

TOWN BOARD
DECEMBER 13, 1995

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
Frederick C. Webster, Councilman
George Lenhardt, Councilman
Doris M. Davis, Councilman
Freeman T. Putney, Councilman
Donald DeAngelis, Esq., Acting Town Attorney
Kathleen A. Newkirk, Town Clerk

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SUPERVISOR FULLER: Good evening and welcome to a meeting of the Bethlehem Town Board. We begin this evening with 3 public hearings. After the 3 public hearings then we will go to the rezoning. I would ask the Clerk to read the call of the first hearing.

TOWN CLERK NEWKIRK:

NOTICE OF PUBLIC HEARING
TOWN OF BETHLEHEM
ALBANY COUNTY

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing on the December 13, 1995 7:30 p.m. to consider proposed Local Law No. 10 of 1995, amending Chapter 111, Taxation, Article I, Section 111.1 of the Code of the Town of Bethlehem permitting a partial real property tax exemption to persons who turn age 65 between March 1 and December 31 of a calendar year.

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

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

Public
Hearing on
Local Law 10
amend Taxation
Article I partia
Property tax
exempt over 65
between March 1
and December 31

BY ORDER OF THE TOWN BOARD
TOWN OF BETHLEHEM
Kathleen A. Newkirk
TOWN CLERK

- - -

State of New York)
County of Albany)

MARY AHLSTROM of the Town of Bethlehem, being duly sworn, says that she is the Assistant Publisher of 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 29th day of November 1995.

/s/ Mary A. Ahlstrom

Sworn to before me this 29th day of November 1995.
/s/ Kathryn Olsen
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 December 5, 1995, 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
5th day of December 1995.
/s/ Catherine T. Picarazzi
Notary Public

- - -

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

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

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SUPERVISOR FULLER: As you have before you, the 1995 law change in the New York State Real Property Tax related to the senior exemption. I believe, Mr. Leafer, our Assessor did hand these charts out, they were with the agendas tonight.

COUNCILMAN WEBSTER: Yes.

SUPERVISOR FULLER: Is there anyone that has any questions? There were none. Okay. Is there anyone in the audience who would like to speak in favor? There were none. Is there anyone wishing to speak in opposition? There were none.

The motion was made by Mr. Putney and seconded by Mr. Webster to close the public hearing at 7:35 p.m. The motion was passed by the following vote:

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

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Kathleen A. Newkirk
Town Clerk

11

12

13

14

The Supervisor convened the regular meeting following the close of the public hearing.

Supervisor Fuller asked if the Board wished to adopt Local Law No. 10 of 1995 pertaining to the senior exemption.

The motion was made by Mr. Webster and seconded by Mr. Lenhardt to adopt Local Law No. 10 of 1995 amending Chapter 111 Taxation, Article I, Section 111.1 of the Code of the Town of Bethlehem permitting a partial real property tax exemption to persons who turn age 65 between March 1 and December 31 of a calendar year. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Passed Loc
Law No. 10
partial
property tax
exemption
who turn 65
between Mar
1 and Decem
31

Supervisor Fuller continued with the regular agenda items, noting the next public hearing was scheduled for 7:45 p.m. The next item was the adoption of a resolution regarding assessment rolls for the year 1996. The following resolution was offered for adoption.

WHEREAS, assessment rolls for the year 1996 have been prepared by the Town Board for and in connection with the Bethlehem Sewer District, the Special Sewer District No. 1 and the South Albany Sewer District, which said rolls were completed and filed with the Town Clerk of said Town, and

WHEREAS, due notice of the completion of the assessment rolls and of the time and place when and where this Board would meet to hear and consider any objections that might be made to said rolls and for the purpose of reviewing, correcting and amending the same, was duly given by the Town Clerk by publication of due notice in THE SPOTLIGHT, a newspaper published in the County of Albany and the Town Board met at the time and place specified, and the hearing was duly had upon said assessment rolls,

NOW, THEREFORE, BE IT RESOLVED, that said assessment rolls be and they hereby are approved, affirmed and adopted by the Town Board as filed.

The foregoing resolution was presented for adoption by Mr. Webster, was seconded by Mr. Putney and duly adopted by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Resolution
regarding
1996
assessment
rolls for
Bethlehem
Sewer Distri
was adopted

The following item was a request from Building Inspector, John Flanigan, regarding approval of issuance of trailer camp permits for 1996.

