

TOWN BOARD
DECEMBER 10, 2003

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

PRESENT: Sheila Fuller, Supervisor
George Lenhardt, Councilman
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 explained the auditorium looked different due to a previous meeting and the fact that the senior citizens meet the following day and need the set-up of tables and chairs. She invited everyone to join in the pledge of allegiance.

Supervisor Fuller said before the work of the Town Board, asked everyone to give a round of applause for the service Doris Davis has given this community. She presented Mrs. Davis with a proclamation for a meritorious service and thanked her. Mrs. Davis said one of the really good parts of that was working with the Town Board.

Deputy Supervisor Lenhardt asked Supervisor Fuller to remain and presented a proclamation for her decade of meritorious service. Mr. Lenhardt noted this was a real balancing act to keep both Mrs. Fuller and Mrs. Davis unaware of what was happening to the other. He said this is the type of resolution that is more appropriate for this Board level. Mrs. Davis noted this was difficult for Mr. Lewis who works in the Supervisor's office to accomplish and complete the proclamation. Supervisor Fuller thanked everyone.

SUPERVISOR FULLER: She asked the Town Clerk to read the call of the hearing.

TOWN CLERK NEWKIRK:
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held by the Town Board of the Town of Bethlehem on the 10th day of December, 2003 at 7:30 p.m. to consider a proposed Local Law amending the Code of the Town of Bethlehem as follows:

AMEND VEHICLE AND TRAFFIC CHAPTER 119, ARTICLE II, Section 119-29, Schedule III, One-way Streets as follows:

ADD:

BENDER LANE - Eastbound for a distance of 100 +/- feet from an area 450 +/- feet west of Route 9W to an area 550 feet west of Route 9W.

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

All interested persons 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 are in need of assistance in order to participate should contact Nan Lanahan at 439-4131. Advanced notice is requested.

BY ORDER OF THE TOWN BOARD
TOWN OF BETHLEHEM
KATHLEEN A. NEWKIRK, CMC,RMC
TOWN CLERK

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State of New York)
County of Albany)

BRENDA WIERZBICKI of the Town of Bethlehem, being duly sworn, says that she is the RECEPTIONIST for THE SPOTLIGHT, a weekly newspaper published in the 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 26th day of November 2003.

/s/ Brenda Wierzbicki

Sworn to before me this 26th day of November, 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 Nov. 26, 2003, a Notice of Public Hearing, a copy of which is hereto attached, on the sign board of the Town maintained pursuant to subdivision six of Section thirty of the Town Law.

/s/ Kathleen A. Newkirk
Town Clerk

Sworn to before me this
10th day of Dec. 2003.

/s/ Julie S. McNeil

Notary Public

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The motion was made by Mr. Plummer 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.

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Noes: None.

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SUPERVISOR FULLER: Are there people here from Bender Lane? Okay. I am going to ask, Bob Alessi, our Town Attorney, to let you know the purpose of this public hearing tonight.

TOWN ATTORNEY ALESSI: The purpose of the public hearing tonight is to implement a decision that was reviewed and made as part of the process related to the NIGRO development. The environmental impact statement reviewed many impacts, including the impacts that are pertinent to this particular local law and one of the conditions for development for this one way that you are going to have a public hearing on. So, this is really an implementation of what has already occurred, what has already been reviewed and the public hearing tonight is for you to make comment, etc., with regard to it but I would encourage those of you who may not have had the opportunity to do so to understand that this is really an implementation that is required by law. It is not a revisitation of the issues that have already been settled with regard to the environmental impact statement and the development. The real purpose of the hearing, although you're... you know, you have your rights to make the comments as you see fit is really to just determine that this does, in fact, implement that which was approved before.

SUPERVISOR FULLER: Okay. Is there anyone wishing to speak in favor, speak in opposition, just offer your comments? Okay.

MR. JASINSKI: Good evening. I hope you didn't I was going to pass this up. I, personally, am not in favor of this but I understand that it is going to be implemented. I would ask a few questions of you. Is the markings on the road and is this the way it is going to be as it present is or are you coming further down into where the pumping station is with markings?

SUPERVISOR FULLER: With the markings on the road?

MR. JASINSKI: Is there anything else that's going down? Ah, the man that knows it all.

SUPERVISOR FULLER: He knows the roads.

MR. SAGENDORPH: The markings on the road as they are right now will not be the same once the one-way is implemented. There is additional curbing, mountable curbing, that has to be put in next spring. This is so that there is emergency access to Bender Lane from 9W for emergency vehicles, for Town vehicles to maintain the highways.

MR. JASINSKI: Don't go yet because I foresee traffic still going over Bender Lane and I understand what you are trying to do. You are trying to stop the 2 way traffic on such a small, narrow road.

