

TOWN BOARD  
AUGUST 13, 2003

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

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

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SUPERVISOR FULLER: Good evening and welcome to a meeting of the Bethlehem Town Board. Like to invite all of you to join us in the pledge of allegiance.

Before we begin tonight's meeting I would like to give you a very sad announcement. Charles Gunner who served on our Town Board 1989 to 1993 passed away this morning. Charlie Gunner served the Town very well and most of you may remember Charlie as the long-time high school principle of Bethlehem Central. So, I'd ask for a moment of silence. Okay, I thank you.

The first item on tonight's agenda is our public hearing amending the Code Section 128-23. I will ask the Clerk to read the call of the hearing.

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

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing on August 13, 2003 at 7:30 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, NY to consider a proposed Local Law amending the Code of the Town of Bethlehem Section 128-23, Zoning, dealing with permitted uses and uses permitted by special exception in Rural Districts not zoned.

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

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

BY ORDER OF THE TOWN BOARD  
TOWN OF BETHLEHEM

Kathleen A. Newkirk, CMC

TOWN CLERK

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State of New York)  
County of Albany )

BRENDA WIERZBICKI of the Town of Bethlehem, being duly sworn, says that she is the RECEPTIONIST for THE SPOTLIGHT, a weekly newspaper published in the Town of Bethlehem, County of Albany, and that the notice of which the annexed is a true copy, has been regularly published in said THE SPOTLIGHT ONCE A WEEK FOR 1 WEEK consecutively, commencing on the 18th day of October 2000.

/s/ Brenda Wierzbicki

Sworn to before me this 1st day of August 2003.

/s/ Sharon A. Doldo  
Notary Public, Albany County

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STATE OF NEW YORK)  
COUNTY OF ALBANY) ss.:

KATHLEEN A. NEWKIRK, being duly sworn, deposes and says that she is the Town Clerk of the Town of Bethlehem, Albany County, New York and that I posted on July 30, 2003, a Notice of Public Hearing, a copy of which is hereto attached, on the sign board of the Town maintained pursuant to subdivision six of Section thirty of the Town Law.

/s/ Kathleen A. Newkirk  
Town Clerk

Sworn to before me this  
13th day of August 2003.

/s/ Catherine T. Picarazzi  
Notary Public

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

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

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SUPERVISOR FULLER: As most of you probably are aware, back in June we had the discussion of Judge Benza's decision and we had attempted to put back into use all those areas that were impacted by his decision mainly to help the residential portion of the Town. As many of you know, you were not able to put an addition on your home, not able to have your decks, you were not able to build homes and there are some people who

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came in requesting that. So, as a result after great discussion that evening we did put together the local law, sent it out for advertising and tonight is the public hearing for each and every one of you to speak in favor or against its adoption. Before we reach that point, Mr. Alessi, our Town Attorney, who sits on my right is here to also bring a correction on the local law or an amendment which he received notice of today. Bob.

TOWN ATTORNEY ALESSI: Thank you, Supervisor Fuller. There's a minor change to the local law that's going to be the subject of the hearing tonight and I want to call it to the Board's attention... the change. It has to do with... I'll refer you to the section... Section 1-A-11, the definition of agriculture or agricultural land use. I want to state what the change is and I want to state the basis for the change.

As you may recall we were provided with this definition by the Farm Bureau and the definition we were provided with which I have with me here this evening... it had some grammatical shortcomings in it which I fixed and which is imbedded in the law that is now out for notice. Unfortunately, the Farm Bureau and its representatives, despite this law being out for some time for notice, waited until today to make some comments. And, while I certainly enjoy, as the Board does, working with the Farm Bureau and certainly I feel my duty is to discharge the law that protects agricultural use, I found it particularly unhelpful what they had done. I find it unhelpful for 2 reasons. One the lateness of their suggested changes but also that the definition that we had written was the one they had given us and then they commented today that they challenged the definition that they had given us. So, notwithstanding how it came about, notwithstanding whether I find it unhelpful or not, it's our job and our duty to discharge the law the way it is supposed to be. So, we are going to make the following 2 changes in the sense of when I say we, it is proposed to the Board and to be put out for public hearing for your comments.

In the original law.. the language that was provided to us on agriculture or agricultural land use, I'll read it, it says 'means the employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or feeding, including but not limited to, grazing, breeding, managing, selling or producing livestock, poultry, fur bearing animals or honey bees or by dairying and the sale of dairy products by any other horticultural, floricultural, viticultural use, aquaculture, hydroponics, silvaculture, animal husbandry, or by a combination thereof'. And, then here's the language that I want to highlight, 'it also includes the currently employment of land – and you can see grammatically that doesn't work but I want to focus on the currently – for the primary purpose of obtaining a profit by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows, including other on-farm niche marketing promotions'. When we got this language we did a couple of things to it. We made it a little more grammatically correct but we followed – because it was the proposal of the Farm Bureau -- where it says it also includes the currently employment of land. Now the adverb currently, current means present so we put in there a date because you can't have current in a local law because nobody is going to know when the date starts so we put in there the date of August 7 to match up what else we had been doing. Paradoxically, we got a comment today, why are you limiting it to the current uses and the answer is because that's the definition that was provided to us. So, what we did was,

we corrected the intent as we now understand it, that all uses whether they are current today or not if they meet agriculture they are going to be put out for public hearing tonight as a permitted use. So that that particular issue is cured.

Because we understood you only wanted current uses for boarding and stabling to be in the definition, we by necessity had to put uses that would come in the future under a special exception. Now, the comment we got from the Farm Bureau was, these shouldn't be special exceptions, they should be permitted as of right. But, we went with the definition that they gave us.

The second correction, therefore, to number 11 is to pull out the limitation date and to remove from number 12 that type of riding and stabling that was listed to be required in existence on August 7.

Short of it all is what is before you is a minor change that essentially says if you meet the definition of agricultural use which now included current uses, as well as, any use that would come in the future in this zone, that's a permitted use, the end. No request... requirement for special exception, etc. So, that is the change that is being made.

I would ask that in the future that not just the Farm Bureau but that anybody who proposes a definition look carefully at what you ask for... the old saying goes, you may get it... and secondly if you want a change, I'd sure appreciate – as I am sure the Board and members of the public who would prefer probably not to sit and listen to all this – we could make the changes at the appropriate time. So, in effect, Members of the Town Board, that is the change that has been made. It's a minor change to the law but in effect, Supervisor, that is what is before us for the public hearing tonight.

SUPERVISOR FULLER: Okay. We'll begin the public hearing. I think those of you that were not here, I would like you to speak first – if you were not here back at the June meeting. There was great discussion back at the June meeting and I'm sure a lot of you are here this evening. I don't know if you wish to speak again or not but to try and move this along we need to start now. We have a 2 page agenda and we have a lot to accomplish tonight. Yes. And, when you come to the mike if you'll just please identify yourself for the record.

MR. MILLER: Certainly. My name is James Miller. I live on Old Quarry Road near Bell Crossing, Town of Bethlehem. I personally am in favor of the Town Board passing, adopting, whatever the words would be the local law as written with the amended section.

On another note, I've been asked to be the spokesman for the recently organized Feura-Bethlehem Heights Alliance. Not only are people who are involved with that from the Town of Bethlehem, they are also from the Town of New Scotland. They are our neighbors, our intimate neighbors. Many of those property owners pay taxes to the Town of New Scotland, however, their land does extend into the Town of Bethlehem. For some little nuance of who gets the money. So, on behalf of the persons, the neighbors, we also support and encourage the Town of Bethlehem to pass the local law as written with the

amendment or the change that was just stated. Thank you.