The motion was made by Mr. Putney and seconded by Mr. Lenhardt to approve the issuance of trailer camp permits for 1996 with a total fee collected of \$740. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Approval
granted to
Building
Inspector
for issuance
of trailer
camp permits
for 1996

The next item was a request from Highway Superintendent, Gregg Sagendorph, for approval to go to bid for gasoline, diesel fuel and heating oil for 1996.

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

Approval to
go to bid for
diesel fuel
and heating
oil for 1996

WHEREAS, the Town desires to advertise for bids for the purchase of gasoline, diesel fuel and fuel oil for 1996, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 20th day of December, 1995 and that bids be received up to 2:00 p.m. and 2:15 p.m. on the 3rd day of January 1996 at which time the bids will be publicly opened and read.

The resolution was adopted by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Highway Super-
intendent
award bid for
uniforms for
1996 to Quail
Uniform Service

The next item was a recommendation from Highway Superintendent, Gregg Sagendorph, for award of bid for uniforms for 1996 to Quail Uniform Service, Albany, New York.

The motion was made by Mr. Lenhardt and seconded by Mr. Putney to approve the award of the bid for uniforms for 1996 to Quail Uniform Service of Albany, New York at the bid price which is lower than the current charge. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Request from
Receiver of
Taxes for
appointment
of Clerk
Typist

Supervisor Fuller noted the next item was a request from Receiver of Taxes and Assessment, Kenneth P. Hahn, for the appointment of Account Clerk Typist.

The motion was made by Mr. Lenhardt and seconded by Mr. Putney to approve the appointment of Nancy Lingner, Albany, New York to the position of Account Clerk Typist, Grade 8, Step 2, \$21,926. effective December 14, 1995. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

The Board welcomed Miss Lingner to the Town of Bethlehem.

Authorization
for Supervisor
to Mohawk
and Hudson
River Humane
Society

The next item was to authorize the Supervisor to sign the agreement with Mohawk and Hudson River Humane Society for 1996.

The motion was made by Mrs. Davis and seconded by Mr. Webster to authorize the Supervisor to sign the agreement with Mohawk and Hudson River Humane Society for 1996. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Engineering
Services
recommendation
for exchange
of bonding

The next item was a recommendation from Engineering Services Administrator, Michael Cirillo, for exchange of bonding regarding Woodhill, Section 4.

The motion was made by Mr. Webster and seconded by Mr. Putney to approve the exchange of bonding from a check in the amount of \$11,000 to an Irrevocable Standby Letter of Credit, pending receipt of the Letter of Credit. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

The following item was a request from Highway Superintendent, Gregg Sagendorph, for approval of 1995 budget transfers.

Approval
for Highway
Superintendent
for 1995 budget
transfers

The motion was made by Mr. Webster and seconded by Mrs. Davis to approve the transfer of funds in the 1995 budget as listed in the Memorandum dated December 6, 1995 from Gregg Sagendorph, Highway Superintendent. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

The next item was a request from Chief of Police, Richard LaChappelle, for approval of transfer regarding salvage payment and replacement police vehicle.

The motion was made by Mr. Putney and seconded by Mr. Webster to approve the transfer of \$2,039.15 from the Insurance Recovery Account to Police Account A3120.464 which allows for the salvage payment of a damaged police vehicle to be applied towards the cost of a replacement vehicle. The motion was passed by the following vote:

Approval for
Chief of Police
transfer
regarding salvag
payment and
replacement
police vehicle

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

The following item was a request from David Austin, Administrator of Parks & Recreation Department, for the transfer of funds regarding the fishing access site along the Hudson River at the Henry Hudson Park.

Request by Parks
and Recreation
for transfer
of funds fishing
access site
along Hudson

The motion was made by Mr. Putney and seconded by Mrs. Davis to approve the transfer of \$20,000 from Account No. A7110.418; transfer of \$34,000 from Account No. A7110.449; and transfer of \$12,000 from Account No. A7110.454 (Total of \$66,000) to the Recreation Reserve Account for the future development of the fishing access site along the Hudson River at the Henry Hudson Park, Cedar Hill, Selkirk, New York. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

The next item was a request from Judith Kehoe, Comptroller, pertaining to year end budget transfers and transfer to Parks Capital Reserve Fund.

Request from
Comptroller
year end
budget transfer
and Parks
Capital Reserve
Funds.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the year end budget transfers and transfer to Parks' Capital Reserve account as listed in the Memorandum dated December 8, 1995 from Comptroller, Judith Kehoe. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Following was a request from the Comptroller to abolish certain reserve funds. Comptroller Kehoe noted every year prior to close out, there is a review of the capital reserve funds.