SUPERVISOR FULLER: I think Doug Hasbrouck is here, as Chairman of our Planning Board and certainly this was discussed at great length before the Planning Board and

before the Town Board. This was a request really that started from, I believe, some residents that wanted it.

MR. JASINSKI: Everybody but me.

SUPERVISOR FULLER: Everybody but you?

MR. JASINSKI: That's right, at the time. My concern is now that it is going into effect and everything, we're still going to have people going east on Bender Lane. Now, I hope Gregg is looking forward... I know they have been surveying the road quite extensively, I hope he is looking forward to doing some improvements in the road because you're still going to get a large influx of traffic hearing from Delmar over or from the bypass over to the shopping center. So, that's my main thing.

And, while I'm up here to the mike, if I may be so bold, I mean I am talking and I do feel a little uncomfortable over the years putting my back to my peers but facing forward to you people, I've always wondered if we couldn't go at an angle some way. I mean, just because the room is square there is no reason why seats have to be perpendicular or parallel to walls.

SUPERVISOR FULLER: Supervisor elect Theresa Eagan is in the audience. She'll be pleased to take your request under consideration.

MR. JASINSKI: That's why I made the request at this time. Thank you very much. It's been a pleasure always coming forward here.

SUPERVISOR FULLER: Thank you. Okay.

MR. SAGENDORPH: Bender Lane is on the schedule for 2004 to begin reconstruction. We have done 2 phases already. It was supposed to be this year also but with the horrendous winter we had last year and this one hasn't started out much better, we had 3 roads that deteriorated rapidly and we had to shift priorities in 2003. So, Bender Lane is on the 2004 schedule.

SUPERVISOR FULLER: Thank you, Gregg.

MR. FITZPATRICK: Bob and I always take turns speaking to counteract each other's opinion. I'm in favor of it. Actually the original proposal that we presented, the residents of which Bob was against, was for a dead end which we didn't get but we're worried about and see what happens with the traffic. I think that that is a significant issue we can probably readdress that with the next administration per se.

The other question I have is originally I think when I heard the Planning Board speak, there was supposed to be a stop sign on Bender Lane at the spot where the exit is from the mall, from the Walmart. Is that... I know there is already a stop sign on the Walmart side but at one point they discussed a stop sign on the Bender Lane side, on Bender Lane

so that the traffic would have to stop on Bender Lane and then proceed up to the light itself. Is that still part of this plan?

SUPERVISOR FULLER: Do you know, Jeff?

MR. FITZPATRICK: Anyone?

COUNCILMAN LENHARDT: There is black dots on this map.

SUPERVISOR FULLER: It's back a couple years ago.

MR. HASBROUCK: Yes, we're going back here almost 2 years to the time we approved this project but I don't remember the exact signage at that driveway entrance. But, the purpose, I think you understand this, as he said, they originally asked us for a dead end on the 9W end to prevent traffic coming in or out from that street. That just wasn't practical from a safety point of view. There are too many homes down there, whatever. The solution we came up with was basically to put the curved island in which blocks westbound traffic from 9W so in effect, Bender Lane when you go north on 9W or come south, either way and turn into Bender Lane from there, what you are in basically is a driveway that goes only into the project site. All right, that was the purpose of setting it up the way we did.

The eastbound lane is open all the way through so traffic can come through from 32 to 9W but there will not be any through traffic from 9W to 32. Also, vehicles coming out of the project from that entrance are forced to turn left by that same curbing. So, they can't turn right and go Bender Lane to Route 32. I think what's going to happen ultimately is you're probably going to have less traffic, certainly westbound, you're going to have less traffic than you do now. Eastbound you may have a little more just because of the project. But also, traffic coming from 32, if they come down that way to Bender, they can't turn left into the project there either. They have to come all the way out to 9W, the traffic light, and then go north to the main entrance. And, we did that intentionally because it probably more convenient for people once they realize that to go all the way around and down 9W in the first place which again will reduce traffic on Bender.

MR. FITZPATRICK: But, there was a point. One point that I heard but there was also going to be a stop sign for the Bender Lane traffic. Is that no longer part of this?

MR. HASBROUCK: Again, I don't remember the exact signage, I would have to go back and look at the drawings and you are welcome to come and see them as they are approved.

SUPERVISOR FULLER: Gregg, do you remember the signage question?

MR. HASBROUCK: I don't remember that. That goes back too far. You may be right but I am not sure.

MR. FITZPATRICK: But, I'm just wondering what's on the plan right now.

MR. SAGENDORPH: Some of the maps in the proposal do show a stop sign on Bender Lane along with one exiting the Town Bethlehem... Bethlehem Town Center. At this point, as you know, Bender Lane is a hill heading up towards 9W. We hesitate to put a stop sign at the brink of the hill simply because as traffic stops, it is hard for them to get going again in the winter months. What we were thinking was institute the one way section, see what happens what happens to the traffic once Bethlehem Town Center opens and then revisit the issue with a stop sign which would be another Town Board action, another public hearing. And, put one there if it were necessary.

