10 mgd to sell. Mr. Plummer said he was not suggesting 10 because that would be foolish. He said we already have the Vly there, noting there might be another combination. Mr. Rest said they can run the model and show him that. Mr. Plummer thanked Mr. Rest. Further discussion of the possibility of water purchase from Albany was completed.

Councilman Marcelle said as he looks at the plan and cost certainly the most cost effective in the short term, and he means 10 to 20 years, of purchasing water from the City of Albany and the City of Watervliet. Mr. Rest said that was correct. Mr. Marcelle

said neither of them, especially in times of drought, have an infinite supply of water. He asked as this study was done and it was projected out into the future whether it was taken into account the increased demands that Albany and/or Watervliet might have and given the lucrative market of selling waters and the needs for both cities to increase their revenue, selling more water to the suburban towns than they actually could safely yield. He asked if any of that kind of analysis factored in. Mr. Rest said the simple answer was yes. He said he knows the Town representatives have had some exploratory discussions with both cities to get some reasonable assurance at this stage that they have that amount of water to sell. He said both entities seem willing to sit down at a table and negotiate a deal.

Councilman Marcelle referred to negotiating and noted he did not think the City of Albany and the City of Watervliet would not negotiate in good faith but their interests vary from the Town's and he wanted to make sure that they make representations to us about the capacity upon which they can sell us for the next 20 years, that we have from the Town's perspective, assurances as far as anyone can make assurances in the distribution of water that what they promise is what they can deliver. He said that was his concern. Mr. Rest said that he was absolutely right to be concerned about that and it is always a concern when you are relying upon someone else to provide a vital service. He said at this point, the only assurance he can give is that they did some initial due diligence to make sure that it looked like they had enough water as they thought they have. He noted they think that they do. Mr. Rest said one of the reason they recommended some common facilities that optimize the use of the Vly system is that if there ever was any kind of short term interruption, the Town would be able to service the entire commercial and residential service area from the Vly facilities on a short term basis. He said they thought that was a better way to invest in reliability. He said this is kind of a balanced risk approach that is being proposed. The other comment to make on that is that there will be kind of a third party validation of the demand projections and the availability of the supply when you go to the State of New York and get a water supply permit. He said this action will consummate whatever deal is made. He said they will go through a review process.

Councilman Davis said there has been a significant residential growth in the Town in the last 10 years and she was sure it was factored into this project. Mr. Rest said they certainly did. Mrs. Davis said the Town also knows that they need to have a significant increase in the commercial and the industrial base in the Town for the tax base, noting this is a fact of life. She asked how that has been factored into the numbers. Mr. Rest noted he would separate the industrial question first. He said the way that is factored in was to work with the very simple premise that as the Clapper Road facility is brought up to its full capacity, they believe there is about 3 mgd per day at this time but as it is brought back up to full capacity, based on any projections that seemed to be a reasonable allowance for any growth that could be gotten out of the industrial base or any commercial base that would occur in the system. He said on the residential system, they were all floating the industrial in that system, with the industrial system to bring it back to capacity and they believe the projections that have been made going forward for purely residential and commercial, accommodate the growth that's consistent with the Town's

plan.

Councilman Davis asked what the projections are. Mr. Rest said the projections would be to have a growth of about 3.5 mgd up to 5.7 mgd. He said the 2.1 mgd would go 5.7 and then in addition to that, they put in the push factor to say let's look at 2.5 which means another 400,000 a day that was set as a minimum threshold. He said in the 30 years he thought it was always a balance between projecting too big to have a cost you can't swallow and projecting too small. He thinks this is, he would say, moderately conservative. He thinks it will certainly allow for growth now. He said if that element of growth is reached within the 20 years, it simply means that the next element of capacity would have to be added sooner. He said that would probably be a good thing in the sense of recouping the investments from revenues in the water system. Councilman Davis thanked Mr. Rest.

Deputy Supervisor Lenhardt asked if there were any other questions. There were none. He thanked Mr. Rest for his presentation.

The motion was made by Mrs. Davis and seconded by Mr. Plummer to table this item for future discussion. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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Deputy Supervisor Lenhardt said for the residents information, when the Town Board is going to make a decision to move forward, there will be a public hearing on all of this and at that time the public will have the ability to have input made known to the Board. He also said he believes copies of the report will be on file at the library and in the Town Clerk's office. Mr. Secor said there will be one at the Clerk's office, one at the library and there will be another copy for review. He noted there are a limited number and cannot be removed from the Town Hall.

Councilman Davis asked if the report might be put on the website. Mr. Secor, Commissioner of Public Works, noted there would be a security issue with that proposal because of the contents of the report. Councilman Davis said that was okay then. Deputy Supervisor Lenhardt said it was something to consider and thanked Councilman Davis.

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Councilman Marcelle said as long as the previous discussion was about the water supply, he would like to add one other thing he would like to do and have a motion on the setting of a public hearing to discuss whether or not fluoridation of the water supply should be done. He said it is just a public hearing for discussion as the Board advances a long-term view of how the water situation will be dealt with. He said he would like to set it for the May meeting if possible. The Town Clerk noted there is enough time to do so. He said he wished to make that request a formal motion.

Deputy Supervisor Lenhardt asked for a second to the motion. Councilman Plummer asked if the purpose was to have a hearing to gather information on people's view regarding the use of fluoride. Councilman Marcelle said that was correct. Councilman Plummer seconded the motion.

Deputy Supervisor Lenhardt said his personal feeling was that he would prefer that the Supervisor set the hearing date rather than the Board setting it. He said he feels they do not know her schedule and asked if there were any other comments before a vote was taken. Councilman Davis said there has been a significant amount of literature, correspondence from members of the community and people outside the community as Board Members. She said it has been email or letters, telephone calls so she did think it is important that both sides be heard. She said she thinks if they do as George suggested they would have to wait to set the public hearing at the next meeting. Deputy Supervisor Lenhardt noted that was what he would prefer. Councilman Davis would suggest that the motion be amended.

Councilman Marcelle said he would withdraw the motion in anticipation of making it at the next Board meeting on May 14, 2003. Councilman Plummer agreed and the motion was withdrawn.

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The next item was a request from Comptroller for approval to enter into lease purchase agreement and approve related budget modification for expansion of radio communications system. Deputy Supervisor Lenhardt asked if anyone had any questions. There were no questions.

