

TOWN BOARD
AUGUST 28, 2002

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

PRESENT: 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

- - -

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

The Supervisor said the first item was a request from Robert Alessi, Town Attorney, for approval of appointment of Counsel to the Board of Appeals. She mentioned that the Zoning Board attorney passed away a week ago. She said Peter Bishko had worked for the Zoning Board for the last couple of years. She said it is with mixed emotion that this appointment is done. She said they certainly send condolences to his wife and daughters.

The Supervisor said the new appointment will be Patrick L. Seely, Jr. Esq. She also noted that Donald DeAngelis will remain on as Counsel under the Town Attorney's direction.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the appointment of Patrick L. Seely, Jr., Esq., Delmar, New York to serve at the pleasure of the Town Board; to be subject to the direction of the Town Attorney; to be responsible for all Board of Appeals counsel matters except those on which Donald DeAngelis has commenced work on behalf of the Board and which matters Mr. DeAngelis will conclude; and to be assigned as and where needed pursuant to the Judiciary Law to appear on behalf of the Town as Assistant Town Attorney in Town Court. The motion was passed by the following vote:

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

- - -

Supervisor Fuller thanked Mr. Seely for being willing to serve.

The next item was a request from Chief of Police, Richard LaChappelle, for approval of Appointment of Telecommunicator effective September 14, 2002 at an annual salary of \$26,714. Supervisor Fuller said the appointment will be Brent Dragon of Glenmont.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to approve the appointment of Brent W. Dragon, Glenmont to the position of Telecommunicator, effective September 14, 2002, at an annual salary of \$26,714. The motion was passed by the following vote:

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

- - -

Supervisor Fuller congratulated Mr. Dragon and his family.

The next item was a request from Richard LaChappelle, Chief of Police, for approval of appointment of Police Officer, effective September 14, 2002 at an annual salary of \$35,997. Supervisor Fuller noted the appointment was Timothy Travis of Selkirk.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the appointment of Timothy C. Travis, Selkirk, New York to the position of Police Officer, effective September 14, 2002 at an annual salary of \$35,997. The motion was passed by the following vote:

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

The next item was a request from Chief of Police, Richard LaChappelle, for approval of transfer of funds from Insurance Recovery Account to Collision Repairs.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve transfer of funds as requested by Chief of Police, Richard LaChappelle, as follows:

1. \$2,119.66 for damage to car #729;
2. \$2,121.63 for damage to car #726; and
3. \$10,253.24 for damage to car #726.

The motion was passed by the following vote:

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

Supervisor Fuller noted the next item was the presentation regarding truck study for the Town of Bethlehem by the New York State Department of Transportation. Supervisor Fuller asked the audience to be patient while the State presents it for everyone and anyone who is in attendance, as well as, being televised to the community.

Mr. Carlson and Mr. Marko of the State Department of Transportation were in attendance. Mr. Carlson provided an overview of the study that has been completed. Mr. Carlson thanked the Town Board for the opportunity to present this study. He mentioned a summary of the findings was left at the back of the auditorium. The area of Slingerlands, the Cherry and Elm Avenue area, Kenwood Avenue, Delaware Avenue and the Selkirk Bypass was mentioned. He said this study was done at the request of the Town. He said it is basically a data collection effort to have the most current information on truck traffic and routes. Trip generation, number of vehicles and routes used were outlined. Included in the information was a listing of some road improvement projects programmed for the Town and what the impacts might be on current and future traffic.

Mr. Carlson said a consultant was hired to do this study and the data was reviewed from the 1991 study and other data collected regarding truck traffic. They then collected new data as well, according to Mr. Carlson, utilizing some new locations. One issue raised that the study looked at was how to regulate the truck traffic within Town and what restrictions could be applied and who has the authority to regulate the traffic. One of the other items discussed was operating costs and highway tolls involved with tractor trailer routing decisions.

The first step, Mr. Carlson said, was to look at what is out on the highways. He said the data was collected by machine, manual counts with classification done by hand to verify machine data accuracy, and inventory data including the names of the companies on the sides of the trucks for starting points. He said they wanted to determine the truck percentages noting this includes all types of trucks. He noted the chart is on the distributed sheet. He mentioned that they focused on the Selkirk Railroad yards departures because almost half of all the tractor trailer traffic in the Town of Bethlehem in the study area was generated from the rail yard area.

Information provided included restrictions that can be enacted by the Town Board in regard to the NYS Vehicle and Traffic Law. It also noted other roads and what entity had jurisdiction over restrictions placed on these roads.

Councilman Lenhardt said he was in favor of moving this along to a public hearing in an effort to restrict truck traffic since we do have the ability in this particular corridor, wishing we had it in Selkirk also but he would deal with this one – he is willing to make a motion that we move this forward to a public hearing to restrict truck traffic as defined by whatever law our counsel can write that allows local delivery but precludes cut throughs to the Thruway, exit 24 or whatever. He put that forth as a motion.

Councilman Plummer seconded the motion. Supervisor Fuller said this was up for discussion. Councilman Davis asked Mr. Lenhardt regarding the last phrase made regarding the Thruway, asking if that would have to be in there. Councilman Lenhardt said it would not have to be in there but the intent is that he does not know how you craft a law that allows the local businesses to function locally. He said he does not want to restrict that but at the same time, he said there is no reason, as he has stated, for these trucks to go to exit 24 when they can go to exit 23 to get on the Thruway using the bypass for what it was built for.