SUPERVISOR FULLER: Thank you, Mr. Miller. There must be others waiting to speak.

MR. MILLER: there are several of us here, if you want to come up one-by-one.

SUPERVISOR FULLER: No, they don't all have to come up but that's... if you are representing everyone in this room that is fine but there's a lot of people out here. And, Mr. Stockli.

MR. STOCKLI: John Stockli representing Waste Management. It is my understanding that the comments from the last hearing are going to be incorporated into this hearing. If that's the case, I'm not going to rehash them all for time's sake, if that is appropriate. I would...

SUPERVISOR FULLER: Tonight is the public hearing.

MR. STOCKLI: That's right. You had said that people who had spoken last time... I'll go through it. I mean, I'll try to make it quick, prompt. I think we all know why I'm here. I have a few issues.

One, we believe that the adoption of this law would constitute segmentation especially given that the Town Board has talked about adopting yet another set of restrictions for the same properties in the future. We think that's improper under SEQR. We don't think it is pursuant to a comprehensive plan because by definition you are segmenting the way you are approaching zoning in this... this part of Town. We do think there are other ways you could have gotten to the goal of protecting current uses in that part of the Town and I discussed them at the last hearing and I won't go through them at length other than to say that one would be to allow the Zoning Board to continue their appeal financially or...

SUPERVISOR FULLER: I don't think we need to rehash all of that, we did that in June.

MR. STOCKLI: ..to join us. That's what... okay, this is a public hearing and I think I have a right to speak and I'm not being overly lengthy. I'm going as quickly as I can so unless you are telling me I can't speak...

SUPERVISOR FULLER: And, we also have the minutes of the meeting in June where you spoke and we also have the add in the Spotlight that you took.

MR. STOCKLI: I asked in the beginning if that's incorporated into tonight's record, I won't rehash it all. If that's agreed, I won't.

SUPERVISOR FULLER: That's fine.

MR. STOCKLI: Because I certainly don't want to waste your time. The only other point I would make is I'm not sure whether there has been a 239-M referral. Obviously, that's something that this is subject to.

SUPERVISOR FULLER: Yes.

MR. STOCKLI: And, you know, we renew our objections. We don't think it is appropriate and we'll certainly fight to protect our rights going forward.

SUPERVISOR FULLER: Okay. Thank you and to answer your question on the Albany County... it did go to the Planning Board and we had the referral back. It is with the Town Board's authority and that was as of July 17th. Anyone else wishing to speak?

MR. ORSI: I'm Richard Orsi. I live in 1378 River Road. I've spoken several times here. I have some specific questions about Waste Management's repeated threats in the past to sue the Town. They didn't do so tonight. They intimated that. If the Town gets sued by Waste Management over this issue, do we have – in that process – what they call discovery and depositions that we do of them? Mr. Alessi, do you know if that would happen?

SUPERVISOR FULLER: I think tonight is the public hearing and the public hearing is on adopting this local law. So, I think I'd like to stick with what the purpose of tonight's meeting is.

MR. ORSI: All right. Just wanted to know the Town would vigorously defend itself against Waste Management if they were to go that route and I thought that would be a chance to talk about it.

SUPERVISOR FULLER: I'm not so sure that's appropriate for tonight's discussion.

MR. ORSI: Okay, thank you.

SUPERVISOR FULLER: Thank you.

MR. QUERRY: My name is Marcus Querry. I live on River Road in Selkirk, New York and I just want to say that I support the adoption of the amendment as written. I think it's appropriate. I think it protects single family homeowners and the farmers in our community. Thank you.

SUPERVISOR FULLER: Thank you.

MR. ZARANKO: Hi, my name is Richard Zaranko. I live at 67 Maple Avenue. I've been on the zoning committee for the last 6 months. We worked with members of the local community. We gathered information. We did a lot of research on this issue. We received input from neighbors. We sent out emails. We sent out letters. We had a public meeting which people attended and we give all... gave all that results to the Town Board

in our proposal for the new zoning. What I think you see is feedback from the people that live in the area and what they truly want and need in this area. Thank you.

SUPERVISOR FULLER: Thank you.

MR. EVANS: My name is Tom Evans. I live on Barent Winne Road. I support this. I think it's the right thing to do. Thank you.

SUPERVISOR FULLER: Thank you.

MR. CORODA: Good evening. My name is Dominick Coroda. I live at 1408 River Road. I've been a spokesperson for BREATH, one of 3, for the past year and a half and this evening 2 large landowners couldn't be here and they asked me to speak for them and that's Mr. Jennings and Mr. Chi. Both own in excess of 130 acres and they did support this amendment. Thank you.

SUPERVISOR FULLER: Thank you. Anyone else wishing to speak in favor or in opposition? Any questions or comments from the Board?

COUNCILMAN MARCELLE: Can I just have... ask Dominick one quick question?

SUPERVISOR FULLER: Sure.

COUNCILMAN MARCELLE: Last time Mr. Jennings was here he had some problems with some of the uses permitted. Did he resolve that to his satisfaction after reviewing the proposed local law?

MR. CORODA: He resolved it in the effect of being for the proposed amendment and he agreed in principle that there were some uses there that he would probably, if he had his druthers, not have there but not being a zoning specialist he indicated at the time and to me both verbally and in regular email that he was in support of the amendment, however, there were some issues but that was aside from the amendment. That was issues that were already existing in the 32 enumerated uses and I don't think there was any particular opposition to them as we discussed during the last presentation. That, you know, there are some items on the 32 enumerated uses in the RNZ that some people may not want next to them... you know, a funeral home or, you know, a large sign or whatever it happens to be but he was willing to accept that given that we move forward with this amendment. Thank you.

SUPERVISOR FULLER: Okay. I'll have a motion to close the public hearing.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to close the public hearing at 7:50 p.m. The motion was passed by the following vote:

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

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Town Clerk

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Supervisor Fuller asked for a motion to approve the Local Law amending the Code of the Town of Bethlehem, Zoning, with the correction on the agricultural definition.

The following resolution was presented for adoption:

TOWN BOARD  
TOWN OF BETHLEHEM  
SEQR RESOLUTION  
DETERMINATION OF SIGNIFICANCE / NEGATIVE DECLARATION  
LOCAL LAW NO. 3 OF THE YEAR 2003  
AMENDING SECTIONS OF THE TOWN ZONING CODE RELATING TO RURAL  
DISTRICTS NOT ZONED

WHEREAS, the Town Board of the Town of Bethlehem is considering the adoption of Local Law No. 3 of the year 2003, which would amend certain sections of the Town Zoning Code relating to permitted uses in Rural Districts not zoned; and,  
WHEREAS, provisions of the Local Law would clarify that certain land uses in the Rural Districts not zoned are permitted as of right or by special exception of the Board of Appeals; and,  
WHEREAS, the State Environmental Quality Review Act (SEQR) regulations found at 6 NYCRR Part 617.3(a) require that no agency may undertake, fund or approve an action until it has complied with the requirements of SEQR; and,  
WHEREAS, the SEQR regulations at 6 NYCRR Part 617.6(a) require that as soon as possible in an agency's formulation of an action it proposes to undertake it shall: (a) determine whether the action is subject SEQR; (b) determine whether the action involves a federal agency; (c) determine whether other agencies are involved; (d) make a preliminary classification of the action; (e) determine whether a full or short form Environmental Assessment Form (EAF) will be used; and (f) determine whether the action is located in an agricultural district and complies with Subdivision (4) of Section 305 of Article 25-AA of the Agriculture and Markets Law; and,  
WHEREAS, 6 NYCRR 617.6(b) indicates that when a single agency is involved with respect to an action, that agency shall be the lead agency and determine the significance of the action; and,  
WHEREAS, the Town Board has received an EAF which addresses the proposed action, and said document indicates that (a) the proposed action is subject to SEQR and properly classified a Type I action; (b) there is no federal agency or other agency involvement with the action; (c) portions of the Rural Districts not zoned effected by the Local Law are located within an agricultural district, however, the provisions of Subdivision (4) of