The motion was made by Mrs. Davis and seconded by Mr. Plummer to approve entering into a lease purchase agreement and approval of related budget modification for expansion of the radio communications system. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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The next item was to acknowledge completion of the audits by Comptroller, Judith Kehoe, for the Town departments and notification to the Board that the audits have been completed.

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The following item was a request from Chief of Police, Louis G. Corsi, for approval of promotions of sergeant and lieutenant. The appointment of sergeant, Deputy Supervisor Lenhardt noted was made from a list of eligible candidates as provided by the Albany County Civil Service Commission and fills a budgeted position made available by a

recent retirement.

The motion was made by Mr. Plummer and seconded by Mrs. Davis for approval of appointment of Robert J. Helligrass, Glenmont, New York to the position of Sergeant as requested by Chief of Police, Louis G. Corsi, effective April 27, 2003 at an annual salary of \$55,810. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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Deputy Supervisor Lenhardt congratulated Sergeant Helligrass.

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The next recommendation from Chief of Police, Louis G. Corsi, was for the appointment of Thomas M. Heffernan to the position of lieutenant. Deputy supervisor Lenhardt noted this appointment fills a budgeted position made available by a recent retirement.

The motion was made by Mrs. Davis and seconded by Mr. Marcelle to approve the appointment of Thomas M. Heffernan, Delmar, New York to the position of Lieutenant as requested by Louis G. Corsi, Chief of Police, effective April 27, 2003 at an annual salary of \$66,208. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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Deputy Supervisor Lenhardt congratulated Lieutenant Heffernan.

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

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the appointment of seasonal personnel as requested by Nan Lanahan, Administrator, Parks and Recreation Department dated April 23, 2003 at the titles and salary rates listed. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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The next item was a request from Engineering Division, Department of Public Works, for approval of award of bid for corrugated steel, corrugated aluminum and plastic pipe for

the period May 1, 2003 to April 30, 2004.

The motion was made by Mrs. Davis and seconded by Mr. Marcelle to approve the award of bid for corrugated steel, corrugated aluminum and plastic pipe for the period May 1, 2003 to April 30, 2004 as requested by Engineering Division, Department of Public Works, in the Memorandum dated April 17, 2003 to Chemung Supply Corporation, Elmira, New York at the bid prices submitted. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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The next item was a request from Engineering Division, Department of Public Works for approval of award of bid for Precast Reinforced Concrete Manhole Sections.

The motion was made by Mr. Marcelle and seconded by Mrs. Davis to approve the award of bid for Precast Reinforced Concrete Manhole Sections as requested by Engineering Division, Department of Public Works in the Memorandum dated April 17, 2003 to Fort Miller Company, Schuylerville, New York at the bid prices submitted. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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The following item was a request from Engineering Division, Department of Public Works for approval of award of bid for Iron Castings – Frames and Covers.

The motion was made by Mr. Marcelle and seconded by Mrs. Davis to approve the award of bid for Iron Castings – Frames and Covers – as requested by Engineering Division, Department of Public Works in the Memorandum dated April 21, 2003 to Syracuse Casting, Cicero, New York and Neenah Foundry, Albany, New York for the items listed at the bid prices submitted. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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The following item was a request from Gregg Sagendorph, Highway Superintendent, for approval of award of bid for one truck-mounted storm sewer cleaner/jetter for use by the Highway Department to the low bidder.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the award of bid of one (1) truck-mounted storm sewer cleaner/jetter for use by the Highway Department to the low bidder, Cyncon Equipment Inc., Rush, New York as requested by Highway Superintendent, Gregg Sagendorph. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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The next item was a request from Highway Superintendent, Gregg Sagendorph, for approval of transfer of funds from insurance recovery to collision repairs.

The motion was made by Mrs. Davis and seconded by Mr. Plummer to approve the transfer of funds in the amount of \$2800 from Insurance Recovery to Collision Repairs to cover repairs to a Town-owned truck tractor as requested by Gregg Sagendorph, Highway Superintendent. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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The next item was to approve the Town Board minutes of March 26 and April 9, 2003.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the Town Board minutes of March 26, 2003 as submitted. The motion was passed by the following vote:

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

Noes: None.

Abstain: Mrs. Davis.

Absent: Mrs. Fuller.

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The motion was made by Mrs. Davis and seconded by Mr. Marcelle to approve the Town Board minutes of April 9, 2003 as submitted. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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Deputy Supervisor Lenhardt acknowledged Councilman Marcelle who wished to address the Board. Councilman Marcelle said before there is a move to the public portion of the meeting, he wanted to address that all of the Town Board is aware of and needs to be addressed and probably looking at the audience, there are a lot of speakers on the issue. He said he had considered drafting a formal resolution but decided to simply make a motion. Councilman Marcelle proposed making a motion and then permit discussion and go forward to get the sense of the Town Board.

Councilman Marcelle moved that the Town Board direct the Town Comptroller and the Town Supervisor not to authorize or expend any money to prosecute an appeal by the Zoning Board of Appeals of Judge Benza's decision in the Waste Management matter. The motion was seconded by Councilman Plummer.

Deputy Supervisor Lenhardt said there can now be a discussion of the motion. Councilman Plummer noted he made his position clear and did it in writing to the Chairman of the Zoning Board and copies to the Board Members and Supervisor that he is opposed to expending taxpayers money for the appeal. He said that is why he is supportive of the motion.

Councilman Davis said she had received numerous letters and numerous emails, phone calls from residents both in the area affected and in other parts of the community. She said everyone has expressed the same opinion and that was they do not support nor do they want her to support as a Town Board or as a Town Board Member to support any funding for an appeal. She said frankly she feels very strongly. She said she has not responded to the email simply because she has not had, in many cases, felt that if she said the wrong thing she did not want it to be interpreted incorrectly. She apologized to those who have not received a response but she knew they would hear one at the meeting. She said she does not feel, as Dan and Tom have said, that it is appropriate for the Town to expend taxpayers money on this issue and feel that if Waste Management wants to appeal this, they have much more money than the Town of Bethlehem and let them spend their money on the appeal.

Deputy Supervisor Lenhardt noted he concurs with all of the previous comments and he feels that any monies that need to be spent should be spent on pursuing land use management recommendations of 6 years ago which he will speak further to in a little bit.