Councilman Marcelle asked Councilman Lenhardt when he said trucks if he meant all trucks or tractor trailers. Councilman Lenhardt said that is the purpose of a public hearing, noting he wanted to hear what the public feels on that particular issue. The audience suggested a study on this and Mr. Lenhardt said he thinks this has been studied to death. He said his feeling is there are too many trucks, period, with whatever number is there or will become.

Supervisor Fuller said she thought Councilman Lenhardt's motion is a great idea, however, she said she is not sure legally how this is done. She said she is not trying to buy more time but she thinks when this is done it should be done right. She said there needs to be a local law in place in order to hold a public hearing. She said we cannot just say draft a public hearing notice and send it out and not know what the local law would be. She said she wanted to make a couple comments, noting she does not want anyone counting traffic. She said she offered that because of the concern and thought if this will help to get the message to DOT or DOT to convince you that their numbers are accurate, either way she thought the residents wanted to be involved. She said she certainly apologized, noting she does not want anyone counting trucks. She said she can count trucks herself and she rides on the road. She said she is familiar with what is there.

Supervisor Fuller noted Mr. Joyce from the New York State Truck Association was in attendance. She said she met with him early on and also met with the Swift Car Carriers. She said the Swift Car Carriers, she does not believe have sent anyone to attend but one gentleman ended up she thinks in Pennsylvania and the other one that was local was going to try and make it but was not sure. They assured the Supervisor, she said, that they have cut back on their trucks and the count showed that they had cut back on their trucks. She said they were going from Elm down to the 32 on the Delmar Bypass and go to 787, they can get on I-90 and they are over where they need to be. She said it was not a problem for the car carriers to agree to do that. She said she did not go any further than car carriers and it was only Swift that she dealt with since they were the major one here.

Supervisor Fuller said Mr. Joyce is here and can tell about some of the trucking industry and where it was headed and why it was going on Cherry and Elm and if it was really necessary. She said she did not like putting Mr. Joyce on the spot but she said he might as well be put on the spot as well. She said he is familiar with some of these routes and where they start and end up and why they need to be on Cherry and Elm.

Mr. Joyce said he is really rather ignorant about a lot of the traffic issues other than in general, you get 2 sides here. He said the rail yard becomes a shipping point. He said the car carriers are not really bringing anything back into the rail. For the other business, he said that are here, you have a 2 sided function which is shipping and receiving and it becomes more difficult. He said the people leaving, it is easy to monitor. He said it is the people coming in that's bringing in the goods – the fellow from Oklahoma he said does not take the short cut down somewhere. He gets a route planned for him. He said what they have tried to do is work in a cooperative fashion working with any interested trucking companies. He said he worked with Swift and noted they are not a member of his. He said they certainly are a good organization to work with. He said they are very cooperative. He said they looked at the numbers and noted he is willing to work with other companies to come to a reasonable solution. He said sometimes they get the question of what is local with regard to where the trucks can go and it can involve other towns. But, Mr. Joyce said if you start doing that in other towns, what happens is all of a sudden you find you cannot get a delivery because they cannot get through your adjacent town. He said that becomes a nuisance. He said what he thinks needs to be done is to work together in a common sense fashion rather than an overall trying to ban trucks. He said he just does not think that is the right way to do this.

Mr. Joyce said he thinks if they work with the businesses, noting he was here to help contact and work with trucking companies, to get a reasonable accommodation down. He said the other side of this and he did not notice on any of these routes that there is any significant down hills. He said in many communities where there is a down hill grade, the use of what are generically called jake brakes but that's a trade name. Supervisor Fuller noted they are familiar with them. Mr. Joyce said they are engine brakes. He said this can be worked with and they have suggested in some places signs indicating no engine brakes. He said there are noise standards regarding these. A gentleman in the audience noted New York State law says you cannot restrict the use of compression brakes, noting this is a safety feature. Mr. Carlson, DOT, noted you can enforce the noise standard.

Mr. Joyce reiterated that the industry is supportive and is always trying to be a good neighbor. The resident said he did not disagree with this but noted there are people who know all about this and have been involved in this for a year and there is nothing done for the people in Selkirk considering noise pollution of trucks.

Supervisor Fuller noted there is a motion and a second on the floor. Councilman Lenhardt said he wished to withdraw his current motion in an effort to put forth a more coherent one. Mr. Plummer said he would second that.

Councilman Lenhardt said he would like to put forth a motion to direct the Town Attorney to draft a local law to restrict truck traffic on Cherry and Elm Avenues and when that local law is drafted then they can proceed with public hearings and a debate as to whether or not to adopt it. Supervisor Fuller asked if it was all trucks or tractor trailers. Councilman Lenhardt said he agrees with whatever makes the most sense, be it local deliveries, weight limit or whatever the Town Attorney can draft. He said he wanted to see the law before he could say he totally agreed or disagreed with it. He noted he has been informed that he will not draw a second if he makes it as broad as I just did.

Councilman Plummer said he is supportive of restricting tractor trailers. He said he is supportive of allowing that for local deliveries but he is not supportive of

inclusive, all trucks. He said if the tractor trailers are going to be restricted, that is something he would support. He said if a weight limit is the way to capture that then that is fine but he did not want to include very truck that is on the road.

Councilman Marcelle said as he is looking at the DOT report, there is 3 ways you can regulate trucks, by class, by size, by weight. He recommended to the Town Attorney maybe present 3 separate options – one regulating by size; one regulating by class which he assumes would be tractor trailers although he is not an expert and then one by weight. He said then the Board can find out exactly what would be included and excluded under each class, size and weight provision. He said as the law is looked at, the Board can decide which is the best fit and proceed by then.