The motion was made by Mr. Lenhardt and seconded by Mr. Putney to approve the request of Comptroller, Judith Kehoe, to abolish certain Reserve Funds as outlined in the Memorandum dated December 8, 1995. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Request by Chief of Police for budget transfers

The following item was a request from Richard LaChappelle, Chief of Police, for budgetary transfers.

The motion was made by Mr. Putney and seconded by Mr. Lenhardt to approve the budgetary transfers as requested by Chief of Police, Richard LaChappelle, as noted in his Memorandum dated December 8, 1995. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Supervisor Fuller convened the second public hearing at 7:45 p.m.

SUPERVISOR FULLER: I ask the Clerk to read the call of the hearing.

NOTICE OF PUBLIC HEARING
TOWN OF BETHLEHEM
ALBANY COUNTY

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing on December 13, 1995 at 7:45 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, NY to consider proposed Local Law No. 11 of 1995, Amending Article XVI, Section 128-67, Front Yards; Article XVII, Section 128-76, Side Yards; and Article XVIII, section 128-82, Rear Yards. All parties in interest and citizens will have an opportunity to be heard at the said hearing.

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

BY ORDER OF THE TOWN BOARD
TOWN OF BETHLEHEM
Kathleen A. Newkirk
TOWN CLERK

Dated: November 8, 1995

Public Hearing
to consider
Local Law No. 11
of 1995, Amending
Article XVI
Section 128-67,
Front Yards
Article XVII,
Section 128-76,
Side Yards; and
Article XVIII,
section 128-82,
Rear Yards

State of New York)
County of Albany)

MARY AHLSTROM of the Town of Bethlehem, being duly sworn, says that she is the Assistant Publisher of 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 29th day of November 1995.

/s/ Mary A. Ahlstrom

Sworn to before me this 29th day of November 1995.

/s/ Kathryn Olsen
Notary Public, Albany County

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 December 5, 1995, 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
6th day of December 1995.

/s/ Catherine T. Picarazzi
Notary Public

The motion was made by Mrs. Davis and seconded by Mr. Webster 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:

Ayés: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.

Noes: None.

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SUPERVISOR FULLER: Mr. Flanigan.

MR. FLANIGAN: Over the years or the last few years we have had some problems with some landowners in putting fences up around town and beginning to use barbed wire or dangerous materials to... as part of their fencing. And, we had one a year ago and we thought that was just a one time thing and it didn't we had another one since then and we have met with some landowners down in the area... or some property owners down in the area and we have come up with this. This is not an overall fix that is going to be here for everything. This is just to take care of the barbed wire and the wire part of it by putting these three (3) sections into the code. This was easy to do because you didn't have to make too many changes but at least it is a first step.

What we are doing is taking front yards, rear yards and side yards which all read exactly the same thing and adding a point that says, Section B, the use of dangerous materials such as crushed glass, razor wire, electric fences and barbed wire are prohibited. He said that will take care of the barbed wire part of it we are talking about. But, we found by doing some checking around that we had to have some exemptions in there and that would be the confinement of livestock or other farm purposes where permitted. The enclosure of public utilities and enclosure of property or storage by commercial/industrial users. Because they use those for protective purposes in those areas. But, we also put in there that if barbed wire or razor wire is used, it shall be canted in rather than out on the barbed wire. And, that is the proposal that is here to make those 3 changes in the code at this time.

SUPERVISOR FULLER: Thank you, John. I know that there are some people here this evening concerned with the height of fencing, the set back on the fencing. Tonight the only issue that we are dealing with is the barbed wire because we have seen this go up in a residential area for the second time. This was the quickest we could get to it, is to schedule a public hearing and eliminate this immediately. It doesn't help for those that have already been dealing with the barbed wire, that does remain up. But, it does prevent anyone else from using the barbed wire fencing. That is the only issue that is here tonight for the public hearing. Down the road, we certainly will be back to some of the questions that have been raised over the fence issue.

I would ask those wishing to speak in favor to please come forward.