Councilman Marcelle wished to add a little explanation because he said he thought very long and very hard about this. He said he remembered last year when many of the people in the audience were before the Board when there was the initial ruling by the Building Inspector and the problems that caused of having the south end basically unzoned. He said he knew their concern that if that interpretation of zoning were made the law that anything could happen in the south end. Every member of the Board last year, according to Councilman Marcelle, said there is a need to do something about zoning in the south end. He said it is now April of 2003 and it has not been accomplished. He said he believes if this went forward without the consequences of the decision, forces the Town Board to deal with, it may be a number of years before the issue is ever dealt with. He

said the other reason he feels very strongly about this is a promise he made when he ran for election. He said he grew up in the south end of town, not the east side, but on the west and he sees former Councilman Putney in attendance and he certainly remembers when he was in grade school spending many afternoons at his house at the very portion of Town that would be affected by this lack of zoning. He said to him by making this motion - and he appreciated the deference of the other Town Board Members in letting him make this motion – that he can fulfill a campaign promise and to represent, he thinks, the clear view and concerns of the people of the south end. He urged the Board to take this opportunity to deal with the zoning issues in the south end.

Deputy Supervisor Lenhardt noted there is a motion on the table and asked for a vote. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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Deputy Supervisor Lenhardt noted for the record, even though it was not a valid vote, Supervisor Fuller had phoned him and expressed her agreement with this motion. He said in that case, it is unanimous.

Councilman Davis noted about another matter related to this, she said she has spoken with the Board members regarding this and with Mr. Alessi. She said she is very distressed that with Judge Benza’s decision many of the residents who live in the area affected by that decision and many are in attendance, technically cannot sell their homes or someone might not be able to secure a mortgage if they wanted to buy a home in their area because a residential single family home is not a use that is listed. She said she thinks that is a severe problem. She said that is a problem for everyone. She said they need to deal with it and go further and move and go broader in related to zoning. She said she thinks this needs to be addressed quickly and handle it as quickly as possible.

Councilman Davis made a motion that the Town Planning Officer and the Office of the Building Inspector take action to amend the zoning ordinance to allow single-family, as of right or as a permitted residential use in the rural not zoned district of our Town. She said the referral should be made to the Albany County Planning Board for review under the General Municipal Law, Section 239m no later than May 5, 2003 because the deadline for submission for consideration would be at their May 15, 2003 meeting. She said a SEQR determination of significance shall also be prepared along with that amendment. She said there is one other thing Counsel advised me, along with single family residences, any other uses such as churches, schools that are consistent with what would be necessary to comply with the judge’s decision.

Councilman Marcelle seconded the motion made by Councilman Davis. The motion was passed by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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Deputy Supervisor Lenhardt said he wanted to add a caveat on this noting he was voting aye because he also is concerned about homeowners, however, for 7 years he has been arguing that the Town Board move forward with changing the zoning code in the Town. He said unfortunately at this point, his hands as well as the rest of the Board's hands are tied with the existing codes. He said the rural district not zoned – reading from the Code book – states in the very first paragraph – located in sections of Town where living is by agriculture generally. He said based on Judge Benza's decision, many of those functions of agriculture are not permitted in his mind. He noted that could be argued, mentioning everyone has their own opinions. He said, personally, he felt if someone really wanted to keep it in an agricultural district or agriculturally sensitive that included most of the permitted uses in there now, an AR zone would apply. He said that does not solve the situation of not having current zoning standards and he hopes that this can be moved forward with a consultant that has been in the budget for at least 3 or 4 cycles to draft codes that can be discussed with the public and move forward into the 21st century. He said for the sake of the single family homeowners, he will go along with this. He said he is not in favor of band aide construction of the zoning code and that is just a band aide approach. He said he is sure everyone will be back here very shortly with other uses that are not allowed based on the decision that the people already are using.

Councilman Davis said she agreed with Deputy Supervisor Lenhardt. She said she agrees on the larger picture also. She said many people are aware that there are residences in the 144 area of the Town who are working right now and very hard on trying to address zoning issue that relates to them directly. She said they have been meeting and trying to do this the best way possible and hopefully they will be coming to the Board with something that can be acted on quickly. She said hopefully they will be able to do that soon. She said she thought to supplement that, noting she agreed with Deputy Supervisor Lenhardt, that a consultant needs to be hired to address the rezoning. She said she does not think they should put this off. She said it is important. She said she thinks everyone sees with just this one case, the ramifications of not doing the rezoning. She said when the Supervisor returns at the next meeting, she would like to address this and in the mean time, she would like to have someone look at what the possible alternatives are for consultants, who they might be and then to move forward and discuss it at the next meeting.

Councilman Plummer said he wanted to just follow-up on this and said he thinks clearly there is a lot going on here in his view. He said he thinks a comprehensive plan is what is needed. He said he thinks they all feel that way, it is just a matter of how to get there. He said he thinks Supervisor Fuller not being at the meeting, she has committed already to talking to different consultants and bringing them in so we can have briefings as to what they've done elsewhere. He said there are plans, obviously, that people have

work on in the past, well before his time, that can be updated so he thinks it is a matter of the Town voting to expend resources and to get a land use planner and then starting the process where they try to balance the needs of residential business and open space. He said he knows the Supervisor has started that process and he wanted to make that point.

Councilman Davis noted that was why she did not want to do anything until Supervisor Fuller returns.

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Deputy Supervisor Lenhardt next opened the floor to questions or comments from the public.

Mrs. Marie Capone, resident, noted she wanted the people from the south end to realize the first person that supported them was Councilman Marcelle.

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Mr. Jennings, resident on Route 144, asked that the Town not hold up the proposal for zoning east of the Thruway in order to have a totally comprehensive situation. He said he feels there is a need to move forward with the part that is immediately impacted by the current situation. He said he does not think it will interfere with a comprehensive zone but do not postpone in order to do it all at once. Councilman Davis noted that was why she said that she hoped they would receive whatever is happening as soon as possible to accomplish that. She said that is her position. Deputy Supervisor Lenhardt noted any forward movement would be welcomed from his perspective.