Resident asked that the Town Board possible consider something for Selkirk which might be noise. He said let's not forget Selkirk. Town Attorney Alessi said he does not see that is it not mutually exclusive but he can inform everyone that he has litigated many, many noise ordinances and you cannot draft an ordinance for noise that is targeted against a class. He said it is illegal, however, he said the Town does have a noise standard and noise ordinance that can be enforced and that is not a Town Board function. If it is the desire of the Town Board, according to Mr. Alessi, to change its noise law and he said it is a very complicated thing. He said it can be done but look at Clifton Park that has been trying to do it for 3 years. He said it is a tricky area but he said drafting a noise ordinance is a much different animal than drafting a traffic restriction. He said he sympathizes with the request and the reason for it but the last thing needed is to have something drafted up quickly that gets struck down just as quickly.

Supervisor Fuller said the Board is not ignoring Selkirk, she said she thinks they need to deal with one thing at a time. She said it is the Cherry/Elm that has been discussed at recent meetings.

Councilman Davis asked if the class and weight are the same thing. She said she knows it is not the same but asked what the different classes that are part of the study. A resident handed a sheet to Councilman Davis pertaining to truck sizes.

Councilman Marcelle said the VT law outlines by definition class.

Councilman Marcelle moved that the Town Attorney draft a local law with several options -- one with a class limitation; one with a weight limitation and one with a size limitation that references New York State Vehicle and Traffic Law and that he presents each of the 3 local laws as separate options for the Town Board to debate, pass or amend as they see fit. Councilman Lenhardt seconded the motion and it was passed by the following vote:

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

Noes: None.

Absent: None.

- - -

Supervisor Fuller asked a procedural question, the drafts will be brought in and the public hearing cannot be set until the decision is made as to what the hearing will be for. Town Attorney Alessi said this was correct.

The next item was to consider approval of Amendment No. 2 to Building Project Approval No. 33 for Bethlehem Town Center, Route 9W, Glenmont. Supervisor Fuller noted the Board has the recommendation from the Planning Board. She said the proposed amendments have the short form EAF and issue a negative declaration and declare there will be no coordinated SEQR review of the amendments. The second vote, according to the Supervisor, would be the draft resolution approving amendment to the Building Project Approval.

The following resolution was presented by Mr. Marcelle and seconded by Mrs. Davis for adoption:

**TOWN BOARD
TOWN OF BETHLEHEM
ALBANY COUNTY, NEW YORK
SEQR RESOLUTION
CLASSIFICATION OF ACTION AND NEGATIVE DECLARATION
AMENDMENT No. 2 TO BUILDING PROJECT APPROVAL No. 33
PLANNED COMMERCIAL DISTRICT No. 2
NIGRO COMMERCIAL DEVELOPMENT – ROUTE 9W
BETHLEHEM TOWN CENTER**

WHEREAS, the Town of Bethlehem Town Board ("the Town Board") has received an application submitted by Nigro Companies for certain amendments to Building Project Approval No. 33 – “Nigro Commercial Development – Route 9W” (a.k.a. Bethlehem Town Center); and,

WHEREAS, said application entails proposed amendments to a Building Project previously approved by the Town Board on January 23, 2002; and,

WHEREAS, the Town Board, prior to approving Building Project Approval No. 33, required and accepted both a Draft and Final Environmental Impact Statement for the development, and issued its SEQRA Findings Statement on January 23, 2002; and,

WHEREAS, the proposed amendments to Building Project Approval No. 33 include:

1. A request to change the name of the entity to which the approval is issued;
2. A request to subdivide the development parcel into five lots;
3. A request to establish an “open development area” on the parcel pursuant to Section 280-a of the New York State Town Law;
4. A request to construct the project in two phases; and,
5. A request to make minor modifications in design of the project’s water service and site grading in order to accommodate the phasing plan; and,

WHEREAS, the proposed amendments to Building Project Approval No. 33 do not change the scope, scale, layout or design of the overall project, or the SEQRA mitigation measures that are required and will be implemented as part of project development; and,

WHEREAS, the Town Board has received a short Environmental Assessment Form ("EAF") to assess the potential environmental impact of the proposed amendments to Building Project Approval No. 33, with Part I completed by the applicant; and,

WHEREAS, the State Environmental Quality Review Act (SEQRA) 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 SEQRA; and,

WHEREAS, 6 NYCRR 617.6(a) requires that when an agency receives an application for approval of an action it must: (1) determine whether the action is subject to SEQRA, (2) determine whether the action involves a federal agency, (3) determine whether other agencies are involved, (4) make a preliminary classification of the action, (5) determine whether a short or full EAF will be used to determine the significance of the action, and (6) determine whether the action is located in an Agricultural District; and,

WHEREAS, 6 NYCRR 617.6(b)(4) indicates that for uncoordinated review of an Unlisted action, each involved agency may proceed as if it were the only involved agency when making its determination of significance before acting on the matter before it; and,

WHEREAS, the Town Board has received a recommendation from the Town of Bethlehem Planning Board, dated August 20, 2002, expressing the Planning Board’s recommendation that the proposed amendments to the Building Project be approved; and,

WHEREAS, the Town Board has independently considered both the information provided in the EAF and comments on the application provided by the Town of Bethlehem Engineering Division and Planning Department;

NOW, THEREFORE, BE IT RESOLVED,
that the Town Board hereby determines that:

1. the proposed amendments to Building Project Approval No. 33 constitutes an Unlisted action which is subject to SEQRA;
2. the proposed amendments may involve a federal agency, the U.S. Army Corp of Engineers;
3. involved agencies may include the Bethlehem Planning Board and the Albany County Health Department;