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Section 305 of Article 25-AA of the Agriculture and Markets Law do not apply to the action; and,

WHEREAS, the Town Board has held a public hearing on the proposed action and has considered the comments provided at said hearing; and,

WHEREAS, the Town Board has considered the potential environmental impacts of the proposed action, applying the criteria for determining significance found at 6 NYCRR 617.7(c);

NOW, THEREFORE, BE IT RESOLVED,

that the Town Board of the Town of Bethlehem hereby determines that adoption of Local Law No. 3 of 2003 constitutes a Type I action that is subject to SEQR and that there are no other involved agencies with respect to this action; and,

BE IT FURTHER RESOLVED,

that the Town Board hereby determines that it is lead agency with respect to this action and that a full EAF will be used to determine the significance of the action; and,

BE IT FURTHER RESOLVED,

that the Town Board hereby determines that the zoning district effected by the proposed Local Law includes land located within an agricultural district, however, the provisions of subdivision (4) of section 305 of article 25-AA of the Agriculture and Markets Law do not apply; and,

BE IT FURTHER RESOLVED

that based upon its review of Local Law No. 3 of 2003, the full EAF, public comments concerning the proposal, its own independent analysis of the proposed action, and comparison with the Criteria for Determining Significance found at 6 NYCRR Part 617.7, the Town Board hereby finds that adoption of the proposed Local Law constitutes an action which will not have a significant impact on the environment and, therefore, does not require preparation of a draft Environmental Impact Statement; and,

BE IT FURTHER RESOLVED,

that this Determination of Significance shall be considered a Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law; and,

BE IT FURTHER RESOLVED,

that the Town Planning Department is hereby authorized and directed to file any and all appropriate notices of this determination so that the intent of this Resolution is carried out; and,

BE IT FURTHER RESOLVED,

that this determination is based on the following facts and conclusions:

1. Adoption of the Local Law would not result in any direct action or physical change to the environment.
2. The Local Law restores certain land uses as uses permitted by right or by special exception under the Town Zoning Code in the Rural Districts not zoned. These uses were previously permitted by right in the Rural Districts under the Town's long-standing interpretation of its Zoning Code. That interpretation held that any land use not requiring site plan approval was permitted by right in the District.
3. The Town's interpretation of its Zoning Code was recently challenged and invalidated by a court decision. The decision, in effect, makes many existing land uses in the district, including single-family homes, non-conforming and prohibits the further construction of such uses.

4. In response to the court decision, the purpose of the Local Law is to create a list of land uses and clarify that such uses are permitted by right or by special exception in the Rural District not zoned. The list includes agricultural uses and those uses that are currently permitted by right in the Town's existing residential districts.

5. Any changes to the environment that may occur from adoption of the Local Law would be indirect and result from future undertakings that would be permitted by the Local Law. Adoption of the Local Law does not include any proposal to undertake such activities at this time.

On a motion by Mr. Plummer, seconded by Mrs. Davis and a vote of 5 for, 0 against, 0 abstention and 0 absent, this RESOLUTION was adopted on August 13, 2003.

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The motion was made by Mrs. Davis and seconded by Mr. Marcelle to approve the adoption of Local Law No. 3 of 2003 amending the Code of the Town of Bethlehem, Zoning, Section 128-23 as presented with correction to the definition of agricultural uses. The motion was passed by the following vote:

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

Noes: None.

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Supervisor Fuller thanked everyone for being in attendance.

Councilman Davis made the following statement:

Now that the public hearing is over, this won't be in the record but I just have to say because the article or the add in the Spotlight has been referred to several times this evening. As a Board Member who worked hard on putting this amendment together, I have to say I was offended by that advertisement and the suggestion that the Town Board was doing something underhanded for the residents of this community. We intended to do what we thought was right for as many people as possible. There was nothing negative in our intentions and I truly believe that the Board, all of us, deserves better than what the advertisement in the Spotlight suggested.

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The next item was a proposed Local Law of the Code of the Town of Bethlehem regarding Zoning, Rural Districts, adding existing Commercial, Industrial and Retail Uses to the list of permitted uses and to set public hearing. Supervisor Fuller said the purpose of this item is to set the public hearing for the first meeting in September. She said the reason for this item is the June meeting was to deal with all the residential and what was approved previously. She said at the end of the meeting, mention was made about the businesses that are in existence. She said that is why it is a separate item and will be a separate public hearing. She said it will be advertised and that is for businesses, presently in existence that have been a permitted use throughout this Town.

The motion was made by Mr. Marcelle and seconded by Mrs. Davis to set a public hearing at 7:30 p.m. on September 10, 2003 to consider proposed local law amending the Code of the Town of Bethlehem, Zoning. The motion was passed by the following vote:

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

Noes: None.

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Resident, Robert Jasinski, asked about the statements made by Mr. Alessi, asking for a clarification at this time on rural districts as listed in the agenda and also considering there are existing if this is being limited to commercial and industrial that are already in existence or a certain area that is being zoned. Mr. Alessi said he believed Mr. Jasinski should get a copy of the proposed local law with the precise language to be used. He said the plain language in the law states that it is commercial, retail and industrial uses that were in existence as of August 7, 2003. He said that means that for any business that fits that category – commercial, retail, industrial – they will be a permitted use. He said they will not be a mere grandfathered use, not a mere non-conforming use, they will be permitted uses. He said as Supervisor Fuller said, this is to restore back to what the Town understood the status quo to be. He said like residential, like agriculture, those businesses that received building permits from us with the understanding that they were permitted will have their use restored and any potential cloud that hangs over them would be removed should the Board pass this law. He said the bottom line is, it's for those businesses in existence in the entire rural not zoned district as of August 7, 2003. Mr. Jasinski thanked Town Attorney Alessi.

Mr. Miller asked if there will be a defined what will qualify for the various categories of this available at the public hearing. Mr. Alessi said the Code of the Town of Bethlehem defines retail use in the code, it does not define commercial and it does not define industrial. He said common in many municipalities that do not have definitions, the Webster's dictionary, 3rd collegian – take your pick – is the one that will be used. He said it is intended that those categories receive the broadest interpretation in terms of commercial, retail and industrial. He said the intent is to cover virtually any type of business as that term is commonly used. Mr. Miller thanked Mr. Alessi.

A resident said he also had a question about this section. He said it is to cover existing businesses within the zone and that is rightfully so. He said these are businesses should be allowed to operate because they were operating under the assumption that they were lawful businesses at the time. He said he asks if future businesses of the same nature would be allowed to operate in the future on a tract of land that may have been farming at one time. And, would they then be able to expand to an industrial use because that particular industrial use is now being granted the authority to continue that industrial use in the rural not zoned. Mr. Alessi said he wanted to make sure he understood the question and proceeded to clarify the question. He said if someone had a business that fit the category of commercial/retail or industrial, and stopped operating for

a number of years and were not in existence at this time, they are not a permitted use now as a result of this amendment. He said they would not be a permitted use in the future. He said they're options, therefore, would be to try to get a zone change or a use variance.