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Mrs. Martens with the law office of Mark Gertzman and they represent the Orsi's and the BREATH organization, asked if they could give her some specifics about how the decision tonight – noting they really appreciate it and the bipartisan effort will not go unnoticed, further saying everyone is thrilled, she thinks, with what the Board has decided to do – but she received a Notice of Appeal today which has already been filed on behalf of the Zoning Board and the Building Inspector so she asked procedurally what is going to happen next. She asked if they would have that rescinded. Deputy Supervisor Lenhardt deferred to Counsel Alessi. Town Attorney Alessi said the precedent in New York State is that Town Boards and Town Attorneys cannot interfere or direct the litigation of Zoning Boards of Appeals. He said there are many cases on that. He said neither the Town Board nor the Town Attorney can tell the Zoning Board of Appeals what to do. He said that is why they have made a decision, their prerogative to file a notice of appeal, however, what this Town Board has very clearly said tonight is that there will be no Town funds expended for that appeal. So, he said the notice of appeal that was filed was done and there will be no reimbursement for those activities, etc. He noted, as Mrs. Martens knows, it is a pretty ministerial act. He said the Zoning Board of Appeals does not have line item budget funds to do any more that needs to be done. He said the money necessary to put together a record to file, etc. He said the ZBA if they should get an attorney who would do this pro-bono, someone who would fund this, the

Town Board and the Town Attorney are prohibited by law from interfering with that process. He said they have seen no reason to believe that that would occur but he wanted to make it clear that the Town Board is without power to affect that, should that occur. He said that is the explanation as to why she has seen a notice of appeal and to your point of whether the Town Board will ask the ZBA to rescind that, it would be an illegal act under previous court decisions.

Mrs. Martens asked how much money the ZBA has available to it for an appeal. Town Attorney Alessi said he is not aware of any money available to the ZBA for an appeal but that would be a matter better suited to ask the Town Supervisor and the Comptroller's office. He said he made some preliminary inquiries into that question himself and very preliminary information he got was that no one sort of top of the head was aware of any monies available in a budget for that. He said that needs to be checked. Mrs. Martens thanked Town Attorney Alessi.

Councilman Davis asked Deputy Comptroller Webster if he was aware of any monies. Deputy Comptroller Webster said he was not aware of any, as far as he knows all legal fees are paid from the Town Attorney's budget. Councilman Davis thanked Deputy Comptroller Webster. Town Attorney Alessi said to the extent that anybody might think or ask whether the Town Attorney will be approving any monies out of his budget, the answer is no.

Resident, Ted Putney noted he lives in Cedar Hill and he thanked the Board very much for what they have done.

Following verbatim due to comments regarding the Clapper Road Water Supply:

MR. KELLEHER: I've already notified you ahead of time. I submitted a list of questions, especially those I'm going to ask the Town Attorney but I'd like to make a comment. It's absolutely ridiculous. I don't see how you can sit here and take it. How can they possibly exclude this failed water supply down on Schermerhorn Island? Now, Doris Davis and George Lenhardt, you know for a fact, absolute fact, that Waste Management, Fraser and the State of New York guaranteed us 6 million gallons a day of excellent quality drinking water. And, that is not an industrial water supply, never was, it's a drinking water supply.

You are just fooling the people. Do you deny that that occurred, George and Doris? I'm asking you both. Do you deny that this was always planned as an industrial water supply?

DEPUTY SUPERVISOR LENHARDT: First of all, your comment regarding Waste Management was... I never knew Waste Management was part of the equation regarding our water supply.

MR. KELLEHER: I'll explain that in a minute, go ahead. It's very simple.

COUNCILMAN DAVIS: No, I'd rather you...

MR. KELLEHER: Information was withheld from us. Am asking you a very simple question. I was here when you approved it. You approved it as drinking water supply and we never would have to worry... you know, the year 2050. As a matter of fact, and Mr. Alessi knows this very well, they said the capacity was 12 million gallons a day. All you had to do was double the size of the treatment plant. We could go another 50 years. And the pipeline was designed for that. Now, do you deny that?

DEPUTY SUPERVISOR LENHARDT: I will correct your facts. I was not here when the original supply source... I'm sorry, can everybody hear me?

I was not part of this Board nor was Mrs. Davis part of this Board when the original supply contract was written. We were part of... at least I was, I'm not 100 percent certain Doris was... when the request for additional funds was made because of the cost overruns from the original estimate.

MR. KELLEHER: That's correct.

DEPUTY SUPERVISOR LENHARDT: Okay.

MR. KELLEHER: Yes. You provided the additional funds and I heard both of you...

DEPUTY SUPERVISOR LENHARDT: I was here for that additional...

MR. KELLEHER: And, I heard both of you... there is absolutely

DEPUTY SUPERVISOR LENHARDT: And, that was to be...

MR. KELLEHER: ..no question in your mind at the time. In my mind there wasn't.

DEPUTY SUPERVISOR LENHARDT: And, that was to be an additional water supply for the Town of Bethlehem.

COUNCILMAN DAVIS: It was an additional...

MR. KELLEHER: A drinking water supply, I beg your pardon, and it was approved by the State as a drinking water supply.

DEPUTY SUPERVISOR LENHARDT: At that time, we had not separated our water supplies. It was an addition to our water system.

MR. KELLEHER: No, no... it was sold by Rust, Waste Management and Fraser as a drinking water supply. No question about it. I was here and I heard you. I heard Sheila Fuller said we're well on our way to getting the best water supply in the State of New York. I heard that.

COUNCILMAN DAVIS: Mr. Kelleher, you have for years... you have stood up and said that you are a qualified engineer, correct?

MR. KELLEHER: I'm a retired engineer.

COUNCILMAN DAVIS: But, at the time you were not and you have always said that you are an engineer, correct?

MR. KELLEHER: Yes.

COUNCILMAN DAVIS: And, that is one reason why we should listen to you. Well, I was on the Board after George but I did vote for the additional 3 million dollars that we had been requested to approve. And, at the time, the reason that I did was because engineers – I am not an engineer – but engineers... excuse me, let me finish, Mr. Kelleher... you asked me a question and I'm going to answer it as best I can.

MR. KELLEHER: Yes.

COUNCILMAN DAVIS: I voted for it at the time because we had significant information from very well qualified engineers. They had very significant credentials. As a Town Board Member, I do my best to listen to people who, in my mind, are qualified. These seemed to be very qualified people with, as I said, excellent credentials.

MR. KELLEHER: Doris, do you want to know something?

COUNCILMAN DAVIS: I have to... that's who I have to listen to, those are the people who we have to listen to.

MR. KELLEHER: I'm agreeing with you, 100 percent.

COUNCILMAN DAVIS: Now, I have a request from you, Mr. Kelleher.

MR. KELLEHER: Sure.

COUNCILMAN DAVIS: Would you please now, because people are waiting, these are people who many of them have been here because of the Waste Management issue. Can you now, because you said you would, explain what the relationship is of what you are saying to Waste Management before you go on?