4. the proposed action is not located in, or within 500 feet of, an Agricultural District and therefore, is not subject to the provisions of the Agriculture and Markets Law; and,
5. a short EAF is adequate for determining the significance of the proposed action; and,

BE IT FURTHER RESOLVED,

that the Town Board hereby determines it will not coordinate SEQRA review and will act as lead agency with respect to its own SEQRA review of the proposed action pursuant to 6 NYCRR 617.6(b)(4); and,

BE IT FURTHER RESOLVED,

that based upon its review of the project, the EAF, review of the proposal by Town Engineering and Planning staff, and comparison with the Criteria for Determining Significance found at 6 NYCRR Part 617.7(c), the Town Board hereby finds that approval of **Amendment No. 2 to Building Project Approval No. 33** 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 is based upon the following facts and conclusions:

1. Building Project Approval No. 33, granted by the Town Board on January 23, 2002, authorized the construction of a 363,849 sq. ft. shopping center to be known as Bethlehem Town Center.
2. Prior to receiving its approval, the proposed shopping center was the subject of both a Draft and Final Environmental Impact Statement required by the SEQRA lead agency, the Town Board.
3. The Town Board issued its SEQRA Findings Statement for the project on January 23, 2002. Contained within the Findings Statement are various mitigation requirements to minimize the potential adverse impacts of the project. Included are off-site mitigation measures to minimize impacts to area roadways and the Glenmont Elementary School, and on-site measures to address federal wetland and visual impact concerns.
4. The proposed amendments to Building Project Approval No. 33 include:
 - a. A change in the name of the entity to which the approval is issued;
 - b. Subdivision of the development parcel into five lots, so that each previously approved structure can sit on its own building lot;
 - c. Establishment of an "open development area" on the parcel pursuant to Section 280-a of the New York State Town Law, so that the project's three out-parcels to be developed without direct access to a public highway will have legal access provided by cross-easements;
 - d. Approval to construct the project in two phases, with the southern portion of the site being constructed as phase one and the northern portion being constructed as phase two; and,
 - e. Minor modifications in design of the project's water service and site grading in order to accommodate the phasing plan.
5. The proposed amendments will have no material effect on the overall scale, design or layout of the project. No such request is included as part of the proposed amendments.
6. All on-site mitigation required as part of the SEQR Findings Statement will remain in effect and all off-site mitigation, including required highway improvements and improvements at the Glenmont Elementary School, will be implemented as part of Phase 1.

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 to file any and all appropriate notices so that the intent of this Resolution is carried out.

On a motion by Mr. Marcelle, seconded by Mrs. Davis, and by a vote of 4 for, 1 against, and 0 absent, this RESOLUTION was adopted on August 28, 2002

- - -

Town Planner Jeffrey Lipnicky noted there was a change on the resolution regarding the Amendment to the Building Project Approval and discussed by Counsel. He said the amendment document titled Town of Bethlehem, Albany County, New York Building Project Approval Amendment dated August 28, 2002. He said in paragraph 8 which is on the last page, the first item should read – except as expressly amended so the

word expressly is inserted. He said at the end there is an additional sentence to be added – To the extent there is any real or alleged ambiguity between this approval and Building Project Approval No. 33 and its associated SEQR findings statement shall take precedence.

**TOWN OF BETHLEHEM
TOWN BOARD
NIGRO COMMERCIAL DEVELOPMENT - RT. 9W
BETHLEHEM TOWN CENTER
PLANNED COMMERCIAL DISTRICT NO. 2
RESOLUTION APPROVING AMENDMENT TO BUILDING PROJECT
APPROVAL
AUGUST 28, 2002**

WHEREAS, on January 23, 2002 the Bethlehem Town Board granted Building Project Approval No. 33 for the Nigro Commercial Development - Rt. 9W/Bethlehem Town Center Project; and,

WHEREAS, on June 6, 2002, the Project Applicant, Nigro Companies, requested that the Bethlehem Town Board amend the Building Project Approval to provide for the following:

- a. that the Project be constructed in two phases in accordance with a set of phasing plans prepared by Sear Brown entitled “Site Phasing Plan” (drawings SE PH 1 through SE PH 8) last revised August 14, 2002; and
- b. the Building Project be divided into five separate lots as shown on a plan prepared by L. Sipperly & Associates entitled “Interior Lot Division Plan for Bethlehem Town Center” last revised August 15, 2002; and
- c. the Project be designated an “open development area” as provided for in Town Law §280-a; and
- d. the Project be permitted to proceed under the name of Bethlehem Associates, LLC, a Nigro Companies entity including the same principals as the Applicant, Nigro Companies; and,

WHEREAS, on June 18, 2002, the Town Board referred this matter to the Planning Board for a recommendation; and,

WHEREAS, on August 20, 2002, the Planning Board issued its recommendation to the Town Board that the requested amendment to the building project be approved as outlined in the attached Amendment No. 2 to Building Project Approval No. 33 for the Nigro Commercial Development –Rt. 9W Bethlehem Town Center, Planned Commercial District No. 2, dated August 28, 2002 now before the Town Board for its consideration; and,

WHEREAS, the Applicant has proposed that all off-site improvements required for the Project, as set forth in the Town Board’s Building Project Approval of January 23, 2002, will be constructed during the proposed first phase of construction. These improvements include all roadway improvements, improvements to the Glenmont School property, and improvements to the Farm Family Insurance property and access roads. All of the Rt. 9W on-site landscaping and screening will also be completed during the first phase of the Project;

NOW, THEREFORE, BE IT RESOLVED,

that given the willingness of the Applicant to construct the off-site improvements and all necessary and appropriate on-site improvements during the first phase of the Project, the changes proposed by the Applicant are minor and technical in nature and do not represent a significant modification or a change of any sufficient magnitude to the Project requiring further proceedings before this Board; and,

BE IT FURTHER RESOLVED,

that the proposed changes to the Project will not result in a significant impact to the environment beyond those impacts of the Project fully considered and for which mitigation has been provided in the Building Project Approval by the Town Board dated January 23, 2002; and,

BE IT FURTHER RESOLVED,

that the January 23, 2002 Building Project Approval be amended in accordance with the terms and conditions outlined in the attached “Amendment No. 2 to Building Project Approval No. 33” for the Nigro Commercial Development –Rt.