The resident asked to expand on it a little further, he said let's say it is a toxic waste dump and it's been operating because before it was thought that everything was allowed except for those 32 uses that needed a permit. He said that toxic waste dump exists in the middle of no where with nothing around it and now there is an empty lot of land and someone wants to operate a toxic waste dump next to a school, would that be allowed. Mr. Alessi said the answer is, the hypothetical is quite a striking example, but he noted those are severely regulated by the U.S. EPA and the DEC but that aside, any use in existence just like the law that was just passed, would be permitted to expand just as they would be permitted to expand before the court decision. He said the key as the Supervisor pointed out, is to return these people to the status quo before the decision. He said any business was entitled to expand before the decision. He said the hypothetical is a little different because if they buy a parcel of land and want to expand their business, if it is on the other side of the zone it is not going to be considered a business that was in operation at that time. But, he said, if its property that they owned or if its adjacent property that they purchase, that would be permitted before the court's decision and would be permitted as a result of this amendment should it pass. The resident said he appreciated that and thanked the Town Attorney.

Councilman Davis noted maybe the question should be asked that he really wants to ask.

A resident said he thinks what they want to know is if somebody is operating this type of business and it has been determined it is a permitted use, could a new business or person come in and operate a like business. Mr. Alessi asked if this was meant to be on the same parcel of land. The resident said not the same parcel of land. Mr. Alessi said no, the answer is no.

Supervisor Fuller asked if there were any other questions. Ms. Linda Jasinski asked when the commercial/industrial uses in the future were going to be discussed. Supervisor Fuller said the purpose of the hearing is to correct what has happened since the judges decision. She said they will do it soon, noting there is a request for qualifications going out for consultants to come in and help take a look at the existing documents. She said they will be recommending a way to make this comprehensive plan for the future. Ms. Jasinski said it is not being set aside for the future. Mrs. Fuller said it is not, the longest part was trying to write the request for qualifications and getting every Board Member to agree with exactly what they were looking for. She said it should move ahead soon. Ms. Jasinski thanked Mrs. Fuller.

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The following item was a request from Kathleen A. Newkirk, Town Clerk, for approval of change in polling location for one election district within the Town of Bethlehem. Supervisor Fuller noted this was a result of St. Stephen's Church doing

renovation and therefore District 20 needs to be relocated to the Elsmere Grade School.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the change in polling location for District 20 from St. Stephen's Episcopal Church at Elsmere Avenue and Poplar Drive to the Elsmere School located on Delaware Avenue. The motion was passed by the following vote:

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

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The next item was to consider an application to establish a Planned Commercial District, the Harbor at Beacon Pointe submitted by OG Real Estate Developers LLC, and located on River Road.

Mr. Victor Gush thanked the Board for allowing them to come before the Board this evening. He said he is one of the principals in the project that is being proposed along the river. He said one of the other partners was in attendance, Mr. Frank Tate. He said they have progressed since their last appearance at the Board. He said they have been making progress on the project working with Steve and the Planning Board Chairman and various people in the Town as to some of the comments they have been looking at. He introduced Dave Ingalls who is the engineer on the project and Tom Yardly who is a new face with them. He noted they found a group who has done river front projects before and they have been involved in projects of this nature.

Mr. Yardly said he wanted to introduce himself as part of the team for Beacon Pointe. He said he is an environmental planner, noting his specialty is preparing environmental impact statements.

Mr. Ingalls noted they are the engineering consultants for the site plan of Beacon Pointe. He said they have prepared the site plan and prepared application dated June 26, 2003 for the request to rezone approximately 77 acres of the subject parcel from the Heavy Industrial Zone to utilize the Planned Commercial District designation. In support of the application, he said they have prepared a concept plan showing the mixed use development of the parcel involving office space development, some retail space, hotel and some restaurant space on the site. He said they also have prepared and submitted an existing conditions map showing the existing property including all of the property boundaries, as well as, the existing topographic or elevations of the site. He said they also have prepared per the Town requirements a map of the proposed rezoning showing the property boundaries, meets and bounds, as well as, some of the existing conditions and information on all the property adjoiners. He noted to the north is the Normanskill Channel, immediately to the east of the site is the riverfront of the Hudson, to the south is the PS & G Power plant and then Route 144 just to the west on the other side of the Ni Mo right-of-way. He said included with the application is a full environmental SEQR long form or full form.

Mr. Ingalls said in terms of the proposal, the site has 76.828 acres predominately flat, formerly used for disposal of slag material from the former Ni Mo power plant that was the immediate neighbor to the south. He said there are some undisturbed areas of the site primarily along the riverfront and the north east corner of the site where there is some forested area. The proposal, according to Mr. Ingalls, is to rezone to the Planned Commercial District which they are utilizing office space, retail space, restaurants, theaters and there is a break out on the plan. He said the predominant use at this point is estimated to be approximately 1.3 million square feet of office space, retail space which right now is being calculated at around 70,000, restaurant space, IMAX theater, museum, hotel and several units potentially penthouse apartments and potentially indoor water park. He said all of this is conceptual with estimates of what the final project could look like. He said the concept plan is a flexible design which is subject to some change. Mr. Ingalls said primarily the main use would be office and he thinks that will be the highest square footage of the site.

Mr. Ingalls said the building are in foot print is about 12 acres. He said there is about 5 acres of parking garage associated with the necessary parking. He said about 8.5 acres of parking lot area, green space 28 acres and for new roadways 4.4 acres for the public road and they are also planning to utilize the open space development and have private roads totally approximately 10 acres and creating about a 10 acre marina focal point of the project in the center of the site and will connect to the Hudson. He said there is a minor area of federal jurisdictional wetlands on the site, minor tidal areas along the south east shoreline and then there is one small federal wetland in the north east quadrant of the site which is the forested area. He said he believes the wetlands total only about .21 acres.

Mr. Ingalls said this is a quick snapshot, noting he did not know if the Board wanted any more detail. Supervisor Fuller said she would like to have the Town Planner, Jeffrey Lipnicky, give the Board information because Beacon Pointe is on the agenda and Beacon Heights was on the agenda a while back. She said they are more interested in the commercial/industrial project than the residential project. She said she thinks the Planning Department has concerns about trying to give some direction to this issue. She said Beacon Heights is the residential and she knew Mr. Gush wanted that on the agenda but she said they have not heard from the school district. She said they had concerns at the meeting. Mr. Ingalls said there has been a summary of revenues generated and costs associated with the Heights across Route 144 and been submitted in a concise fashion which may be difficult to read through it. He said the intent was to evaluate the potential impact on the Bethlehem School District and its being overflowing with students. Mr. Ingalls said there has been some comparisons done and it was part of the evaluation of potential impacts on the school. He said Mr. Gush is having continuing conversations he thinks and will be getting subsequent or additional letters from the school specific to the project. Mr. Gush said they used the school district numbers and Mr. Loomis was on vacation this week or he would have had additional information.

Councilman Plummer noted the previous time there was a concept forwarded and it was clear that the Board felt the commercial part of this was something that the Town

needs and definitely could use. He said he thought it was consistent among the Board. Supervisor Fuller concurred that it was. Mr. Plummer said the residential side of this would be difficult because of all the current growth. He said at the time, there was discussion of a need to advance the residential portion of this proposal before the commercial. He asked Mr. Gush where he was specifically with this proposal. He asked if that has changed and if he was looking at the commercial. Mr. Gush said yes, noting there were 2 things that have happened since that time. He said the one issue was that they thought the residential was going to be a zone change and the other is also zoned industrial and they thought originally that it would allow for everything in the heavy industrial that was needed. He said when they got involved with the Planning Department and Planning Board, they realized that this had to be a zone change because of some parking regulations and some various things that have to be done by zone change. He said this does not fit. He said they are now going both at the same time because they require zone changes. He said the planning people feel it would be a dual impact and therefore, it would be better to join the 2 to go through the environmental aspects of the project. Mr. Gush said there are items that will be created by both, i.e. the traffic, sewer and water.