SUPERVISOR FULLER: Okay. Is there anyone else who would like to speak? Okay. May I have a motion to close the public hearing.

The motion was made by Mr. Lenhardt 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.

Town Clerk.

Supervisor Fuller convened the regular Town Board meeting following the close of the public hearing. She asked if the Board wished to adopt the proposed local law.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the adoption of Local Law No. 7 of the year 2003 amending the Code of the Town of Bethlehem, Chapter 119, Article II, Section 119-29, Schedule III, One Way Streets making Bender Lane one way eastbound for a distance of 100 +/- feet from an area 450 +/- feet west of Route 9W to an area 550 feet west of Route 9W.

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 to retire the Bethlehem Reserve Police effective December 31, 2003 with recognition and 4 remaining members retired at current rank. Supervisor Fuller recognized the Bethlehem Reserve Police and asked that they come to the front of the room. She presented Chief Don Geurtze, Assistant Chief Joathan VanDerpoel and Officer Jonathan Hough a Certificate for meritorious service. She noted a Certificate will also be given to Officer Stephen Bugler. Mrs. Fuller also noted they are being retired at

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their current rank and the Bethlehem Police Reserve has been a volunteer group for the past 33 years. She thanked them and those who have served in the past.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to accept with regret the retirement of the Bethlehem Reserve Police, effective December 31, 2003 with recognition and members retired at their current rank. 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 Lenhardt said he would like to add that this is another example of being in the volunteer service himself of how difficult it is to find people willing to give up their time and volunteer for services like this. He said unfortunately they have been unable to recruit new members and therefore, this situation has occurred. Supervisor Fuller agreed that this was very true.

The following item was a request from Nigro Companies and Bethlehem Associates, LLC for amendment to the Building Project Approval for Bethlehem Town Center, Glenmont. Mr. Sweeney, attorney and was here on behalf of NIGRO Companies. He said he thinks without displaying the maps that he can explain what they are doing. He said on the Town Center site the 2 larger parcels are labeled for purposes of this approved interior lot division plan, Parcel 1 and Parcel 4. Parcel 1 is the Walmart site and is owned by the Nigro Company Entity, Bethlehem Associates, LLC. Parcel 4 is the home improvement center site, the Lowe's site, and that is owned by Lowe's. He said as a result of changes in storm water regulations, recent changes, there is a new storm water facility – a pond – that was built in the location of the lot line between these large parcels. In order for Nigro Companies to continue maintenance of the facility, they would like to change the lot line so the pond is located on the Nigro parcel and comes off of the Lowe's parcel, according to Mr. Sweeney. He indicated on the map the location of the line and where it would be relocated. He said this was shown on the proposed map. He said it is simply a lot line relocation on the proposed plan.

Mr. Sweeney said the second request in the application is that in order to accomplish this and working with the new regulations, there were revisions to the storm water management plan that the Board approved during the course of SEQR and that has been filed and they wish the Town Board to acknowledge that it is part of the record of the project so there is a complete engineering record of the storm water management facilities on the site. He said it is a couple of big binders.

Supervisor Fuller asked if anyone had any questions. The SEQR resolution was presented for adoption.

TOWN OF BETHLEHEM
ALBANY COUNTY, NEW YORK

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

SEQRA RESOLUTION
CLASSIFICATION OF ACTION AND NEGATIVE DECLARATION
AMENDMENT NO. 5 TO BUILDING PROJECT APPROVAL NO. 33
PLANNED COMMERCIAL DISTRICT NO. 2
NIGRO COMMERCIAL DEVELOPMENT - RT. 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 – A Nigro Commercial Development - Rt. 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 amended on June 11, 2002, August 28, 2002, February 12, 2003 and March 26, 2003 (referred to herein collectively as Building Project Approval No. 33"); 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. The adjustment of the common lot line between Lot No. 1 and Lot No. 4, as shown on the Interior Lot Division Plan for the Project, to locate the stormwater facilities on the parcel being retained by Bethlehem Associates, LLC (Lot No. 1) rather than the parcel owned by Lowe's Home Centers, Inc. (Lot No. 4).
2. The approval of the revised Stormwater Pollution Prevention Plan prepared by Sear-Brown and accepted by NYSDEC on November 20, 2003.