9W Bethlehem Town Center, Planned Commercial District No. 2, dated August 28, 2002; and,

BE IT FURTHER RESOLVED,

that said Building Project site be designated an “open development area” as provided for in Town Law Section 280-a, provided that the Applicant complies with the conditions set forth in “Amendment No. 2 to Building Project Approval No 33” for the Nigro Commercial Development –Rt. 9W Bethlehem Town Center, Planned Commercial District No. 2, dated August 28, 2002.

On a motion by Mr. Marcelle, seconded by Mrs. Davis, and a vote of 4 for, 1 against, 0 abstention and 0 absent, this RESOLUTION was adopted on August 28, 2002.

- - -

Councilman Davis asked the representatives of Nigro if they could explain if lot number 4 encompasses all the area on the map. She noted lot number 3 is the proposed restaurant, lot number 5 is this... The representatives said the entire area is lot number 4.

Councilman Lenhardt asked when the construction will begin. The representatives said they still have the Army Corps of Engineers permit to finalize, the DOT highway work permit to finalize and noted they would like to get started within the next month or so. Councilman Lenhardt thanked them. Councilman Davis wished them good luck. Supervisor Fuller thanked them also.

The next item was a request from First Columbia for amendment of extension of time to begin construction to Building Project Approval No. 34 for property located at 1200 and 1210 New Scotland Road, Slingerlands. Supervisor Fuller noted Mr. Bette called late this afternoon and although he had planned on being present, he was unable to be here and asked that this be forgiven.

Supervisor Fuller said he basically is looking for an extension of time and this was received from Chris Bette. She noted Ms. Saatman from the Planning Department presented a draft amendment to the Building Project Approval. She said amended construction work shall begin prior to April 30, 2003 and shall be completed not later than April 30, 2005.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the amendment to Building Project Approval No. 34 for property located at 1200 and 1210 New Scotland Road, Slingerlands. The motion was passed by the following vote:

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

The following 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. Lenhardt and seconded by Mrs. Davis to approve the appointment of seasonal personnel as requested by Nan Lanahan, Administrator, Parks and Recreation Department, at the titles and rates indicated in her Memorandum dated August 28, 2002. The motion was passed by the following vote:

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

The next item was a request from Engineering Services Administrator, Michael Cirillo, for approval of entering into agreement and membership in the New York State Geographic Information System Clearinghouse. Supervisor Fuller said this needs authorization for the Supervisor to sign for membership. She said there is no cost.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to approve the Supervisor signing the Agreement to become a member of the New York State Geographic Information system Clearinghouse 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.
Absent: None.

- - -

Councilman Lenhardt noted the Town has nothing but benefits to gain from this membership. He said his agency that he works for in the State is a member, as well as, many other agencies and there is a lot of information out there that is brought to the members that would benefit our Town. Supervisor Fuller said Mr. Cirillo had done a lot of homework on this and this was the way to go. She noted he had applied for a grant last year and found this is a better way to probably have more access to the grant funds. She said he will also receive information for free.

The next item was a request from Bruce Secor, Commissioner of Public Works, for approval of Proposed new water rates and request to modify 2002 Budget.

Mr. Secor explained that the Board had the Memorandum, however, he wished to have some of it entered into the record. He said the severe drought of 2001 continues to have negative effects on the financial status of the Water District. He said the drought brought the level of the Vly Creek Reservoir down to the lowest level ever recorded. He said it forced the Town to make decisions that have significantly increased expenditures in the Water District. He said in addition to forces of nature, regulatory mandates from both Federal and State agencies are forcing the Water District to incur large expenses to meet new requirements. He said these costs will involve both new expenses for added standard laboratory testing, enhanced recoding and also capital expenses to completely upgrade the New Salem Water Purification plant to meet revised treatment parameters.

Mr. Secor said basically there have been some additional costs also in order to start pumping directly from the river to supply the industrial area. He said as part of the permit restrictions we received in the May 7th permit from DEC, we were required to man the Clapper Road plant 7 days a week and do a tremendous amount of additional testing to document that the water plant could treat the water effectively for use in the industrial area. We have documented that but the costs have mounted, Mr. Secor noted.

Mr. Secor said the combination of extraordinary expenses due to the drought emergency and regulatory mandates have depleted the Water District budget. As pointed out in the Comptroller's memo to the Town Board at the August 14th meeting, it is now projected that the Water District expenditures for 2002 will exceed revenues. It's necessary that the Water District fund be brought back into balance.