MR. KELLEHER: All right. Well, you know...

COUNCILMAN DAVIS: I would appreciate that.

MR. KELLEHER: I agree with you 100 percent and George. Bill Kelleher comes along and you have at least 10 engineers... the 2 top engineers in the State of New York Health

Department saying Bill Kelleher doesn't know what he is talking about. No question about that. And, I don't blame you at all...

COUNCILMAN DAVIS: I have not said you don't know what you are talking about.

DEPUTY SUPERVISOR LENHARDT: And, I've never heard anyone say that.

COUNCILMAN DAVIS: No one has said that. I have never said that.

MR. KELLEHER: No, no I didn't say you did. I said the State of New York did.

COUNCILMAN DAVIS: Well, we have not said that.

MR. KELLEHER: You know, I got a letter that... my neighbor got a letter that the Republican party circulated. It was a vicious attack on me, no question about it. It came from the State Health Department. I took it very personally and I know someone else who took it very personally because it was an attack on him. It wasn't your fault at all. I'm not blaming you at all. You have treated me with great respect.

Now, to answer your question. Dunn was sold to Rust but who owned Rust at the time, Waste Management. Nobody ever knew that. Now, Waste Management sold Rust Environment and Infrastructure. Rust has a lot of companies, it is a big contracting company, engineering contracting company. They sold Rust Environment and Infrastructure which promoted this water supply to... Waste Management sold it to Earth Tech and Earth Tech happens to be a subsidiary of Tyco International. And, as a matter of fact, by way of this settlement agreement, we have an investment in Tyco International. And, our investment went way down when Dennis Koslowski, you know bought his \$6,000 curtains... shower curtains and \$6,000 sewing basket. As a matter of fact, the 3 top officers of Tyco ripped off the company for 6 million dollars. The price of the stock went from \$60 down to \$12 and our possibility of getting money out of Tyco if it goes bankrupt... went down from 60 to 12 too. A lot of people don't know that.

Now, we paid Mr. Alessi's law firm a half a million dollars to give legal advice and he didn't even know this. Nobody informed the Town about this? You know... this bothers me greatly.

TOWN ATTORNEY ALESSI: You are incorrect, Mr. Kelleher.

MR. KELLEHER: What?

TOWN ATTORNEY ALESSI: You're factual... you are factually incorrect on what you just said.

MR. KELLEHER: What?

TOWN ATTORNEY ALESSI: That the Town... first of all, your chronology is

incorrect. When this settlement agreement was signed which is May 17, 2001, Tyco did not own Earth Tech. So, you are incorrect in what you just said.

MR. KELLEHER: Okay. Who owns Earth Tech now?

TOWN ATTORNEY ALESSI: Earth Tech now, as of today, is owned by Earth Tech Environment and Infrastructure Inc. and Earth Tech Inc. Those are 2 corporations which are now subsidiaries of Tyco International. So...

MR. KELLEHER: Yes, they are dummy corporations that were set up after I informed them.

TOWN ATTORNEY ALESSI: They were not dummy corporations, Mr. Kelleher. These were corporations at the time of the settlement agreement that were live with SEC filings. The Town Board was apprised at the time of the settlement exactly who these companies were, what their subsidiaries were and if you would look at the settlement agreement, that you have seen many times, you will see it all set forth on the front page, first paragraph of the settlement agreement.

MR. KELLEHER: You know who signed that settlement agreement?

TOWN ATTORNEY ALESSI: Yes, I do.

MR. KELLEHER: Diane Creel, right? She is not a registered engineer in the State of New York. She cannot sign an engineering contract.

TOWN ATTORNEY ALESSI: Mr. Kelleher, you are switching topics. You are switching topics.

MR. KELLEHER: No, I'm not.

TOWN ATTORNEY ALESSI: You are going from whether an engineer can sign it. But, I want you to stand here and tell me that what is apparent on the face of the agreement – you made a statement that I did not advise the Town Board of the ownership of the companies that Tyco owned Earth Tech at the time the settlement agreement was signed and what I am saying to you is, at the time the settlement agreement was signed on May 17, 2001, Tyco did not own Earth Tech. So, you are incorrect.

MR. KELLEHER: Who did own it?

TOWN ATTORNEY ALESSI: Earth Tech was owned... I don't know the answer to that...

MR. KELLEHER: I'm asking you, who did own it then?

TOWN ATTORNEY ALESSI: It probably at the time it was probably Waste

Management at the time but I don't know. It doesn't matter because they are separate companies.

MR. KELLEHER: Absolutely they are but Waste Management doesn't have a very good reputation by the way.

TOWN ATTORNEY ALESSI: This isn't about reputation. I'm just responding to your statement that the Town Board allegedly was not informed that Tyco owner Earth Tech at the time of the settlement agreement and you are incorrect about that statement.

MR. KELLEHER: All right. I'm incorrect.

TOWN ATTORNEY ALESSI: Hold on, I'm not finished but I always enjoy your interest in the water supply in the Town of Bethlehem and I'm always happy to answer your questions but when you make a misstatement of fact, I need to correct you but please continue.

MR. KELLEHER: You're being a good lawyer. Okay.

TOWN ATTORNEY ALESSI: No, I'm just stating facts.

MR. KELLEHER: No, no look it... I don't have the staff that you have. I'm a one man staff. I spent hours looking this up. Let me ask you a question. You know very well that Earth Tech of New York, Inc. is allowed to practice engineering and contracting in the State of New York. Isn't that correct?

TOWN ATTORNEY ALESSI: I am not familiar with who is as of today and who is not authorized to practice engineering.

MR. KELLEHER: I'll tell you who is.

TOWN ATTORNEY ALESSI: I do know as of the time the settlement agreement was signed who was appropriate and who was not but today it is irrelevant. We have a signed agreement. It is being overseen by Judge Teresi and the Albany County court. We were just down there. So, this is being overseen by a court and there is a settlement agreement. That's my view of it. It's at the time of the settlement agreement was signed these were the issues that were appropriate. You came in at that time, you had this agreement in front of you. So, if you have any questions about something I can help you with...

MR. KELLEHER: I... I... do have an agreement. How come you advised Sheila Fuller to sign it? Illegal agreement... it's clearly illegal under State Education Department laws.