WHEREAS, the proposed amendments to Building Project Approval No. 33 are not of sufficient magnitude to alter the general concept of the project, and do not significantly 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 considered 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 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 of 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 considered the information provided in the EAF;

NOW, THEREFORE, BE IT RESOLVED,

that the Town Board hereby determines that:

1. the proposed amendments to Building Project Approval No. 33 constitute an Unlisted action which is subject to SEQRA;
 2. the proposed amendments do not involve a federal agency, the U.S. Army Corp of Engineers;
 3. 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
 4. 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, 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. 5 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 on 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 Draft Environmental Impact Statement, the Final Environmental Impact Statement, and the SEQRA Findings Statement for the Project, which are incorporated by reference herein, are on file and available for public review in, among other places, the Office of the Town Supervisor, the Office of the Town Clerk, and the Town Planning Department.
4. 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.
5. The proposed amendments to Building Project Approval No. 33 include:
 - a. The adjustment of the common lot line between Lot No. 1 and Lot No. 4, as shown on the Interior Lot Division Plan for the Project, to locate the stormwater facilities on the parcel being retained by Bethlehem Associates, LLC (Lot No. 1) rather than the parcel owned by Lowe's Home Centers, Inc. (Lot No. 4).
 - b. The approval of the revised Stormwater Pollution Prevention Plan prepared by Sear-Brown and accepted by NYSDEC on November 20, 2003.
6. The proposed amendments are not of sufficient magnitude to alter the general concept of the project and will have no material effect on the overall scale, design or layout of the project.

7. All on-site mitigation required as part of the SEQRA 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 during construction of the Project;

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 Mrs. Davis, seconded by Mr. Marcelle, and by a vote of 5 for, 0 against, and 0 absent, this RESOLUTION was adopted on December 10, 2003.

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Supervisor Fuller noted there was the amendment to the Building Project Approval resolution also.

TOWN OF BETHLEHEM
TOWN BOARD
NIGRO COMMERCIAL DEVELOPMENT - RT. 9W
BETHLEHEM TOWN CENTER
PLANNED COMMERCIAL DISTRICT NO. 2
RESOLUTION APPROVING
AMENDMENT NO. 5 TO BUILDING PROJECT APPROVAL

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, the Bethlehem Town Board granted Amendment No. 1 to Building Project Approval No. 33 on June 11, 2002, Amendment No. 2 on August 28, 2002, Amendment No. 3 on February 12, 2003, and Amendment No. 4 on March 26, 2003; and

WHEREAS, references in this Resolution to Building Project Approval No. 33 shall include Amendment No. 1, Amendment No. 2, Amendment No. 3 and Amendment No. 4; and

WHEREAS, the Bethlehem Town Board has received an application from the Project Applicant, Nigro Companies to further amend the Building Project Approval No. 33 to provide for the following:

1. The adjustment of the common lot line between Lot No. 1 and Lot No. 4, as shown on the Interior Lot Division Plan for the Project, to locate the stormwater facilities on the parcel being retained by Bethlehem Associates, LLC (Lot No. 1) rather than the parcel owned by Lowe's Home Centers, Inc. (Lot No. 4).

2. The approval of the revised Stormwater Pollution Prevention Plan prepared by Sear Brown and accepted by NYSDEC on November 20, 2003.

NOW, THEREFORE, BE IT RESOLVED, the changes proposed by the Applicant are not of sufficient magnitude to alter the general concept of the project, 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 the Planning Board or the Town 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 No. 33 by the Town Board dated January 23, 2002; and

BE IT FURTHER RESOLVED, that Amendment No. 5 to the Building Project Approval is approved in accordance with the terms set forth in the attached "Amendment No. 5 to Building Project Approval No. 33" for the Nigro Commercial Development - Rt. 9W Bethlehem Town Center, Planned Commercial District No. 2, dated December 10, 2003. On a motion by Mr. Marcelle, seconded by Mrs. Davis, a vote of 5 for, 0 against, 0 abstention and 0 absent, this RESOLUTION was adopted on December 10, 2003.

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Supervisor Fuller thanked Mr. Sweeney for being at the meeting. Mr. Sweeney thanked the Board. Councilman Davis wished Mr. Sweeney good luck.

Supervisor Fuller asked when Walmart and Lowe's were going to open. She said Applebee's is having their ribbon cutting on December 15, 2003. Mr. Sweeney said Applebee's is on Monday, Wendy's is opening any day, Lowe's is scheduled to open around the 9th of January and Walmart the 21st of January. The Supervisor thanked Mr. Sweeney.