Mr. Secor said the proposed new rates will produce sufficient revenue to cover the expenses of the Water District and provide funds to begin to repay the loan from the General Town. He said the attached computer spread sheet shows projected expenses and revenues for 2002 through 2010. He said the spread sheet provides a financial framework to allow the Water District to meet the financial

challenges of getting the Water Fund back into balance while at the same time working to restore an adequate fund balance to cover cash flows for existing debt service payments. He said the Water District must also plan for system improvements, capital expenses for modernizing the New Salem Water Purification plant, expenses to meet regulatory mandates, replacement of old transmission mains and major maintenance items. It is also advisable to allow contributions to restore the Water Fund Capital Reserve, according to Mr. Secor, to allow the Water District to avoid the costs of borrowing for special projects that could be paid for within the Fund. He said the attached spreadsheet incorporates allocations for these items. He said basically what they did, noting he had prepared one of the spreadsheets back in 1994 when the last major project was done, took what they know now, based on the best information available and tried to project the cost of the Water District. He said they know what the existing debt service is and they showed a 3 year repayment plan to the Town for the loan that they have from the General Fund in order to help out the Water District and also a program over the next 6 years to bring the fund back up to a balance where the Comptroller's office is saying we should have the balance. He said it would be about 20 percent of the fund in order to handle cash flow needs. He said the projection are based on controlling costs on the operation and maintenance ends as best they can but still allowing for money for the improvements that we know are going to have to be done because of regulatory changes.

Mr. Secor said at the last meeting, they had an interim proposed rate change until the spreadsheet was done. The Board asked for a longer-term plan and that is what this was intended to be. He said what is being projected now is if a water rate of \$2.00 per thousand, \$4.00 a thousand for the larger residential user and \$2.00 for the industrial users that we could begin to restore the fund and that rate would then go to \$2.34 in 2004 and \$2.67 in 2005 and then the rate would level off.

Mr. Secor said one of the other things the Board asked was how we compare to other communities. For example, Mr. Secor noted the following:

Purchasing water from the City of Albany	\$2.00/thousand
Above the contracted price	\$2.92/thousand
City of Cohoes	\$3.38/thousand
City of Troy	\$2.92/thousand
City of Rensselaer	\$3.70/thousand
East Greenbush	\$2.36/thousand
Stillwater	\$3.13/thousand
Mechanicville	\$4+ /thousand
Clifton Park (newest of the authorities)	\$3.24/thousand
With a \$6.48 charge for large users and top rate is \$12.96/thousand	
For those who use a lot of water in the summer.	

Mr. Secor said there is more than one angle of things. Question as raised about the Towns of Guilderland and Colonie. Mr. Secor said Guilderland is \$1.25 and \$1.70 for the large users. He said Colonie is not on the list. He said they are assembling a sheet. He said they participated in a state-wide study which was done by Black and Veech and of the 40 some communities that responded, the Town of Bethlehem was the third from the lowest as far as the water prices for residential customers using up to 7,500 gallons. He said we were fourth from the lowest for those customers using 15,000 gallons and for industrial users, we were 15th from the lowest out of 45 or 44 that responded. He said on a state-wide basis, again this isn't every community in the State, but these are the ones that responded. He further noted our rates have been historically low.

Mr. Secor said what the Water District has done since the 1970s is try to keep the water rate as low as possible because they are not-for-profit. He said they do not turn a profit and they do not subsidize the General Fund, nor should the General Fund subsidize the Water District. He said what has happened is that there has been a double punch by nature. He said there was a drought in 1999 which started the problems, and a severe drought in 2001 which really put the Water

District in the hole. He said they are now in the process of digging their way out and said on top of that the regulatory mandates that are coming along are going to cause some additional expense to meet the new standards. He said the reality of the situation is that we need to charge a fair price for what it costs us to produce the water and what he is trying to provide to the Board is a step rate which would allow the low use residential users to still stay with a very reasonable bill but for the people who want to use more water, pay the cost and certainly that charge has to be more than what they are paying the City of Albany or outside users. He said that is why it goes \$2-\$4 and then the industrial rate would be taking a jump from \$1.60 to \$2. He said again, this is reflective of the costs to produce the water.

Mr. Secor said he included in the Memo kind of an average calculation for someone using 3,000 cubic feet which is about 22,000 gallons of water in a 4 month billing period. Under the current billing structure, they would get a bill of about \$46.20 which is about \$11.55 cents per month of service. With the new rates, Mr. Secor explained, the bill would increase to \$78. or about \$19.50 per month. He said if they go to the 4 time a year billing instead of the 3 time a year billing that we have, the customer would see under the new program a bill of \$58 very 3 months. So, he said they are trying to spread the payments out.

Mr. Secor said for the senior citizens and to protect the minimum users, they had proposed a minimum rate of \$12 for a 3 month period. He said that would be 4 bills per year of \$12 which is \$48 a year which is less than \$1 a week for all the water in a minimum billing. He said the minimum bills compare very well with the other minimum bills in the areas around the Town. He said a lot of them are a lot higher than ours. He said there is an increase. He said the minimum user right now is paying \$13 times 3 bills a year which is \$39 a year and the proposal is a \$12 bill but 4 billing periods a year for a total of \$48. He said they are trying to keep it in line with the costs of doing business.

Question was raised as to what the increase would be. Mr. Secor said it would be from \$39 to \$48 spread out over 4 payments for the minimum users. He said out of 10,000 customers, there is about 500 to 800 customers that fall in that minimum range. He said it is less than 10 percent. He said it is not a huge revenue but they are trying to protect the people who do conserve and use a minimum amount of water. Question was raised by Supervisor Fuller in regard to keeping the minimum users at the rate they are paying at this time and not increase them. Mr. Secor said this could be done if there are 4 bills a year and keep them at a \$10 minimum billing. He said that would make it \$40 a year making it similar to the \$39 they are paying now. He said that would give a minimum bill of 667 cubic feet or about 5,000 gallons per billing period. Again, Mr. Secor noted that is not a huge revenue generator. He said it could go either way and to put that in perspective, the minimum bill of \$11.20 was not changed for 11 years. He said in the 12th year it went from \$11.20 to \$13. He said he thinks the Water District has done an excellent job of trying to protect the low-end user but as the costs are spread out and the reality of doing business under the new regulatory forms that they are working in, to ask someone to pay less than \$1 a week for all the water they need for a billing period, he does not think, is an abnormal expense.

