

TOWN BOARD
AUGUST 8, 2007

A regular meeting of the Town Board of the Town of Bethlehem held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, NY. The meeting was called to order by the Supervisor at 6:00 p.m.

PRESENT: John H. Cunningham, Supervisor
Daniel Plummer, Councilman
Samuel Messina, Councilman
Kyle Kotary, Councilman
Joann V. Dawson, Councilman
Colleen Hummel, Deputy Town Clerk
James T. Potter, Esq., Town Attorney

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Supervisor Cunningham welcomed everyone to a regular meeting of the Bethlehem Town Board and invited them to join in the pledge of allegiance.

The first item on tonight's agenda was to receive public comments on agenda items. There were none.

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The next item was to approval the Town Board minutes of. July 11, 2007.

The motion was made by Mr. Plummer and seconded by Mrs. Dawson to approve the Town Board minutes of July 11, 2007 as submitted. The motion was passed by the following vote:

Ayes: Mr. Cuningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.
Noes: None.
Absent: None.

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

The motion was made by Mr. Plummer and seconded by Mr. Messina to approve the appointment of seasonal personnel as listed in the Memorandum dated August 8, 2007 and requested by Nan Lanahan, Administrator, Parks and Recreation Department at the titles and salaries listed. The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.
Noes: None.
Absent: None.

The next item was a request from Nan Lanahan, Administrator, Parks and Recreation Department, for acceptance of donations from the Bethlehem Soccer Club, Ron and Jean Forbes and Jim Grady.

The motion was made by Mr. Plummer and seconded by Mrs. Dawson to approve the acceptance of donations as requested by Nan Lanahan, Administrator, Parks and Recreation Department as follows:

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| Bethlehem Soccer Club | 4 Trash barrels valued at \$300; |
| Ron and Jean Forbes | 700 brick pavers valued at \$700; and |
| Jim Grady | 10 white pine tress at Maple Ridge Park valued at \$3000. |

The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.
Noes: None.
Absent: None.

The following item was a request from Town Engineer, Erik Deyoe, for approval of award of bid for the Maple Avenue Sidewalk Construction – Phase II to the low bidder, Bob Talham, Inc., Troy, New York at a bid price of \$307,381.50

The motion was made by Mrs. Dawson and seconded by Mr. Messina to approve the award of bid for the Maple Avenue Sidewalk Construction – Phase II to the low bidder, Bob Talham, Inc., Troy, New York at a bid price of \$307,381.50 as requested by Town Engineer, Erik Deyoe. The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.
Noes: None.
Absent: None.

The Supervisor next acknowledge receipt of the Quarterly Franchise Fees from Time Warner Cable in the amount of \$113,734.08.

Supervisor Cunningham said at this point Comptroller Kehoe was to give an update on street light audit report. Comptroller Kehoe said every once in a while there is the distinct pleasure of getting the State Comptroller's office coming into the Town and do a general audit of fiscal affairs and sometimes they have a specialty topic. She said a few months ago they came into Bethlehem and several other municipalities and were doing an audit to get more information on whether it made sense for municipalities to acquire street lighting apparatus from the local utility. She said in our case it would be National Grid.

The Comptroller said right now the Town pays a leasing charge each month to National Grid for street lights. She said National Grid maintains the lights and if a bulb is out, they take care of it or if a pole is damaged, they replace it and they own it and assume complete responsibility for it. She said in the OSC report, they built on what several communities in Central New York, Binghamton and also some municipalities on Long Island that had different experiences. She said in one case, they purchased the street lights from the local utility, had the capacity within their staff to actually do the maintenance on the lighting apparatus and in some cases they were able to contract that out on Long Island. She said they calculated that out and even with acquiring debt to purchase the street lighting network that there was still a potential opportunity for savings.

Comptroller Kehoe said when they reviewed the various scenarios with OSC and had gone over their assumptions, they made a number of assumptions that if it were to bear out in reality it is a good plan but they had some reservations about whether it would be feasible to do what they had suggested. She said the first assumption was that National Grid would be willing to sell the light fixtures to the Town at a fair price. She said the assumption they used in the report was that the sales price would be the assessed value on those poles. She said that may or may not be correct. She said from the information they gathered, that is a fairly sizeable revenue source for National Grid and they had no indication that they would be willing to relinquish that set of assets as they had proposed.