Councilman Plummer noted the Board did not influence Mr. Gush and it was his intent to go forward with the residential portion, as well as, the commercial venture. He said this will be linked together ultimately. Mr. Gush said that seems to be what everybody wants them to do.

Mr. Lipnicky noted in terms of the discussions that were held with the Planning Board Chairman and himself. He said the idea of linking the 2 projects is a SEQR issue more than a zoning change type of issue. He said that issue being that if the Board is inclined to go forward with the residential aspect of this and refer it to the Planning Board and if the Planning Board is inclined to make a positive recommendation on the rezoning for the residential, then in review of this project, the SEQR studies really are going to have to address the cumulative impacts of both projects. He said as Mr. Gush said in terms of their proposal, the projects are tied together geographically. The projects are tied together with overlapping ownership of the principles involved here and are tied together in the sense that if both go forward, they will both be tied into the same Sewer District. They both will have highway impacts along the same roadway, Mr. Lipnicky said also. He said the list goes on and on. He said the issue for them is really if Beacon Pointe is referred to the Planning Board and he thinks most would tend to agree that a project of this scale is probably going to require an environmental impact statement, at some point in time, the scoping document has to be created if Beacon Pointe is forwarded to the Planning Board. If putting together the scoping document, the Planning Board will really need to know what is the status of Beacon Heights and the issues associated with the development. He said the overlapping issues have to be incorporated in the DEIS for Beacon Pointe. So, Mr. Lipnicky said when the linking of the 2 projects is discussed, that is the sense in which they think of the term linking. He said this is merely in terms of the SEQR review.

Mr. Alessi said the Board has to make a threshold decision and this is a little

different because it is a zone change and therefore, they are operating in their legislative capacity. He said they by law have the absolute discretion to do what they want. He said that means specifically with Beacon Heights and Beacon Harbor. He said what he would caution against is to just send both to the Planning Board because he thinks, as he understands the comments of the Board, they have concerns about Beacon Heights and you are positive in terms of first impression with Beacon Harbor. He said what Mr. Lipnicky is talking about is if both projects get referred to the Planning Board then there is a segmentation issue if you review them separately. Mr. Alessi said the Board has the discretion as to whether they want to send one of them or both of them to the Planning Board. He said if one is sent, for example, Beacon Harbor, there will be no segmentation issue or a cumulative impact issue because there will be no other action that will go to the Planning Board. He said he just wanted to make the Town Board aware of their options and your alternatives. He said there is a way to avoid what Mr. Lipnicky was appropriately underscoring. He said if both are sent, then review of both has to be done. He said he would make the observation that the Town, he believes, has done great things in the recent past with regard to the land use process and moving them through. He further noted by the sounds of what the Board is saying, the Beacon Heights until there is further information may very well cause there to be a much more ponderous and onerous process than would otherwise be necessary. He said he would hate to see Mr. Gush be sent merely to the Planning Board to languish, not because of the Planning Board's action or inaction but just because there is a component of the project that this Board does not feel is appropriate. He said he cautioned the Board in terms of the thoughts to look closely at the threshold question as to what gets referred.

Councilman Marcelle asked Mr. Gush, noting it was his recollection from the last meeting he said the 2 projects were not financially linked. He said they were mutually exclusive of one another on whether they stand or they fall, asking if that was still true.

Mr. Gush said it is definitely a situation that they probably could stand on their own. He said it is nice to have the residential portion where people can live and go across to work but the answer to the question was that he still believes they can both stand on their own. Mr. Marcelle said as a practical business matter, the 2 are not like to each other, asking if that was correct. Mr. Gush said that yes.

Councilman Lenhardt asked about the terms Heights and understands that to be residential. He said he believes Harbor to be commercial, asking if Pointe is the combination of the 2 or is that another word for the Harbor. Mr. Lipnicky said it has been going back and forth but he believes on the maps it is entitled The Harbor at Beacon Pointe.

Town Attorney Alessi asked about the study that was submitted to Bethlehem Central School Superintendent Loomis and whether it was relative to the effects of Beacon Heights only or the effect of the entire project. Mr. Gush said it was the entire project. He said it is separated in the study.

Supervisor Fuller asked what the Town Board wanted to do. Resident Howard Shafer asked about the water usage and how many boats are accommodated in the

marina. Supervisor Fuller noted Mr. Shafer was well ahead of where the project is this evening. She said the question at this meeting is what is going to the Planning Board.

Councilman Plummer said he is supportive and appreciative that Mr. Gush came back as it relates to the commercial aspect. He said he thinks it is terrific and something the Town needs, noting he has made that clear in the past and continues to be his position. He said that is what he would support being forwarded to the Planning Board.

Councilman Davis said she would second what Councilman Plummer said and said honestly this is one of the most exciting projects they have seen in a very long time particularly along the river. She said as far as she is concerned it is different and unique to the community and the area. She said she thinks it will expand the community, as well as, the entire Capital District. She said she also assumes he will be successful and she would support this also. She said another residential apartment complex in her mind is not any new and exciting. She said she would certainly support this.

Supervisor Fuller said she talked about the residential increase for the school district, the enrollment numbers when this first came to the Board. She said she and Mr. Gush have discussed this as well and she can support the Harbor. She said she thinks that in itself will certainly generate many, many tax dollars which then the residential project will not be as taxing to a community as it is at this time.

Councilman Lenhardt said he is intimately familiar with the pressures of residents on the Bethlehem Central School District and as he stated at the last meeting, he concurs with Councilman Plummer and Councilman Davis and the rest of the Board Members that he supports the commercial aspect of this but cannot support the residential aspect. He said he is in favor of Beacon Harbor/Pointe being pushed forward to the Planning Board.

Councilman Marcelle said he will echo the Supervisor's comment. He said to him it is like a chicken and egg thing. He said what has to come first given the demographic realities in Town, given how this Town is filled up with its residential use, he thinks the Supervisor is absolutely right. He said they have to, as a matter of fiscal reality for the Town and the School District and for the taxpayers, is give priority to commercial development. He said he guesses from what he has heard from Mr. Lipnicky that without involving the School District and from Mr. Gush that the Harbor project can move forward quicker. He said it can stand on its own financially and he thinks it would benefit the community and then he thinks once the tax base in order in the Town, then there can be a hard look taken at how they start changing commercial land to a residential to allow growth. He said he guesses he is echoing with the rest of the Board and he agrees with that.

Supervisor Fuller thanked the Board Members. Town Attorney Alessi noted the role of the Town Attorney's office is to follow the intention and direction of the Board and the Board has spoken with regard to the Beacon Harbors aspect of this project. He noted a few recommendations to further the Board's interest in furthering the project.

Mr. Alessi said this is on the river and noticed accurately identified in the full EAF that Section 10 will be required and for Army Corps. He said they mentioned 0.2 impact to wetlands but could he tell the Board if there are any impacts, if any, to the river and what they might be. He said he would also be interested if they have been before the Army Corps because they are not shy about requiring Federal EIS's for projects along the river and he would not want the expectation of the community or themselves to be unsettled by the Corps coming in and slowing things down and that slow down being attributed to the Town of Bethlehem. He said he would appreciate knowing where the project is with the Corps so proper expectations can be created about how this might proceed.

Mr. Engles said there are 2 components that would involve Corps –one was the wetlands with Federal jurisdiction. He said he thinks it might be about an acre contained on the site. He said there has been a wetland investigation and/or wetland delineation. He said that wetland delineation has been reviewed in the Albany field office with the Army Corps. He said they are waiting on their confirmation letter or their formal jurisdictional determination letter. He said based on the field review, it was agreed that the wetland delineation are correct. He said they are almost home with the wetlands and the impacts are well less than the threshold values and it would be permissible. He said they have not shown a proposed impact or filed the nationwide or individual permit for the wetlands but he thinks it is doable.