The next item was to consider adoption of a resolution to authorize payment to Earth Tech. Supervisor Fuller explained this is part of the litigation settlement agreement. She said Earth Tech submitted an invoice for reimbursement of cost as allowed by the settlement agreement and a resolution has been prepared for consideration by the Board to authorize payment of the invoice from escrow and related paperwork. She explained the resolution authorizes her to sign the release which has been included with the settlement agreement previously approved by the Board. She noted it also authorizes the Comptroller and the Commissioner of Public Works to review, process and disburse funds from the expense and operations fund – an escrow fund in accordance with the settlement dated May 17, 2001 but that no funds will be disbursed before December 9, 2003 and the attorneys of record are authorized to execute the notice of voluntary discontinuance which may be executed in separate counter parts by the respective attorneys of record.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the adoption and authorize payment to Earth Tech under the litigation/settlement agreement. 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 to consider adoption of a Resolution regarding an Abandoned Cemetery. Mr. Michael Smith, Esq., noted in 1992 as a result of construction human remains were discovered in the area of Elsmere Avenue. There was a fairly in-depth investigation that was spearheaded by the County Coroner and Mr. Smith noted there were a number of Town officials, including the Police Department, were involved in the investigation. He said there were certain pathological studies made and results obtained from people in Florida. He said some time the beginning of this spring, Albany County wrote and demanded the Town take certain action under Town Law Section 296 to address the interment of the remains. He said the reason was that the remains have been allowed to be in the possession of the Albany Medical Center for a number of years.

Mr. Smith explained further that at the time of the Board's initial consideration of the draft resolution he proposed, Mr. Marcelle directly pointed out that the evidence concerning the identity of the remains was inconsistent. He noted there was a Spotlight article, the Town Historian had expressed an opinion concerning a number of anecdotal information that when he applied to the facts he came up with a different conclusion. He said the matter was tabled at that time to consider the possibility that (a) the remains were, in fact, run away slaves and perhaps an organization might wish to take possession of the remains. He said he was directed to reconsider the issue and noted he held off to see whether or not because of the publicity that was caused by the resolution or consideration of it that people might come forward with some piece of information. He said there were a couple further contacts by the Albany County Coroner which understandably wants action taken. He said where we are can simply be stated this way – the identity of the remains is inconclusive. He said there is no question about that and a good case can be made that the pathologist report is incorrect. He said there is anecdotal information which is inconsistent but not conclusive.

Mr. Smith said even so, he believes, based upon his reading of the Town Law that the duty is unfortunately clear. He said we have to act based upon the County's demand merely because the remains were discovered in our Town. Under the statute, he does not believe we have discretion. He said it would create a potential problem if someone had to come forward and said, gee, we believe we want to claim the remains because at that point, he would have been forced to say to that person, you need to demand proof of identity and that will never be received. Mr. Smith further said, the remains demand they be treated with respect. He said the proposed resolution basically says that the statute requires the Town to take action and there is a need to make a petition to the Town Law. He said the Board needs to take action because the County has demanded it, the Town does not have discretion and there is no reason to wait any longer. He said the identity will never be determined and even if there are conflicting pieces of information, the Town still needs to take jurisdiction. He said the resolution as proposed, he believes, remains appropriate. He said unfortunately we will never know the answer but fortunately we do not have to determine the answer in order to take action. He said it unfortunately is the only thing to do and the right thing to do. He said they propose the Town take action, do the appropriate legal notices and comply with the interment required in the manner suggested.

Supervisor Fuller thanked Mr. Smith for all his work on this item. She said this was before the Town Board back in July and it is now December. She said she thinks this should be moved on because the Coroner sent the letter back in April.

Councilman Marcelle thanked Mr. Smith and said he was very persistent with him. He said he sent a letter to the one organization that had a potential interest and there was no response. He said he knew Mr. Smith was very concerned of all the issues and commended him for a very thorough job. He said he appreciated his constant follow-up when he had questions. Mr. Smith thanked Mr. Marcelle as Supervisor Fuller did also.

The following resolution was presented for adoption:

**RESOLUTION AUTHORIZING SUPERVISOR FULLER
TO BRING PROCEEDING PURSUANT TO
TOWN LAW §296 TO ADDRESS ABANDONED CEMETERY**

WHEREAS, County of Albany (hereinafter “County”), by the Albany County Coroner, has requested the Town of Bethlehem (hereinafter “Town”) to take possession of and properly inter certain human remains found in 1992 in the area of Elsmere Avenue, Delmar, New York; and

WHEREAS, the investigation conducted by and on behalf of the County demonstrates that the area wherein the human remains were located was maintained in the past as a private cemetery which is now abandoned; and

WHEREAS, pending the County’s investigation, said remains have been maintained at the Albany Medical Center, Albany, New York; and

WHEREAS, pursuant to Town Law § 296, it is the responsibility of the Town to provide for the removal and/or re-interment of the remains of such deceased person or persons as were discovered at this location.