The Comptroller said the Town does not have the staff currently to maintain neither the expertise or the capacity to be maintaining the lights. She said that was another concern for them which would mean the Town would either have to add staff in order to accomplish that or the Town could hire National Grid to maintain the lights that the Town just purchased from them. She said they did not know if that was a very feasible or realistic option.

Comptroller Kehoe said the other item is on the maintenance of the poles, noting that could be contracted out to someone else but there is no one else in the area that does that. She said they suggested that maybe they might consider finding vendors that could do that and putting them on State contract. She said the other fear was that if indeed we started assuming this responsibility ourselves, National Grid might be experiencing a revenue loss and go to the State Public Service Commission and negotiate for higher rates on the other end for the consumption of electricity and things like that. She said that was another concern they had about the ability to actually realize the savings that they had in the report. She said they were essentially suggesting that we might want to consider issuing a significant amount of debt to purchase these poles, possibly add staff or hire National Grid or other contractors to do this, maintain an inventory of the poles and the lights and potentially expose us to paying higher tariffs on the other side.

Mrs. Kehoe said they did not see the recommendations in this report as being a sure shot for savings and they did not come right out in the report and say that that was the case, they just asked the Town to consider it. So, she said ironically the reason they chose us to do this audit was that they noticed that we had achieved some savings in our street lighting costs over the last few years so that prompted them to take a little closer look. She said the reason they had done that was there was some work done with tariff experts and had been able to negotiate some savings on that.

Mrs. Kehoe said the report is on file in the Town Clerk's office. She said there is a notice required to be published so the public is aware that this report exists and she wanted to give a quick overview and highlight some of the areas that they had concerns about within the report. She offered to answer questions at any time on the report.

Councilman Plummer asked what the utility is paid as the leasing charge. Mrs. Kehoe said the annual street lighting bill is around \$200,000 and the leasing charge was about half of that – around \$90,000. Mr. Plummer asked what the \$200,000 was for. Mrs. Kehoe said the total street lighting bill – consumption and leasing charges. Councilman Plummer said the \$110,000 is the actual cost of the energy. Mrs. Kehoe agreed. Mr. Plummer asked why the Office of the Comptroller made these recommendations. He also asked what their role is in encouraging communities to take a look at this. He said he would think it would come from the Public Service Commissioner. Mrs. Kehoe said they had encouraged them to please talk with the Public Service Commission because they are the ones who regulate the tariffs that are being charged. She said the OSC gets into a number of different areas and their role as they see it is to help local governments identify savings opportunities.

Councilman Plummer said the OSC must have seen savings in the communities. Mrs. Kehoe said on Long Island because of the density within the Island, they had many other contractors who were available that could give them an alternative to paying the utility of maintaining the light fixtures so a different scenario than what we face here in the Capital District area. She said in the Binghamton area that community had their own lighting utility and electric utility so slightly different mix of circumstances. She said helpful to know what they have done, noting they always benchmark with other communities. She said it is something that can be revisited periodically. Mr. Plummer said he did not get a chance to read the report but asked if it at all estimate what the value of the assessed actual infrastructure would be. Mrs. Kehoe said yes and they used it based on the State Office of Real Property Services valuation on those poles currently. Mr. Plummer asked if Mrs. Kehoe remembers what that was. Mrs. Kehoe said she would have to look it up. She said they factored in the debt service costs and she was guessing well over a million dollars. She said within the report it is interesting to note the responses from the other communities. She said we did not have access to those responses until we got the actual report but there are some similar concerns being raised by the other communities as well.

Councilman Plummer said conceptually, it sounds like if all the variables fit it would be a good thing to pursue. Mrs. Kehoe agreed in theory it is a great idea.

She said it may work at some time in the future but the savings identified were based on many assumptions and they took issue with some of the assumptions they used in the report. Mr. Plummer asked if they were looking for a response from the Town. Mrs. Kehoe said they responded and it was included in the report.

Councilman Plummer said he would always be open if the Public Service Commission were involved and rates could not be increased on the other end and the community can benefit. He said any time you have an opportunity to find savings like that, it is worthwhile. Mrs. Kehoe said she is all for savings.

Mrs. Kehoe noted they have been working with an organization for years now, private sector consulting firm called Cost Control Associates and they have been their knowledgeable expert on the utility industry and they have helped the Town achieve some of the savings by looking at the tariffs, they had originally done a pole inventory and then compared it to the billings of National Grid, then Ni Mo, to make sure we were being properly charged for lighting fixtures. She said it is not uncommon in other municipalities have been paying for lights they do not have any longer. She said this has all been addressed. Councilman Plummer thanked Comptroller Kehoe.