Mr. Ingalls said relative to the proposed Harbor, the entirety of the proposed harbor is to be dredged in upland which will help them immensely going before the Corps. He said essentially the involvement will be the connection point to the navigable waters with the Hudson. He said they have not sent anything to the Corps relative to that proposal but that is a very good comment, noting they probably should immediately take the concept plan in for a minimum preapplication or consultation meeting with the Corps to make sure they have the same interpretation of the regulations as they have. Town Attorney Alessi noted they might want to take a look at 33CFR, 325 Appendix B which regards their scope of analysis. He said they have varying interpretations of that and again, this is to help and to further the Board's interest in the project that that gets squared away. He said he would not want to see the applicant go through the middle of the Town's process only to find the Corps say they have an issue with the location of the marina. He said if they look beyond wetlands and look at river impacts and they may or may not agree with where it is being placed in the river or the impacts and cause it to move and the Board would not want to see anyone go through the process. He noted it is their project but there is an interest in making sure projects do move forward as expeditiously as is reasonable. He said he thinks that is an issue that should be taken up much sooner than later. Mr. Ingalls said this was a very good point and thanked Town Attorney Alessi.

Town Attorney Alessi said the second thing he would recommend is to eliminate the segmentation issue is the recommendation he is giving to the Town Board and the Planning Board and its Counsel was that they formally pull that off the table. He said

that is a decision Mr. Alessi feels Mr. Gush will, perhaps, want to think about and you think about but if you do not do it, that's an action that technically has been formulated and proposed and therefore the non-review of it would present a segmentation issue and an exposure to the projects. He noted he just asks that they give that consideration and discuss that with the Planning Board and its Counsel. He said he would be happy to discuss it with the Supervisor, again, to make sure that the intention of the Board is facilitated and not impeded by some exposure down the road. Mr. Ingalls said this was understood.

Mr. Gush noted one of the main reasons that they have progressed with the Army Corps is because he has unofficially gone through other agencies and had asked the Supervisor if he could do that. He said he did do that but he really wanted the Board's opinion and wanted the Board to tell them it was okay to go ahead because then he can go back and say that they have been to the Town Board. He said they are asking if the project has come before the Town Board and whether they are in favor of the project. He said that makes a big difference as far as they are concerned. He said that is where they have been dragging their feet a little bit to be honest but would like to open it up to go forward.

Town Attorney Alessi said similar to the Army Corps, this is in the Coastal Zone, Department of State's delegated program and he recommended that they do the same with them. He said they have their own views with regard to being on the Coastal Zone and he thinks they would be well served to do the same thing with them and he wished them the best of luck with getting the Army Corps and the Department of State to end up on the same page with what they view on impacts in the same jurisdictional area. He said they can be very good, noting they are very talented and they can also present challenges. Mr. Ingalls said likewise with the DEC and the Army Corps and the EPA.

Supervisor Fuller said the Town Board has given their input and it would now be referred to the Planning Board. Mr. Lipnicky noted there was a resolution for adoption. Town Attorney Alessi noted he wanted to make sure the resolution referred to Beacon Harbor and not Beacon Heights. Mr. Lipnicky said the resolution was for referral of only Beacon Pointe/Harbor. The following resolution was presented for adoption.

TOWN BOARD  
TOWN OF BETHLEHEM  
SEQR RESOLUTION  
CLASSIFICATION OF ACTION AND LEAD AGENCY DESIGNATION  
APPLICATION TO ESTABLISH A PLANNED COMMERCIAL DISTRICT  
PROPOSED PCD NO. 7  
HARBOR AT BEACON POINTE

WHEREAS, the Town Board of the Town of Bethlehem has received an application,

Environmental Assessment Form and related materials from OG Real Estate Developers, LLC to amend the Town Zoning Code and Map by the establishment of a Planned Commercial District on 76.825 acres of land located along the Hudson River, east of the intersection of River Road (NYS Rt. 144) with Glenmont Road; and,

WHEREAS, the current zoning of the subject parcel is classified as Heavy Industrial District; and,

WHEREAS, the stated purpose of said zoning amendment is to allow the subsequent construction of a 1.486 million square foot commercial development along the Hudson River, consisting of 1.3+ million square feet of office space, 80,000 square feet of retail and restaurant space, a 30,000 square foot hotel, 30,000 square feet of residential apartments, and 40,000 square feet devoted to a theater, museum and indoor water park; and,

WHEREAS, the proposal would also include development of a harbor along the Hudson River and development of parking facilities for 4,170 vehicles; and,

WHEREAS, Chapter 128, Article 5 of the Code of the Town of Bethlehem contains procedures for the establishment of a Planned Commercial District, and said procedures authorize the Town Board to establish such a District upon referral to, and recommendation of, the Town Planning Board; and,

WHEREAS, the State Environmental Quality Review Act (SEQR) regulations found at 6 NYCRR Part 617.3(a) require that no agency shall carry out, fund or approve an action until it has complied with the requirements of SEQR; and,

WHEREAS, the "Memorandum of Understanding between the Town of Bethlehem Town Board and Planning Board for Planned Development Districts" (MOU), adopted by the Town Board on February 27, 1991, sets forth procedures for incorporating the requirements of SEQR with the requirements of Chapter 128, Article 5 of the Code of the Town of Bethlehem for the establishment of Planned Commercial Districts; and,

WHEREAS, the SEQR regulations found at 6 NYCRR 617.6(a) require that as soon as an agency receives an application for approval of an action it shall determine: (1) whether the action is subject to SEQR; (2) whether the action involves a federal agency; (3) whether other agencies are involved; (4) the appropriate preliminary classification of the action; (5) whether a full or short environmental assessment form is necessary; and (6) whether the action is located in an agricultural district and subject to applicable provisions of the Agriculture and Markets Law; and,

WHEREAS, 6 NYCRR 617.4 establishes thresholds for the classification of Type I actions and the proposed project exceeds these thresholds in that it would involve a zoning change at the request of an applicant that exceeds the following thresholds: 1) non-residential construction that would physically alter more than 10 acres, 2) non-residential construction that would provide parking for more than 1,000 vehicles, and 3) non-residential construction involving more than 100,000 square feet of gross floor area; and,

WHEREAS, 6 NYCRR 617.6(b)(2) & (3) establishes procedures for coordinated review of Type I actions where more than one agency is involved; and,

WHEREAS, the Town Board has received and considered a preliminary report from the Town Planning Department regarding SEQR classification and referral,

NOW, THEREFORE, BE IT RESOLVED,

that the Town Board of the Town of Bethlehem hereby determines that the application by