Question was raised with regard to the reduction of the number of gallons per month and asked if this would take some of the 500-600 users out of the category and bump them into the next rate. Mr. Secor said no, the criteria is set – it used to be between 1 cubic foot and 1600 cubic feet was at a lower rate. He said that was backed off to 1000 cubic feet which was the last proposal and now it is at 800 cubic feet. He said if you use up to 800, through the computer they can look at the statistics on the billing cycles and say how many users would fall into this category if they make it cut off at 1000 or 800. He said it runs at about 8 or 10 percent. He said they are not punishing people for using less water, they are trying to come to a happy medium where the minimum bill reflects kind of the minimum usage.

Request was made to leave the minimum user amounts at the same rate. Mention was made that many senior citizens in Town are living on fixed income and they are now about to see school tax bills come and they are going to be looking at health costs but that will be going up as well. There are retirees and they are getting hit or will be getting hit eventually with this big increase in Medicaid. Mention was made that it is all these costs that are coming up and if the Town can manage to save something and the water issue for seniors is not a big revenue issue, then the suggestion is to leave the minimum user amount the same. Mr. Secor said the only thing that would change is that on the proposed schedule sheet that where it says 1-800 cubic feet at a \$1.50, it will be changed to read 1-667 cubic feet which would generate a \$10 minimum bill.

Further discussion ensued regarding keeping the minimum bill at the present rate. Mr. Secor said it is more difficult to explain the bill to a customer because of the steps or schedules. He further noted the rates that would be used.

Question was asked as to how many customers are in the 80,001 and over group. Mr. Secor said it is the large users, noting maybe a dozen or two dozen.

Question was raised about the in district and out of district users. Mr. Secor said the industry is all in district. He said the proposed new rates are for the in district and then they double for out of district. He said everybody pays all the steps but industry goes through the first 2 steps in the first day of business. He said they basically buy all of their water at the third rate. He explained that if you were using a million gallons a day, you go through the 800 cubic feet in about an hour. He said you go through the 80,000 cubic feet in a couple of days. He said most of the water is bought in a billing period at the larger rates.

Mr. Alessi explained that the Water District is not co-terminus with Town boundaries. Mr. Secor said it is a special district. Mr. Alessi said you have the Water District ending in the Town of Bethlehem but there are still areas outside the Water District that are in the Town of Bethlehem. Mr. Secor said the majority of users are in the district. He said there are a few areas that have not yet been brought into the District where the reports are pending or there was some problem in getting them put in which they brought in and extended. He said they cannot do it right now because there is a moratorium in effect with DEC. He said the majority of the out of district users started off in the Town of New Scotland and the reason they were brought in at double the rate is that they do not pay taxes. If you are out of the district, you cannot be taxed by the district, according to Mr. Secor.

Question was raised as to whether there were people that are in the out of district category that are paying taxes to the Town of Bethlehem. Mr. Secor said not in the Water District. He said if you are not in the Water District, you might be paying Town highway tax or some other tax but if you are not in the Water District, you are not taxed by the Water District and that is why you pay double the water rate. Mr. Secor said the few users along Creble Road pay double the water rate but they pay no Water District tax. He said they got picked up because the pipe got extended to get over to industry. He said the pipe itself was no expense to the homeowners, they got fire protection, but if they wanted to hook-up. The doubling of the water rate was set by the water supply permit and that was the justification – since they could not be taxed.

Question was asked of the Comptroller as to whether the increase would create a 1.7 million dollars in the fund balance. Mr. Secor noted it was on the spread sheet. The question was asked as to when the fund balance would reach the 1.7 million dollars. Mr. Secor said it is about 4 years out. Question was asked as to whether that would be the 15 or 20 percent level. Comptroller noted this will get the fund within the reasonable range of around 20 percent. She noted this is just a model. This is different than other models because it keeps in mind the fact that the revenues can fluctuate based on consumption which is driven by weather conditions. The other costs are not just the day-to-day operating costs but also the capital needs looking at the reserve needs. This allows for other contingencies so

that there is some room and remain to the fund balance level and maintain the integrity of the fund.

Mr. Secor noted that on the spread sheet there is a negative balance and shows about 4 years out, the fund will be at about 1.3 million and then goes up to 1.7 million and then levels off. He said once the threshold is reached, that is when the rates will level off. Question was asked if the vote on the rate increases is for the outer years as well. Mr. Secor said it is not, just to set the \$2., \$4, \$2 and the minimum will be taken care of so that the senior citizens bill stay he same. He said this is just to put the community on notice that this new rate is in effect so that the bills that go out in January will reflect this rate. Question was also asked as to whether there will be a request for another raise as part of the next fiscal year. Mr. Secor said there will not be and includes the budgeted value and this will carry through the year and look at the numbers when the budget is looked at one year from now. He said then the proposed rates will be brought to the Board which will be these rates or slightly less than these rates. He said the rate proposed now will stay through January 2003 until budget season a year away. Mr. Secor noted it takes 3 years to pay off the general fund under this plan. The Comptroller said her request to Mr. Secor for the Board is that they work to whittle that down.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve a new rate of 1 to 670 cubic feet at the rate of \$1.50 per 100 cubic feet (\$2.00 per 1,000 gallons); 671 to 80,000 cubic feet increase to \$3.00 per 100 cubic feet (\$4.00 per 1,000 gallons); and 80,001 and over cubic feet increase to \$1.50 per 100 cubic feet (\$2 per 1,000 gallons).