NOW, on motion of Town Board member Mr. Marcelle, seconded by Town Board member Mrs. Davis, it is hereby
RESOLVED, that Sheila Fuller, in her capacity as Town Supervisor, is hereby authorized to act as petitioner, as Supervisor, for purposes of that special proceeding required by § 296 of the New York Town Law in order to provide for the re-interment of the remains and is authorized to incur, and pay such expenses, including reasonable legal fees, for purpose of this special proceeding including, but not limited to, all filing fees, and costs of publication, and it is further
RESOLVED, that the Town shall retain the services of Hiscock and Barclay, LLP. (Michael J. Smith, of counsel) as its attorneys, at the hourly rate of \$135, to represent the Town’s interest for purposes of this special proceeding, and the Town shall retain Applebee Funeral Home, a licensed funeral director, and the Bethlehem Cemetery for purposes of the re-interment of these remains, and Supervisor Fuller is authorized to incur and pay their reasonable fees and costs for these interment related services in such amounts as shall be reasonable and necessary but which are estimated to be \$2,365.

The foregoing resolution was presented for adoption by Mr. Marcelle, seconded by Mrs. Davis and passed by the following vote:

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

Noes: None.

Absent: None.

The next item was a request from Commissioner of Public Works, Bruce Secor, for award of bid for Directional Drilling Services.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the award of bid for Directional Drilling Services to Suburban Pipeline, Syracuse, New York and Lash Contracting, Latham, New York 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.

The following item was a request from Assessor, M. David Leafer, for approval of reappointment of Board of Assessment Review Member. Supervisor Fuller noted Mr. Richard Haverly should have been reappointed back in September for October 1, 2003. She said he is willing to be reappointed to a new 5 year term. She also mentioned he has been Chairman of the Board of Review and has done an outstanding job. He will continue to be a great asset working with Herb Steele and Ken Ford to our property owners.

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

RESOLVED, that in accordance with Real Property Law, Chapter 1524, Richard Haverly, 28 Poplar Drive, Delmar, NY 12054 be and he hereby is reappointed Member of the Town of Bethlehem Board of Assessment Review effective October 1, 2003 and expiring September 30, 2008.

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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Supervisor Fuller asked Assessor Leafer what the pay is for this position. Mr. Leafer said it is \$150 per day. Supervisor Fuller thanked Mr. Leafer and asked without the update how many days this was. Mr. Leafer said it is running down to 4 days or so and may be double that with the update, he does not know. He said they budget for something like 10 days. Supervisor Fuller thanked Mr. Leafer.

The next item was a request from Assessor, David Leafer, for consideration of amendment to Code of the Town of Bethlehem relating to Senior Citizens With Limited Income Tax Exemption. Could advertise December 31, 2003 and hold public hearing January 14, 2004 at 7:30 p.m.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to set a public hearing for January 14, 2004 at 7:30 p.m. pertaining to a proposed Local Law amending the Code of the Town of Bethlehem relating to Senior Citizens With Limited Income Tax Exemption. The motion was passed by the following vote:

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

Noes: None.

The following item was a request from M. David Leafer, Assessor, for consideration of amendment to Code of the Town of Bethlehem relating to Property Owners with Disabilities and Limited Income Tax Exemption Law. Could advertise December 31, 2003 and hold public hearing January 14, 2004 at 7:35 p.m.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to set a public hearing for January 14, 2004 at 7:35 p.m. to consider a proposed Local Law amending to the Code of the Town of Bethlehem relating to Property Owners with Disabilities and Limited Income Tax Exemption Law. 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 to authorize the Supervisor to sign the 2004 Animal Service Contract with Mohawk & Hudson River Humane Society, Menands, NY.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to authorize the Supervisor to sign the Mohawk & Hudson River Humane Society contract for the year 2004. 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 Administrator, Nan Lanahan, Parks and Recreation Department, for approval of appointment of seasonal personnel.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the appointment of seasonal personnel as listed on the Memorandum dated December 10, 2003 at the titles and rates indicated as requested by Nan Lanahan, Administrator, Parks

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and Recreation Department. 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 Nan, Lanahan, Administrator, Parks and Recreation Department, for approval of appointment of seasonal personnel, effective January 1, 2004.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the appointment of seasonal personnel, effective January 1, 2004, at the titles and salaries listed in the Memorandum Dated December 10, 2003 and 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.

The next item was a request from Michael Cirillo, Engineering Services Administrator, for approval of acceptance of highway and easement deeds for the Waldenmaier Planned Residence District – Phase 1 from TRK Properties, LLC. Supervisor Fuller explained these are drainage easements and a parcel of land for a new Town street, Walden Field Drive.

The motion was made Mr. Lenhardt and seconded by Mr. Marcelle to approve the acceptance of highway and easement deeds for the Waldenmaier Planned Residence District – Phase 1 from TRK Properties, LLC, Malta, 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.

The following item was a request from Engineering Services Administrator, Michael Cirillo, for approval of preparation and submission of Local Government Records Management Improvement Fund grant regarding GIS Implementation.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the preparation and submission of a Local Government Records Management Improvement Fund grant regarding GIS implementation 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.