TOWN ATTORNEY ALESSI: Mr. Kelleher, as I understand it and you said you do your best and I certainly see that you do but you've said you are an engineer, not a lawyer. And, when you make a statement that you say this is an illegal agreement, that is... this

agreement is before a court, a court has not said that. I have not advised the Town of that and the Education Department -- who I know you have been communicating with this issue on for years -- has not said that. Has the Education Department with whom you have been communicating and you've made this allegation to them several times, have they informed you that this is an illegal engineering contract?

MR. KELLEHER: No.

TOWN ATTORNEY ALESSI: Okay, thank you.

MR. KELLEHER: No, they have not but certainly...

TOWN ATTORNEY ALESSI: Those are the people who determine that question.

MR. KELLEHER: Let me ask you this, Mr. Alessi. Did you inform the Town?

TOWN ATTORNEY ALESSI: Did I inform the Town of what?

MR. KELLEHER: Town of Bethlehem that the connection between Dunn, Rust, Waste Management, Earth Tech?

TOWN ATTORNEY ALESSI: Yes. The Town...

MR. KELLEHER: And, Tyco?

TOWN ATTORNEY ALESSI: No.

MR. KELLEHER: You informed the entire Town?

TOWN ATTORNEY ALESSI: Not...

MR. KELLEHER: I didn't see anything in the paper about it.

TOWN ATTORNEY ALESSI: Mr. Kelleher, you got to let me answer the question. I know you're very interested in this issue but if you want answers, you've got to let people have time to answer.

The agreement on May 17, 2001, the Town Board was informed of all the entities involved at that time. I will say it again, and I hope you... you take the moment to listen this time. At the time the settlement agreement was entered into Tyco did not own Earth Tech.

MR. KELLEHER: Who did?

TOWN ATTORNEY ALESSI: I would have to go research it but I believe it was Waste Management.

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MR. KELLEHER: Okay. I agree, what's the difference?

TOWN ATTORNEY ALESSI: Well, you just said it was owned by Tyco. I am just responding to your allegations, sir. I want to make sure the facts are accurate.

MR. KELLEHER: Okay.

TOWN ATTORNEY ALESSI: Tyco did not own it.

MR. KELLEHER: Tyco eventually assumed control... we're talking about a time element which you are much more familiar with than I am because all I can do is see how they change the registration with the State Education Department... change the registration with the Department of State and the two of them don't agree. There's something terribly wrong here. Did you know that Earth Tech's address... Earth Tech now at the time Tyco owned them, Earth Tech of New York, Inc... you know where their headquarters were listed with the Department of State as a corporation – they couldn't practice in New York State with out it – you know where the address was?

TOWN ATTORNEY ALESSI: I do not, sir.

MR. KELLEHER: Waste Management. They didn't even bother to change it.

TOWN ATTORNEY ALESSI: How does this affect what we are talking about tonight? Is there a point that I can help you with with regard to... Is it water supply? Is it Waste Management?

MR. KELLEHER: Yes. I have a series of questions to ask of you but let me... since you brought it up, let me look at the very back here...

DEPUTY SUPERVISOR LENHARDT: Mr. Kelleher, just a minute, I believe there is a Board Member here that wishes to address this.

COUNCILMAN MARCELLE: While I find... I mean I find this to be some what fascinating... it seems a lot of this is historical fact. A lot of it, even in my short tenure on the Board, I believe I've heard on several occasions. I'm just wondering if it's possible, Mr. Kelleher, if you would just kind of lay out your case without a collogue with counsel. I'm sure as Mr. Alessi has indicated to the extent that you propound questions to him, my understanding in the past – he's been very generous with his time...

MR. KELLEHER: No, he hasn't been. I'm sorry. I... I was writing to him events for two years and you paid no attention to what I wrote whatsoever. Period.

TOWN ATTORNEY ALESSI: We read every document you wrote and not only did we do that, Mr. Kelleher, every document you sent us we sent on to Earth Tech. Everything was read and everything was sent on to them.

MR. KELLEHER: Obviously, they didn't read a dam thing then.

TOWN ATTORNEY ALESSI: We did.

MR. KELLEHER: Now on the very back of this page, nothing experimental about the treatment plant. This was written in 1994, all right. Look at the back.

DEPUTY SUPERVISOR LENHARDT: You're referring to an article that was in the Spotlight in 1994.

MR. KELLEHER: Signed by Dennis Geran of Wheelabrator Engineered Systems, Inc. You know who owns Wheelabrator at the time? Waste Management.

TOWN ATTORNEY ALESSI: At what time, 1994?

MR. KELLEHER: Yes, when the contracts were awarded and guess what, we paid 3 million dollars... 3 million dollars to Waste Management for that ridiculous water treatment plant. We paid Waste Management \$650,000 of useless ozone equipment and you are not going to be using ozone in an industrial water supply. It's a drinking water supply definitely, that proves it.

I want to go back and ask Mr. Alessi these questions. I'm sorry my mouth is getting dry and... why can't we recover the \$500,000 in legal fees?

TOWN ATTORNEY ALESSI: Mr. Kelleher, I'm delighted that you've asked that question. Absolutely delighted. I would like you to turn to page 27 of the settlement agreement you have been reviewing for the past 2 years and I would like you to... paragraph 22a of the settlement agreement: Defendants shall pay the town the sum of \$550,000. Mr. Webster is still here, he could tell you that that money sits in a Town of Bethlehem escrow account.

MR. KELLEHER: Correct.

TOWN ATTORNEY ALESSI: So, what is your question then? Your question was why don't we recover it and as you've just said you know, it is in the Town escrow account, so what is your question, sir?

MR. KELLEHER: Are we going... Is that going to pay for the legal fees for your company?

TOWN ATTORNEY ALESSI: The answer is yes and that was reported in the Spotlight newspaper when the settlement agreement was announced and I believe you read the Spotlight.

MR. KELLEHER: Yes and I also read in there that legal fees wouldn't be covered.

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TOWN ATTORNEY ALESSI: The answer was there is another provision in there that says each party shall be responsible for their own legal fees and that's on a going forward basis and that is the case.

MR. KELLEHER: In other words, the Town is responsible for the legal fees.

TOWN ATTORNEY ALESSI: No, Mr. Kelleher, I am answering... of course, the Town is responsible for its legal fees in the abstract but your point was and your question was why hasn't the Town Attorney recovered \$500,000 or \$550,000 in legal fees paid to my firm. And, the answer is it has and let me also say that you can call up the Association of Towns Attorney, Kevin Crawford, and he will tell you that this was the most extraordinary settlement he has ever seen and he has never seen a municipality recover that amount of attorneys fees since he has been in his position.