Councilman Marcelle said he understands this is dire circumstances but noted this is going to have a real impact. He said they talk about what a wonderful great deal water is but Guilderland under \$1.70 and Bethlehem at \$4 – a relative community, maybe it is not such a great deal. He said what is being talked about to real people now is the annual water bill on the order of about \$230-250 a year which is a significant amount where people actually start affecting other decisions that they make in economics in their household and he said he sees some scary projections all the way up to \$5.50 proposed within the next 5 years. He said he does not know all the information about this but these are real expenses to real people and while he is going to vote for it because basically as the numbers are looked at that the Comptroller gives the Board, they have no choice. He said knowing that financially there is no choice, he will support it. He said he wishes to encourage everyone to look at the expense side of this equation as well.

Councilman Davis encouraged some conservation as well and she thinks that is critical. Mr. Secor said one thing that the Board should acknowledge is that unlike some other taxes or things that you can do at home, you have control over the size of your water bill. Mrs. Davis said conservation is a major way to do that.

Councilman Plummer said no one likes to vote to increase anything and he agrees with what Councilman Marcelle said. He said he would like to as part of the budget process coming up, see what efficiencies can be found within the department. He said it is a general statement but one that is definitely needed. He said he thinks there has been a long history of some problems and he thinks it is time to collectively use all the sources they can to try to find some efficiencies and try to find some ways to try to reduce some costs if possible. He said possibly look at maybe a longer, more permanent contract with the City of Albany and other options. He said he thinks it needs more focus and more attention and he thinks there are a lot of Town people who can help do that. He said that was a general statement and said he will support it also.

Supervisor Fuller said she would support it as well. She said she thinks the contract with Albany is a great idea and she needs to get back into bargaining with the Mayor and see if we can get a lower rate to help us with the long term contract.

The motion was passed by the following vote:

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

- - -

Supervisor Fuller said the second step in the Memorandum is to request the modification of the Water District budget. There are 3 items.

The motion was made by Councilman Davis and seconded by Mr. Lenhardt to approve the following modifications to the Water District budget:

1. Water District revenues for water sales be increased by \$400,000;
2. Item #220-8520-527 be increased by \$850,000 to pay for water purchased from outside sources;
3. Pay for costs of constructing and installing the river intake, overtime at the Clapper Road plant and additional testing costs for the permit conditions – increase the budget items at the Clapper Road water purification plant as follows: budget items #220-8535-573 increased by \$50,000 for personnel services, \$50,000 for equipment and \$200,000 contractual expenses to cover added electrical and testing costs.

The motion was passed by the following vote:

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

- - -

Councilman Lenhardt asked about the notice of water restrictions being at the bottom of the water bill and not on a separate sheet of paper in the envelope and asked if that was true. Mr. Secor said it is now, noting originally there was a special mailing to put the restrictions out there. Supervisor Fuller noted it is on the web page as well. Councilman Lenhardt said he was just passing this along because the recommendation was that a separate color sheet in with the water bill outlining the restrictions is more noticeable. Mr. Secor said they did that in the first mailing.

The next item was to approve the appointment of Democratic Election Inspectors as recommended by Democratic Chairman.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the appointment of Democratic Election Inspectors as recommended by Democratic Chairman, Matthew Clyne.

Councilman Davis asked about the appointment of the Poll Clerks, noting that the Poll Clerks were not included but the resolution noted them in it.. Mr. Plummer said it does not include the Clerks, that the chairman is still working on that list and they will be coming as soon as they are completed.

The motion was withdrawn by Councilman Plummer and seconded by Mr. Lenhardt and passed by the following vote:

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

- - -

The motion was made by Mr. Plummer to approve the appointment of Election Inspectors as recommended by Matthew Clyne, Democratic Chairman. The motion was seconded by Mrs. Davis and passed by the following vote:

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

Supervisor Fuller asked for a motion to cancel the Town Board meeting of September 11, 2002 to allow the community and Members of the Board have the opportunity to be with their families or whatever service they wish to attend that evening. She said the next meeting would be September 25, 2002.

The motion was made by Mr. Marcelle and seconded by Mr. Plummer to cancel the Town Board meeting of September 11, 2002 in recognition of the events of September 11, 2001. The motion was passed by the following vote:

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

Supervisor Fuller asked if anyone wished to address the Board. Mrs. Marie Capone, resident, mentioned that there are more trucks on Delaware Avenue and she could care less.

- - -

MR. KELLEHER: I just have a question Bruce Secor. I've been looking at the permit... the emergency permit that was issued. Are these... does your budget include putting in a Gunder boom, the shad screen?

MR. SECOR: We're still working with the Gunder boom people and the consultant to try to design that but there money allocated for that.

MR. KELLEHER: And, if we get a bad flood it could wipe it out.

MR. SECOR: Again, we're working on the design of that to see whether or not we can install something that will withstand that.

MR. KELLEHER: And, how long does the emergency permit carry for?

MR. SECOR: I think it was 18 months.

MR. KELLEHER: Eighteen months... that's what I thought. I hate to be a carrier of bad news but I think Earth Tech is in very bad shape. And, I think we're going to have to start thinking about increasing this emergency permit. I mean, next year's budget, you'll know by then. I'm sure. Okay, that's my only question.

Supervisor Fuller asked if anyone else wished to address the Board. There were none.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to adjourn the regular Town Board meeting at 10:27 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.

Town Clerk