OG Real Estate Developers, LLC to establish a Planned Commercial District along the Hudson River constitutes an action that is subject to SEQR; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby determines that the preliminary classification of the action shall be designated as "Type I"; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby determines that at minimum a Full Environmental Assessment Form is necessary to determine the significance of the action; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby determines that the proposed action is not located in an established agricultural district and therefore is not subject to the provisions of the Agricultural and Markets Law; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby determines that coordinated SEQR review of the action will be undertaken in accordance with 6 NYCRR Part 617.6 and the Memorandum of Understanding for Planned Development Districts approved by the Town Board on February 27, 1991; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby determines that two federal agencies, specifically the U.S. Army Corps of Engineers and the Federal Emergency Management Agency, may have jurisdiction in this matter; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby determines that other involved agencies with respect to this action may include: (1) the Albany County Health Department; (2) the Albany County Sewer District; (3) the New York State Department of Environmental Conservation; (4) the New York State Department of Transportation; (5) the Planning Board of the Town of Bethlehem; (6) the Zoning Board of Appeals of the Town of Bethlehem; and (7) the New York State Department of State; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby determines that interested agencies with respect to this proposal may include: 1) the Albany County Planning Board (General Municipal Law Section 239 review); 2) the Capital District Transportation Committee; 3) New York State Office of Parks, Recreation and Historic Preservation and 4) the Town Departments of Public Works, Building, and Highway; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby authorizes and directs the Town Planning Department to initiate coordinated review of the action by filing a copy of the Planned Commercial District application, SEQR materials and appropriate notice with involved agencies, and notifying said agencies that a Lead Agency must be agreed upon within thirty (30) calendar days of the date of mailing said notice; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby authorizes and directs the Town Planning Department to notify other involved and interested agencies of the proposed action and to make referral of the application to the Albany County Planning Board; and,  
BE IT FURTHER RESOLVED,  
that the Town Board as an involved agency with the broadest governmental powers for

investigation of the environmental impacts of the proposed action, hereby declares its desire to assume Lead Agency status for the purpose of SEQR review; and,  
BE IT FURTHER RESOLVED,  
that having notified the involved agencies of the Town Board's desire to be Lead Agency, the Town Board hereby declares it shall be Lead Agency for SEQR review of the proposed action unless objection to such designation is received from any involved agency within the above specified thirty day (30) time period; and,  
BE IT FURTHER RESOLVED,  
that the Town Board hereby refers the application to the Town Planning Board for a recommendation on both a SEQR determination of significance and the zoning district amendment, said recommendation to be provided consistent with the procedures as outlined in the Memorandum of Understanding between the Bethlehem Town Board and Planning Board for Planned Development Districts.

On a motion made by Mr. Plummer, seconded by Mr. Lenhardt, and a vote of 5 for, 0 against, and 0 absent, this RESOLUTION was adopted on August 13, 2003.

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Supervisor Fuller thanked Mr. Gush. He thanked the Supervisor.

Planning Board Chairman, Douglas Hasbrouck, said it has been a long time since he had a logic course, but he did remember that the concept of if then is different than the concept of no. He said his question was to the Town Attorney more than anyone else at this point in time. He said 2 of the Members in speaking about the Heights kind of suggested that this is not the right time but maybe later. He said his question is even if the Heights is not referred to the Planning Board now, and even if they withdraw the Heights, that if then discussion and history is still there, if the segmentation issue really goes away. Supervisor Fuller said she could withdraw her comments from the record if that would make it easier for the Planning Board. Mr. Hasbrouck said likewise. Supervisor Fuller said that was in discussion with Mr. Gush really to get the message loud and clear. Mr. Hasbrouck said that might help but he did not know. He said the question that he has is, as far as the segmentation question is concerned, is a non-action by the Board equivalent to the Board saying no we don't want the Heights project. He said in other words, taking action on that request as opposed to asking them just to withdraw it. Mr. Alessi said it is a good question and he understands it. He said they are 2 separate questions. He said, the first being whether what the Board has done is a refusal or denial of the Beacon Heights aspect of the project. He said the answer is that it is not because this is a legislative decision and it's a rezoning request. He said therefore the Board did not entertain that, didn't choose to refer that and for it to come alive, it's got to be referred to the Planning Board. He said absent the referral, it is not alive and, therefore, there's really nothing to deny. He said the segmentation question, that is why he recommended because it has been proper, proposed, that to make the segmentation issue clear – and he had no problem with the discussion that has occurred on the Town Board tonight, he said it is appropriate to him and it does not create an exposure on segmentation – but that is why he recommended it be pulled off so that there is no action

proposed so that the segmentation would go away and there is not a need to deny Beacon Heights for that to happen but there is a need for it to be pulled off and detached from this in his judgment, withdrawn and that there be a request by the applicant that that happen such that the record is clear that there s no other action and, therefore, there is not an action to be segmented from.

Supervisor Fuller said for tonight's agenda, it was strictly discussion of the Harbor at Beacon Pointe and the Beacon Heights was going to be on the next Town Board agenda if this were not resolved here tonight. She said she thinks they created as much confusion as could possibly be generated but Mr. Gush knows what was discussed and he does know that this will not be on the agenda at the next Board meeting.

Supervisor Fuller thanked everyone for being at the meeting.

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The next item was a request from the Parks and Recreation Department, Administrator, Nan Lanahan, for approval to go to bid for air conditioning system. Can advertise on August 20, 2003 and open bids on September 3, 2003 at 3:30 p.m.

The following resolution was offered by Mr. Lenhardt and seconded by Mrs. Davis:

WHEREAS, the Town desires to advertise for bids for the purchase of an air conditioning system for the Parks and Recreation Department, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 20th day of August, 2003 and that bids be received up to 3:00 p.m. on the 3rd day of September, 2003 at which time the bids will be publicly opened and read.

The resolution was adopted by the following vote:

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

Noes: None.

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The next item was a request from Nan Lanahan, Administrator, Parks and Recreation Department for approval of award of bid for the pool deck reconstruction project to Hudson River Construction Co, Inc, Albany, NY at a base bid price of \$287,600.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the award of bid for Pool Deck Reconstruction Project to Hudson River Construction Co., Inc., Albany, New York at the bid price of \$287,600 as requested by Nan Lanahan, Administrator, Parks and Recreation Department. The motion was passed by the following vote:

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

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

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the appointment of seasonal personnel as requested by Administrator, Nan Lanahan, Parks and Recreation Department as listed in her Memorandum dated August 13, 2003 at the titles and salaries listed. The motion was passed by the following vote:

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

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Councilman Marcelle made a comment regarding what a tremendous job the Parks and Recreation Department did with the swimming program for the children of Bethlehem. He said everyone raved about it, noting there was a great job done. He said the kids who taught the little ones to swim were fantastic and thanked Mrs. Lanahan for a great job with the program. Supervisor Fuller noted her granddaughter was involved in the program and is ready for the Olympic team now and extended thanks to Mrs. Lanahan.

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The next item was a request from Judith Kehoe, Comptroller for approval of appointment of a Financial Advisor. Supervisor Fuller noted in order to access the bond market for the upcoming public works project, a team of financial specialists needs to be engaged. It was noted that Paul Goldman of Segel, Goldman, Mazzotta and Siegel were appointment as bond counsel previously and it is now necessary to appoint a financial advisor to assist the Town with determining the structure of financing. She said the Financial Advisor would meet with Moody's to review and potentially upgrade the Town's current bond rating (A1) and preparing the official statement and notice of sale and obtaining bids from underwriters. She noted the Comptroller sought proposals from 3 firms, noting 2 submitted formal proposals.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the appointment of Fiscal Advisors and Marketing, Inc., with the Town's service provider being Ms. Jeanine Rodgers Caruso, as Financial Advisor with estimated fees of \$15,000 for the serial bond issuance and additional consulting at \$90 per hour up to a maximum of \$5,400 to the Town as requested by Comptroller, Judith Kehoe. The motion was passed by the following vote:

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

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The following item was a request from Deputy Comptroller, Richard Webster, for the approval of award for Motorola mobile and portable radios to Wells Communication Services of Troy, NY at a bid price of \$237,570.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the aware of bid for Motorola mobile and portable radios to Wells Communication, Troy, New York at a bid price of \$237,570 as requested by Richard Webster, Deputy Comptroller.. The motion was passed by the following vote:

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

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The following item was a request from Commissioner of Public Works, Bruce Secor, to award bid for a new air conditioning unit for Town Hall to Family Danz Heating, Albany, NY at the bid price of \$32,130,000.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the award of bid for one (1) new air conditioning unit for Town Hall to The Family Danz Heating and Air Conditioning, Albany, New York at the bid price of \$32,130,000 as requested by Bruce Secor, Commissioner of Public Works. The motion was passed by the following vote:

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

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The next item was a request from Commissioner of Public Works, Bruce Secor, to hold a public hearing for replacement of a water main on Cherry Avenue and Elm Avenue as part of the reconstruction on Albany County Route 52. Could hold hearing August 27, 2003 at 7:45 p.m. Supervisor Fuller said each of these items is really to set the public hearing for the purpose of the financing. She said all of this was agreed upon by the Town Board back at earlier meetings. She noted the price of this project was \$490,00.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to approve setting a public hearing for August 27, 2003 at 7:45 p.m. to consider replacement of a water main on Cherry Avenue and Elm Avenue as part of the reconstruction of Albany County Route 51 as requested by Bruce Secor, Commissioner of Public Works. The motion was passed by the following vote:

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

The next item was a request from Bruce Secor, Commissioner of Public Works, to hold a public hearing for replacement of a water main on Route 9W from Corning Hill Road to Feura Bush Road. Could hold hearing August 27, 2003 at 8:00 p.m. Supervisor Fuller noted the amount of this was \$750,000.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve setting a public hearing for August 27, 2003 at 8:00 p.m. regarding replacement of a water main on Route 9W from Corning Hill Road to Feura Bush Road, Glenmont as requested by Commissioner of Public Works, Bruce Secor. The motion was passed by the following vote:

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

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The following item was a request from Bruce Secor, Commissioner of Public Works, to hold a public hearing to consider the issuance of bonds to pay for repairs to Stage III Diversion Pipe Line to the Vly Creek Reservoir. Could hold hearing August 27, 2003 at 8:15 p.m. Supervisor Fuller said the cost of this work was \$105,554. She noted some of the cost of this item is covered by Federal Aide but the Town Board needs to finance the local Water District share, estimated total cost \$422,218, Federal share \$316,664,000, local share \$105,554.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve setting a public hearing for August 27, 2003 at 8:15 p.m. to consider the issuance of bonds to pay for repairs to State III Diversion Pipe Line to the Vly Creek Reservoir as requested by Commissioner of Public Works, Bruce Secor. The motion was passed by the following vote:

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

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Supervisor Fuller noted the total cost of the 3 projects is \$1,345,554. She said cost will have to be paid for by the customers of Water District Number 1 through water district taxes and water sales. She said projected debt service payments for improvements to the Water District have been included in the budget estimates for the Town Board for 2003 and 2004.

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The following item was a request from Engineering Services Administrator, Michael Cirillo, for approval of acceptance of a deed document for Terramere PRD for a multi-purpose easement.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve

the acceptance of deed for a multi-purpose easement for utilities and grading for Terramere Planned Residence District from Terramere, L.L.C., Madison, New Jersey as requested by Michael Cirillo, Engineering Services Administrator. The motion was passed by the following vote:

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

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The next item was a request from Michael Cirillo, Engineering Services Administrator, for approval of acceptance of two deed documents for right of way & easements purposes for 231 Delaware Ave., Delmar.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to accept two (2) deeds for right-of-way and easement purposes from Paul and Joanne DeStefano, Clifton Park, New York and Merle L. Whitehead, Orhcard Park, New York for Realty USA, 231 Delaware Avenue, Delmar as requested by Michael Cirillo, Engineering Services Administrator. The motion was passed by the following vote:

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

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The following item was a request from Engineering Services Administrator, Michael Cirillo, for approval of acceptance of two deed documents for right of way and easement conveyances for Dowerskill Village – PRD 4, Sec 3, Phase 4E.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the acceptance of two (2) deeds for street rights-of-way and easement purposes for Dowerskill Village – PRD 4, Section 3, Phase 4E, from Charlew Construction Co., Schenectady, New York as requested by Engineering Services Administrator, Michael Cirillo. The motion was passed by the following vote:

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

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The following item was a request from Chief of Police, Louis Corsi, for approval of award of bid for uniforms and related equipment for the Bethlehem Police to Rosen's Uniforms, Albany, NY. This award will be for three years.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the award of bid for uniforms and related equipment for three years for the Bethlehem Police Department to Rosen's Uniforms, Albany, New York as requested by Louis Corsi, Chief, Bethlehem Police Department. The motion was passed by the following vote:

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

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The next item was a request from Louis Corsi, Chief of Police, to accept the resignation of Telecommunicator James E. Cross, Jr., Coeymans Hollow, New York effective July 18, 2003. Supervisor Fuller noted Mr. Cross leaves the Town for a full-time position with the Town of Coeymans Police Department as a Police Officer.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to accept the resignation of James E. Cross, Jr., Telecommunicator, Coeymans Hollow, New York as requested by Chief of Police, Louis Corsi. The motion was passed by the following vote:

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

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Supervisor Fuller noted she will send Mr. Cross a letter on behalf of the Town Board.

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The next item was a request from Chief of Police, Louis Corsi, for approval to appointment a Telecommunicator. Supervisor Fuller said the appointment is Brianna Sagendorph, Selkirk, New York at an annual salary of \$31,598. She noted Briana was a Telecommunicator currently with the Albany County Sheriff's Department and her appointment has been made from a certified list of candidates from Civil Service.

The motion was made by Mrs. Davis and seconded by Mr. Marcelle to approve the appointment of Briana M. Sagendorph, Selkirk, New York to the position of Telecommunicator, Bethlehem Police Department, at an annual salary of \$31,598, effective August 17, 2003 as requested by Chief of Police, Louis Corsi. The motion was passed by the following vote:

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

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The following item was a request from Louis Corsi, Chief of Police, for approval to authorize a budget modification to increase the insurance recovery revenue line item and to increase the police 43-15 collision repairs account line.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to approve the transfer of funds from 43-15, collision repairs, to insurance recovery revenue line to permit repairs to Police vehicle in the amount of \$5,3641.41 as requested by Police Chief, Louis Corsi. The motion was passed by the following vote:

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

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The next item was to acknowledge receipt of Certificate of Conditional Approval of Final Plat for Amsler Subdivision from the Planning Board for information purposes..

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The next item was to acknowledge receipt of amendment to Certificate of Final Plat Approval for Devonshire Hills lot line revision for 71 & 77 Devonshire Drive from the Planning Board for information purposes.

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The following item was to acknowledge receipt of final plat for Waldenmaier Planned residence Community, Planned Residence District No. 13 from the Planning Board for information purposes.

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The next item was to acknowledge receipt of the 2002 Annual Franchise Fee from Mid-Hudson Cablevision, Inc., in the amount of \$253.39.

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The next item was to acknowledge receipt of quarterly franchise fee (April through June 2003) from Time Warner Cable in the amount of \$82,061.85.

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The next item was to approve the Town Board minutes of June 25, 2003 and July 9, 2003.

The motion was made by Mr. Marcelle and seconded by Mr. Plummer to approve the Town Board minutes of June 25, 2003. The motion was passed by the following vote:

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

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The motion was made by Mr. Marcelle and seconded by Mr. Plummer to approve the Town Board minutes of July 9, 2003. The motion was passed by the following vote:

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

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Supervisor Fuller asked if anyone wished to address the Board. There was no one who spoke.

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The Supervisor asked for a motion to adjourn to Executive Session to discuss negotiations.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve adjourning to Executive Session to discuss negotiations. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

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The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to adjourn the regular Town Board meeting at 9:02 p.m. The motion was carried by the following vote:

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

Noes: None.

Absent: None.

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Town Clerk

#### EXECUTIVE SESSION

There was no formal action taken at the Executive Session.