MR. KELLEHER: Oh, very good, that's why I asked the question.

TOWN ATTORNEY ALESSI: You said very good when we recovered it and you complimented me on that fact. And, I thank you again.

MR. KELLEHER: Is the Town Attorney participating in this conspiracy by the State of New York and Earth Tech Inc. to defraud the Town of 20 million by blaming the Town for the poor well yield of the infiltration gallery?

TOWN ATTORNEY ALESSI: I'm happy to report that I am not participating in a conspiracy and I am also pleased to tell you that I did not blame the Town for what happened. I was the attorney who prosecuted the law suit in which we successfully got the engineers to rebuild our entire system to 6 million gallons per day which they are working on now. I'm proud to say that I got them to give us a 13 year guarantee that never was in the original agreement and just for the record, I was not the Town Attorney nor the Attorney for this project when it first came around. I was the attorney who was asked to fix this. And, I believe most people would agree that it is in the process of being fixed.

MR. KELLEHER: It's not going to be fixed.

TOWN ATTORNEY ALESSI: Let me answer your question. So, not only am I not involved in a conspiracy and not only am I not blaming the Town, I was the lead attorney blaming the engineers who worked on this project and got them to agree what they did agree to and if what they agreed to, as you know in the settlement agreement doesn't work, we go back to court.

MR. KELLEHER: Okay, fine.

TOWN ATTORNEY ALESSI: So, that's what I've done with regard to this matter.

MR. KELLEHER: Now, who are you going to recommend for the... as Town Attorney are you going to recommend your law firm because I guarantee you beyond any shadow of a doubt this will go back unless, of course, Earth Tech tries to blame the whole thing on the Town by not maintaining the wells. Now, I sat here in a Town Board meeting when you said and I distinctly heard you that the Town will have to pay for the maintenance of the wells over and above what they would have paid to maintain that infiltration galley. I heard you very clearly.

TOWN ATTORNEY ALESSI: That's not what I said.

MR. KELLEHER: What did you say?

TOWN ATTORNEY ALESSI: As a matter of fact, I'll tell you what I said and then I will point you to the agreement because I said exactly what the agreement says. And, that is that the maintenance that the Town will pay for this new system will not be materially different from the maintenance it would have had to pay on the system it contracted for. That's what I said then, that's what's in the agreement and that's what I say now.

MR. KELLEHER: No, but Earth Tech and the State of New York are making a claim that we did not maintain the well.

TOWN ATTORNEY ALESSI: That is correct, they made that claim and they lost on that claim.

MR. KELLEHER: Where?

TOWN ATTORNEY ALESSI: In...

MR. KELLEHER: I don't see it anyplace.

TOWN ATTORNEY ALESSI: No, I'm going to tell you it is throughout 53 pages of an agreement. Had they won on that, sir, they would not have agreed to go rebuild the system.

MR. KELLEHER: Well, what are they doing it now? What's Earth Tech doing?

TOWN ATTORNEY ALESSI: Earth Tech is...

MR. KELLEHER: They're drilling wells in... in Henry Hudson park... who authorized them to do that? This is a production well not a....

TOWN ATTORNEY ALESSI: Department of Health and the Department of Environmental Conservation both State entities have authorized them to do that.

MR. KELLEHER: They did without any hearing or anything else?

TOWN ATTORNEY ALESSI: There were applications put in. Those applications were noticed in newspapers, subject to public comment and it was a public process.

MR. KELLEHER: No... those wells at Henry Hudson park were never in the application. You mentioned engineers okay... how many engineers have Earth Tech had so far?

YTOWN ATTORNEY ALESSI: I don't know how many they've had.

MR. KELLEHER: I know. The first one resigned because he didn't want to practice... he claimed that Stephen Meyers, the Vice President of Earth Tech was practicing engineering without a license. The second engineer, Carson Floss, who came up with a ridiculous well maintenance program, he resigned when I informed him that he was going to be held accountable when this whole system fails which it certainly will. Now, they've got a third engineer, Coffey, but he's come in with a new plan. It isn't in the Town library, it's hidden in the Town Hall. You know, too many of these hidden agreements. Earth Tech has a well maintenance procedure they claim they had an expert look at it. Where's that report? You know, what's going to happen and I guarantee you this... in 1994 I predicted this whole thing was going to happen. For 4 years I was hoping, I was begging the Town Board to get an attorney to bring a lawsuit against the design engineers. I didn't know it was Waste Management who was actually the owner of Rust. I didn't know that Waste Management was the owner of Wheelabrator that sold all this equipment to the Town. You know, everybody is feeding off the trough. Everybody is making money except the Town and we're losing money hand over fist on this.

And, it's absolutely ridiculous for them to exclude... for O'Brien and Gere to exclude this drinking water supply and don't call it industrial water supply, it is not. It's a drinking water supply.

When this whole system fails, which it surely will, this agreement... some of the agreement is going to fail. They're going to claim it was our fault because we didn't maintain it. Do you realize... have you read what their plans are?

TOWN ATTORNEY ALESSI: Yes, I have.

MR. KELLEHER: What did they say about using hydrochloric acid to clean a well? Who's going to have to do it... the very first time? Not the second time, the very first time.

TOWN ATTORNEY ALESSI: I read the agreement as...

MR. KELLEHER: Not the agreement, I'm talking about the engineering plans.

TOWN ATTORNEY ALESSI: Well, you asked me about... you just said have you read

the agreement and I said yes.

MR. KELLEHER: I should have said the agreement includes the engineer's plans. The agreement doesn't specifically say how the wells are going to be cleaned, that's in the engineer's report, right?

TOWN ATTORNEY ALESSI: That's correct.

MR. KELLEHER: In the engineer's report they claim that the Town, the very first time that these wells get clogged, the Town will have to clean them, not Earth Tech. That's unheard of. That's not protecting the Town, that's protecting Earth Tech and that's in the plans. Do you know the... do you know Joseph Coffee, the third engineer that they hired, do you know him from Adam?

TOWN ATTORNEY ALESSI: I do know him.

MR. KELLEHER: Yes.

TOWN ATTORNEY ALESSI: He used to be with C.T. Male.

MR. KELLEHER: Yea, right, okay. What did they hire a third one for? What happened to the first and second one?

TOWN ATTORNEY ALESSI: I don't know.