The next item was a request from Michael Cirillo, Engineering Services Administrator, for acceptance of deeds for the Willow Estates Subdivision. Supervisor Fuller noted there are 3 deeds including one for the extension of Willow Drive; the second provides for 3 drainage easements and the third claims a strip of land from the Commons of Bethlehem subdivision and Willow Estates in the area of Willow Drive. She said the Town is being asked to accept 507 feet of new Town highway.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the acceptance of three (3) deeds for the Willow Estates Subdivision from A. T. Zautner & Sons, Delmar, NY 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.

The next item was a request from Building Inspector, Kevin Shea, for approval of Dumping Permit for 140 Port Road, South, Town of Bethlehem. Supervisor Fuller noted there are 3 dumping permits to be approved.

Councilman Lenhardt inquired with regard to the establishment of the policy that the adjoining property owners be notified of this type of activity, asking Mr. Shea if this was done for these applications. Mr. Shea noted the adjoining neighbors did get a letter. He said the letter indicated if there were any questions they should contact him. He said he did receive some calls. Councilman Lenhardt thanked Building Inspector Shea.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the issuance of a dumping permit with stipulations indicated for Port Terminal, Ltd, 140 Port Road, Glenmont, NY as requested by Building Inspector, Kevin Shea. The motion was passed by the following vote:

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

Noes: None.

The following item was a request from Building Inspector, Kevin Shea for approval of Dumping Permit for 257 Bender Lane, Glenmont, Town of Bethlehem.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve a dumping permit for Richard and Patricia Zignosser, 275 Bender Lane, Glenmont, NY with stipulations indicated as requested by Kevin Shea, Building Inspector. 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 Kevin Shea, Building Inspector, for approval of Dumping Permit for 250 Bender Lane, Glenmont, Town of Bethlehem.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve a dumping permit for Linda Jasinski, 250 Bender Lane, Glenmont, NY with stipulations indicated as requested by Kevin Shea, Building Inspector. 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 Building Inspector, Kevin Shea, for approval of Dumping Permit for 270 Waldenmaier Road, Feura Bush. Supervisor Fuller explained this item was pulled from the agenda at the request of Mr. Gregory, noting he will apply at another time.

The next item was a request from Comptroller, Judith Kehoe, to approve 2003 budget transfers and transfers to reserves and adopt resolutions.

Resolution to Approve

The Transfers for the 2003 Budget

as Per the attached Memo Dated December 10, 2003

The motion to approve the budget transfers as listed was presented for adoption by _Mr. Plummer_, 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.

Resolution to Approve

a Supplemental Appropriation

RESOLVED, that pursuant to Town Law Section 112, the Town Board does hereby approve a supplemental appropriation for the General Fund in the amount of \$834,000 to fund the net increase in appropriations required to fund the transfers listed on the memo prepared by the Town Comptroller, dated December 10, 2003.

The foregoing resolution was presented for adoption by _Mr. Plummer , 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.

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Resolution to Approve

The Transfer of Funds into Capital Reserves

WHEREAS, the Town Board has determined that the funding of reserves for future capital projects to be a prudent action;

WHEREAS, the adopted 2003 General Fund budget as revised provides for a transfer to other funds;

WHEREAS, the following funds and projects have been identified as requiring funding:

Highway equipment purchases 250,000

Recreation projects, as per established funding plan 250,000

RESOLVED, that the Town Board authorizes the Town Comptroller to transfer up to a maximum of \$500,000 into the following reserves:

Highway Fund Capital Reserve 250,000

Recreation Reserve 250,000

In the event financial conditions do not warrant the transfer of the full \$500,000, the Comptroller is authorized to reduce the transfer as necessary.

The foregoing resolution was presented for adoption by _Mr. Plummer , 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.

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Resolution to Approve

The Transfer of Funds From the General Fund

into the Highway Fund

WHEREAS, the Town Board has determined that the transfer of funds from the General Fund to the Highway Fund to be a prudent action;

WHEREAS, the General Fund and Highway Fund share the identical town-wide tax base, and;

WHEREAS, due to additional revenues being received by the General Fund, a source of funds has been identified which may be used to help fund the operations of the Highway Fund;

RESOLVED, that the Town Board authorizes the Town Comptroller to transfer \$500,000 from the General Fund into the Highway Fund.

The foregoing resolution was presented for adoption by __Mr. Plummer, seconded by _Mrs. Davis and passed by the following vote:

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

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Noes: None.
Absent: None.

- - -

Supervisor Fuller explained this is something usually done at the end of the year for the Town of Bethlehem and if necessary, budget transfers are needed above and beyond this between now and December 31st, the Board is able to call a special meeting. She said hopefully they will not need to do this.

The next item was a request from Comptroller, Judith Kehoe, to approve interfund loans from General Fund to Water Fund in 2004, not to exceed \$750,000.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve interfund loans from the General Fund to the Water Fund in 2004 not to exceed \$750,000 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.