Supervisor Cunningham asked if there were any other questions. There were none.

Supervisor Cunningham mentioned the opening ceremony for the Wall that Heals. Councilman Messina said the wall was being constructed and it is a subtle thing that when you walk near, you get quiet just by being there. He said all he has done is made a couple calls and expressed an interest in participating on behalf of the Board. He said he thinks Nan Lanahan and her staff and Gregg helped out with generators and things like that had done a lion's share of the work. He said he was told by the people from Rolling Thunder and VFW that they have done this many times and never had the cooperation and support that they have had from the Town of Bethlehem. He said that speaks well for everyone. He said he hopes everyone will come out to look at the wall. He said there are volunteers still needed.

The Supervisor said next will be the public comment on non-agenda items. Ms. Linda Jasinski said she understands that there have been 2 meetings, preliminary budget meetings that have gone on and they were not known to most people she has talked to. She said it was not on the website. Supervisor Cunningham said they were open meetings, public notice was talked about prior to the dates. Ms. Jasinski said it would be nice if they were on the website because that is where people look for it.

Ms. Jasinski said also, the agenda was missing the Comptroller's presentation. She said that is one of the things they like to have is the agenda more up-to-date with what is being presented at the Board.

Ms. Margaret Rockwell spoke because she is a tenant at 325 Kenwood Avenue and it has changed hands from Mark Tryon to Anthony Cardona. She said she signed the lease with Empire Properties in December. She said since she moved into the building, she has had nothing but problems. She said there was no hot water, no water, toilet tank broken, and she received a notice her lease would not be renewed. She said she was citing New York State Law 223B which says that since she has gone to Code Enforcement and, in fact, she had to come physically over here and Mr. Boucher met her at her premises at 325 Kenwood to see that they have no hot water which is illegal by State law. She said she knows this because she is lucky to be a student at University and has access to Lexus Nexus. She said otherwise she had to pay for this book which is 17 pages from California. She said on the website also where it says code and the code takes you to another link and gave several different prices according to who she is. She said she has everything written down and she was told...

Ms. Rockwell thanked the Board for the Code Enforcement people that we have and also Kathleen Newkirk who is the Town Clerk who is extraordinarily knowledgeable and helpful to her. She said Barbara Hodom who is the Court Clerk, wanted to file a complaint to get some injunctive relief. She said she has a sick child and moved here, giving up a house, for the schools. She said she is a certified literacy professional and getting a PhD in literacy at SUNY in literacy.

Ms. Rockwell said she moved from a house to an apartment and it cost her about \$5,000 to move in and she has the receipts. She said Mr. Cardona wanted 4 months in advance and now she is being asked to move again. She said if she had the money she would be happy to move but she does not have the amount they are asking and she has certified receipts for letters sent to Mr. Cardona begging him to let her stay. She said she has a copy and he never picked up the certified letter, officially sent August 1 and she never got the returned receipt. She said she has them in her wallet so she mailed 2 more today with a proof of mail. She said that counts. She said she has proof that she sent an email begging him to stay and he wrote back immediately, I am not reading your email. She said she cannot contact this man and the only reason he is doing this is that it was July 16 and she had 2 interviews which she still has Which she knows in Albany is against the law in Code Enforcement you cannot have a multi-dwelling building but she does not know what the law is. She said there was a bunny rabbit in my building yesterday, noting that is a rodent, she just filled out the form for that. She said they have fuses that goes out constantly and said she has asked him to show her how to use the fuses since the blackout and he told her.... She said she wrote him on August 4 and his message machine was full. She said it was her son's room that did not have any electricity at all. She said she waited 2 days to get a return which she also had in her possession. She said the email said when you move out, they are renovating. She said her son can stay until August 25 and Ms. Hodom told her that she was a tenant and have no rights. She said she told Ms. Hodom she was going to act pro se because she does not have money for a lawyer right now.

Ms. Rockwell said she is starting to teach at Cobleskill but right now she is in need of help. She said she does not know what other tenants do in Delmar but she knows that this place is extraordinary.