MR. KELLEHER: Yea, I know. They all got scared away. You know, Mr. Alessi the easiest way to prove... to make Earth Tech prove what... you know... put their money where their mouths are... the easiest way to do it that you would do in any engineering contract is make them provide the sufficient amount of malpractice insurance. It's a very simple way of solving the whole problem and I guarantee you this, any engineer looking at this would never take it on because who is the very first person we can sue? You know, if this falls apart, Earth Tech can sue their own engineer, right? The Town would definitely sue him especially if TYCO goes bankrupt. If TYCO goes bankrupt, we've got nothing.

TOWN ATTORNEY ALESSI: Do you have a question for me, Mr. Kelleher?

MR. KELLEHER: Well, okay...

DEPUTY SUPERVISOR LENHARDT: Yes, in lateness... in light of the lateness of the evening, could you please sum up your points.

MR. KELLEHER: I've already asked the questions... I'm asking it again, how come you didn't attempt to recover the \$650,000 in useless ozone equipment?

TOWN ATTORNEY ALESSI: Mr. Kelleher, the ozone equipment, as I understand the

history because I was not here in 1994 or whenever that was purchased... as I understand the history, that ozone equipment was a requirement that was imposed upon the Town by the Department of Health and that is why the Town purchased it. That was my understanding but there are people who were here then who can better answer it.

MR. KELLEHER: Well, I can tell you what happened. Waste Management sent up portable ozone equipment and then ran a pilot study and the pilot study showed beyond any shadow of a doubt you should not use ozone. But, Rust... you got to remember this Rust and Fraser might just as well say Fraser and Waste Management clearly recommended it. It's right there.

TOWN ATTORNEY ALESSI: I wanted to...

MR. KELLEHER: It's right there... I've shown you right there. Now the State Health Department... they encouraged ozone. They didn't say they recommended it. But, that's the conspiracy they are covering up. I wrote to Governor Pataki about that. You know what happened, they sent... the young engineer, the only one who knew what he was talking about in the State Health Department, they sent him down to New York City to get rid of him. He was the only one who knew what they were talking...

TOWN ATTORNEY ALESSI: I want to complete my answer also, Mr. Kelleher. No one has ever asked me or directed me to pursue Waste Management for \$650,000. As a matter of fact, when you brought this up is the first time I have ever heard of anybody suggesting that...

MR. KELLEHER: Well, hey, you know, the Town Board time and time again... I appeared before the Town Board, Sherwood Davies did too. You all know that that ozone equipment is useless. It's very expensive to operate but Waste Management says it's very inexpensive.

DEPUTY SUPERVISOR LENHARDT: Mr. Kelleher, we've heard this argument on the ozone equipment for many, many, many meetings. Could you move on to something new for the Board?

COUNCILMAN MARCELLE: I have a motion, Mr. Deputy Supervisor. I believe we've given Mr. Kelleher ample time to speak and question the Town Attorney. I believe he can do that after the meeting but I still see a significant number of the public present who may wish to speak to the Town Board, so I would just...

MR. KELLEHER: Okay.

TOWN ATTORNEY ALESSI: Thank you for your questions, Mr. Kelleher.

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Resident Nancy Burns, corner of 396 and 144, asked the Board if it is legal, fully

or in part, for Waste Management to fund the Zoning Board of Appeals appeal and in any case, whether or not their funding would be made publicly known. Deputy Supervisor Lenhardt asked Town Attorney Alessi to respond. Mr. Alessi said he would want to research the question to be 100 percent sure but he said he is not aware of any law that would proscribe, meaning prohibit, Waste Management from funding the appeal of the Zoning Board of Appeals. He said that is providing the Zoning Board of Appeals would accept the funding. He said from his experience that that happens often enough throughout New York State Law where applicants have various funding arrangements with municipalities and with regard to lawsuits. He further noted lawyers when they get asked specific questions unless already researched, at least prudent ones, do not want to give an absolute answer but his judgment is subject to check, is that there is nothing legally that would prohibit them from doing that.

Deputy Supervisor Lenhardt said the second part of the question was whether there would be public notification. Town Attorney Alessi said he could tell everyone that from his years working with the Town of Bethlehem and all the Boards that they are – and he has counseled a lot of municipalities – probably the most open forms of governments and boards all throughout New York State. He said based upon past practices everyone would be fully aware of that funding and if it ever occurred. He said as Town Attorney he would expect to know that that would be proposed and he would make sure that the Board Members are made aware of it and that the public would be made aware of it. Councilman Davis said she would be very unhappy if that happened. Deputy Supervisor Lenhardt said he would be very unhappy if the zoning board accepted an offer of that nature.

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Mr. Paul Trudono said he lives in Cedar Hill and the Zoning Board has apparently already filed the appeal and their intent. He said they know that the Supervisor is not in favor of this and they have gone ahead and done it anyway and with Waste Management's record, it is not beneath them to fund this. He said they will do this because they want to put this in Selkirk. He said this looks bad on this town. He thanked the Board for what they did but if Waste Management comes forward with the money and this Zoning Board takes this money – stating he did not know who they work for but thought they pay their salary – asked if anyone controls these people. Town Attorney Alessi said this is a hypothetical and there are no facts to support this. He said you can disagree with the Zoning Board of Appeals decision and that is anyone's prerogative, First Amendment right, but he said that the Zoning Board of Appeals, like the Planning Board, discharges their services in a very ethical and high integrity manner. He said they do what they think is best. He wanted to make sure that the record was clear that there has not been any offered or that the Zoning Board has even discussed taking monies for the appeal. Mr. Trudono said no and indicated he did not want to infer that there is anything shady going on.

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Deputy Supervisor Lenhardt asked if there was anyone else wishing to address the Board. Town resident, Marie Capone, said TYCO, Waste Management, Earth Tech, was

in the business section of the Times Union a few weeks ago. She said they have to be polite with Mr. Kelleher because look at the new Chief of Police. She said when Mr. Kelleher graduated engineering school, Chief Corsi was not born. Deputy Supervisor Lenhardt said he thinks everyone learned this evening that Waste Management is a very large corporation.

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Deputy Supervisor Lenhardt asked if anyone else wished to address the Board.

The motion was made by Mrs. Davis and seconded by Mr. Plummer to adjourn the regular Town Board meeting at 9:32 p.m. The motion was carried by the following vote:

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

Noes: None.

Absent: Mrs. Fuller.

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Town Clerk