The following item was a request from Chief of Police, Louis Corsi, for approval of acceptance of donations to the DARE Program – Nancy Farr \$125; Anne Rosenblum & Michael Marmulstein - \$100.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the acceptance of donations to the DARE Program from Nancy Farr \$125; Anne Rosenblum and Michael Marmulstein \$100 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.

The next item was to acknowledge receipt of the 2002 Annual Report from Chief Louis Corsi, Bethlehem Police Department. Supervisor Fuller thanked Chief Corsi .

The next item was to adopt a resolution pertaining to Substitution of Attorneys. Supervisor Fuller noted the Board had the resolution before them.

The following resolution was presented for adoption by Mrs. Davis. She said, however, she does this as a Town Board Member with reservation, noting Mr. Alessi feels strongly about this and she respects him and the reasons he has given about this. She said Bob and his firm represents the Town of Bethlehem very, very well as everyone knows through the litigation on this whole issue. She said she thinks only because of that representation

did the Town have the result that was accomplished. She said she can't say how strongly she feels about this but she feels the Town would be in very, very good hands if Leboeuf Lamb and Bob as the attorney continued to represent the Town. She said his reasons are very sound ones and she has to respect that. Mr. Lenhardt said he would reluctantly second the motion.

TOWN OF BETHLEHEM, NEW YORK

TOWN BOARD RESOLUTION

WHEREAS, the Town has pending litigation ("the Lawsuit") against J. Kenneth Fraser & Associates, PE, LS, LA, P.C., also known as J. Kenneth Fraser & Associates, P.C., also known as J. Kenneth Fraser & Associates, P.C., Consulting Engineering; James K. Fraser, Jr., individually ("Fraser Defendants") and against Rust Environment and Infrastructure, Inc., now known as Earth Tech Environment & Infrastructure, Inc.; and WHEREAS, the Town retained the law firm of Leboeuf Lamb Greene & MacRae, LLP to represent the Town in the litigation; and

WHEREAS, the Town wishes to substitute the firm of Hacker & Murphy, LLP in the place of Leboeuf Lamb Greene & MacRae, LLP to represent the Town in the litigation;

NOW, THEREFORE, BE IT HEREBY RESOLVED, that:

The Town Supervisor is authorized to sign the Consent to Change Attorneys form attached as Exhibit A, substituting the Law firm of Hacker & Murphy, LLP to represent the Town in the place of Leboeuf Lamb Greene & MacRae, LLP.

Dated: December 10, 2003

At Bethlehem, New York

VOTING YES

Mrs. Fuller

Mr. Lenhardt

Mrs. Davis

Mr. Plummer

Mr. Marcelle

VOTING NO

None.

The next item was to acknowledge receipt of Final Plat Approval from RDA Associates, Inc., Russell Road, North Bethlehem, from the Planning Board for information purposes.

The next item was to approve the Town Board minutes of November 12, 2003.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the Town Board minutes of November 12, 2003 as submitted. The motion was passed by the following vote:

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

Noes: None.

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

Supervisor Fuller said her silence on Leboeuf Lamb was because she thinks it is the wrong thing for the Board to have done. She said Mr. Alessi has requested it for reasons but she thinks it is unfair because Bob Alessi has done the job that he has done for this Town to have people being very negative here at the Town Board meetings. She noted those who regularly attend know that Bob took a lot of verbal abuse over the last couple years and there were very nasty letters to the editor in the Spotlight. She said just really trying to attack Bob Alessi's integrity and there is no reason for this. She said Bob has chosen to make this change. She said it is a loss to this community.

Councilman Lenhardt noted he echoes all the sentiments that have been expressed by Mrs. Davis and Supervisor Fuller. He said it is a loss.

Councilman Marcelle said he struggled before he voted yes on this and he intended not to but out of respect for Mr. Alessi and he understands it is not pleasant to go through. He said you don't want to have to deal with that but he did out of respect for him and he does not believe there is any conflict. He said out of respect for Mr. Alessi's desires he voted. He said he does not think it is in the best interest of the Town.

Town Attorney Alessi thanked the Board.

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Supervisor Fuller asked if anyone wished to address the Board.

Supervisor Fuller made a couple of announcements. One was this was the last Town Board meeting of 2003 and there will not be another meeting in December.

Supervisor Fuller said the second announcement was that on December 26, 2003 all Town offices will be closed. She said it is an additional holiday for all employees to enjoy Christmas with their families.

Supervisor Fuller thanked everyone for attending this meeting and wished everyone Happy Holidays.

The motion was made by Mr. Marcelle and seconded by Mrs. Davis to adjourn the regular Town Board meeting at 8:20 p.m. The motion was passed by the following vote:

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

Noes: None.

Town Clerk