Town Attorney Potter said there is a certain amount of things that the Town Board can do. He said there is a Code Enforcement Department and the Code Enforcement officer gave him a call about the case and the hot water. He said he got the call and tried to reach the landlord who was out-of-town and before enforcement action could be taken and there was a call that the hot water was back on. He said the Town does have the ability to enforce code violations. He said in terms of your ability to stay as a tenant, he was not aware of any laws that the Town Board can enforce or that the Code Department can enforce to compel the landlord to keep you as a tenant if your lease has expired or if there is otherwise a reason why your tenancy is being terminated. He said if there are causes of action she may have, he is not a landlord and tenant lawyer so he does not know if there are, but those would be private remedies that she would have the ability to pursue through the Town Court. He said with her attorney or alternatively on a pro se basis but unfortunately there is nothing the Town Board can do even if it wanted to to assist in staying on the property.

Ms. Rockwell said she understands Mr. Potter is the Town Attorney and he got the information from Mr. Boucher. She said her real issue today is that Mrs. Hodom telling me that I could not file a complaint that I had no grounds to file a complaint. And, also, she realized having shown her lease to an attorney, it was never signed by the person who rented her the apartment. She said she did not know what that means. Town Attorney Potter said she could not speak for Mrs. Hodom.

Ms. Rockwell said she just wants to know if she can have as a person she has the right to be a pro se in her own defense and she believes as a tenant she is definitely being discriminated against just for retaliation just because Mr. Cardona did not turn on the heat, he did not pay the bill. So, she understands that as the Town Board, she was coming here more to ask for a relief and to ask Mrs. Hodom

to please let her know the facts of when she can file a complaint, when she can do something in front of the judge. Town Attorney Potter said he could not speak for Court Clerk Hodom. He said Ms. Rockwell does have the right of course to petition the court for whatever relief you think is appropriate and if there is a case, meritorious or not, the judge will rule on it. He said he was not sure that Mrs. Hodom was giving legal advice about the case. Ms. Rockwell said it was not legal advise but that as a tenant she had no rights and that she should not be able to file anything in court. Town Attorney said he is not sure what action can be taken noting there is a civil jurisdiction that Town Court has and he can speak with Mrs. Hodom. He said Ms. Rockwell would have the right to file a civil case and whether it has merit or not would be something that neither Court Clerk Hodom or he, as Town Attorney, nor anyone on the Town Board could determine. He said ultimately the court will have to determine that.

Town Attorney Potter said he would be happy to speak with Court Clerk Hodom and Ms. Rockwell could give him papers to speak with Mrs. Hodom. He said he can find out the circumstances under which you could file the papers.

Ms. Rockwell asked why she has not been able to get the Code. Town Attorney Potter said New York State has the Building and Fire Prevention Code and she could have access to that through a law library. He said it is not a Town of Bethlehem Code, it is a New York State Building and Fire Prevention Code that the Town follows. He said the Department of State website has some of this information available and any law library. Ms. Rockwell said they do not have a specific law or the specific code. She said 22.3b which is retaliatory about habitability and warrantability. She said as a matter of fact, she is living in a building in the Town that she wonders why it is still standing sort of. She said she moved in because it was November right before Christmas and she was rushed. She said she would love to move right now and she is asking this person for a couple of months and he is not responding. She said she came here because she thought this is her right as a citizen and that she is trying to get to speak with a judge and if the judge says no, that will be fine. She said she also has a child with a disability and it is very difficult. She said her apartment is the only one that has been completely renovated and so she has a brand new kitchen and the floors were done. She said she has all the information but perhaps this is not the correct venue. Town Attorney Potter said unfortunately there is nothing the Town Board can do but if she wished, he would speak with her afterward about this. Ms. Rockwell said that would be fine.

Councilman Messina said with respect to the NYS Fire Prevention and Building Code, if Ms. Rockwell called the Department of State in addition to telling her what web access there might be, they will also tell where copies of that have also been filed that might be more accessible to her. He said it may be libraries and other places. Ms. Rockwell said like she said, she has a database available, however, she talked to Joseph McGrath who she believes is well known and he was the one who told her to call for the booklet. She said she wonders why the law is not free. She said this is probably not the right place, she was not an attorney. She thanked the Board for listening.

Supervisor Cunningham asked if there were other comments on non-agenda items.

The motion was made by Mr. Plummer and seconded by Mrs. Dawson to adjourn the regular Town Board meeting at 6:30 p.m. The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary.
Noes: None.
Absent: None.

Town Clerk