MR. SCHRADER: My name is Richard Schrader. I am a resident of Delmar for probably 35 or so years. And, I was the main speaker in November of 1994 against the gentleman who put up the barbed wire off of Fisher Boulevard. The main purpose of my speaking tonight is just to make you aware that there are people out there in Cedar Ridge which is a new development in Slingerlands, who are affected by barbed wire but unfortunately there are only about right now live houses, about 5 people who actually border on the barbed wire, even though there are about 30 people... 30 families who live in the development and I am affected by the barbed wire but the town overall will be affected by barbed wire in the future if the gentleman who owns the property continues to put the barbed wire and fencing up along Orchard Street. So, I will commend the Board in advance if they put this through quickly and then ask them to come back, as soon as we can, to eliminate an item -- for example, the barbed wire that Mr. Flanigan mentioned points in toward my property which is sort of strange because if you had a ladder you could very easily lean it against the barbed wire and jump over. If it was inside the fence and pointing inward toward the owner's property, if you put a fence up, you have to actually jump over the barbed wire in order to get in there. And, in addition, there also should be a certain set back. I am not sure... where is that or what is the recommendation right now in terms of set back from a property line?

SUPERVISOR FULLER: There isn't any right now. It is not included in this public hearing, only the barbed wire.

MR. SCHRADE: Oh, cause that is the next stage.

SUPERVISOR FULLER: Yes.

MR. SCHRADE: That is about all I have to say.

SUPERVISOR FULLER: The set back and the height of the fences.

MR. SCHRADE: And, isn't height of the fence also an issue?

SUPERVISOR FULLER: Not tonight.

MR. SCHRADE: Oh, not tonight, okay. So, I guess all I have to say is please do whatever we have to do in order to rid the barbed wire and let's come back in the future and get rid of all of it.

SUPERVISOR FULLER: Thank you.

MR. MOONEY: My name is Brendan Mooney. I am a resident on 58 Dover Drive. I raised the issue on the barbed wire a couple of months ago and I... first of all wanted to thank Ted Putney and Doris Davis and Sheila Fuller for being very available and accessible to us and some of the neighbors as this issue developed. And, John Flanigan, who also made himself available in the evening to come speak to some of our residents on Dover Drive.

The issue before you tonight on the proposed ordinances is nothing less than a quality of life issue regarding residential neighborhoods in our town. As you know, the property bordering the so called Dover Estates was purchased last summer and the owner began almost immediately to construct a 6 foot fence, topped with this barbed wire and now it assaults the view of about 15 families or so. For those of you who have not seen this affront to all our sensibilities, I have a picture which I would like to submit for the record for the board and for your edification if you haven't had an opportunity to see it. John, I reserved a copy for you.

What is the point about this? What's our point here? After all, you might ask yourself, gee, what business does the town have in telling a homeowner what he or she may or may not do on his property. Well, let me respond to that in a number of points. First of all, the homeowner is not a homeowner -- while all the neighbors here are exactly that, homeowners, this is our sanctuary. This is the place we come home to at the close of day to get ready for the next day. This is the place where we feel as neighbors we have been invaded by this barbed wire fence that quite frankly looks like a Niagara Mohawk sub-station. The proposed ordinance is inadequate in that it fails to restrict fences in a residential neighborhood to sites until only after a residence has been constructed. The fence ordinance, in our opinion, should make such barriers ancillary to the primary use which is housing -- which is similar to what has happened in some other local towns. The ordinance as it exists and even the proposed statute, also fails to keep pace with the development. John Flanigan mentioned in a recent Spotlight quote, that it is only in the past -- and he mentioned this tonight -- that the people have suddenly taken to putting up barbed wire. That is exactly the point, this a recent phenomena and there are at least 3 that we are aware of situations like this and we feel it is the responsibility, indeed the role of the town board to ensure the safety and quality of life of the majority of the homeowners in the Town of Bethlehem.

Finally... next if I may... the town is exposed on this on the issue from a liability perspective. It is in your interest to require that the barbed wire be removed and be removed promptly. On 10/30/95 our attorney or my attorney, personally advised the present homeowner that the fence poses... the barbed wire particularly poses a potential hazard and a danger to small children. This is particularly true for the town because the town owns part of the easement in which this individual has constructed that fence. Should a child be injured on the barbed wire which is owned and now deeded over to the Town of Bethlehem, you share the liability with the current owner. So, it is in the town's own interests -- I respectfully suggest that the removal of this barbed wire be made retroactively.

Finally, I also suggest that it is indeed your role to establish appropriate limits and ensure the quality of life where we have... which is the reason why all of us have moved here to Bethlehem in the first place. Other towns have seen fit to exercise prudent limits on such fencing and this was brought to Mr. Kaplowitz's attention in Chris Demph's letter of 10/30/95 where he sighted the Guilderland statute Article 22, Guilderland statute Article 30 and Niskayuna statute 220 to 225. There is precedent here. You needn't be out on a limb on this, worried about how well the statute might stand on a legal grounds. It is... the proposed statute has stood the test of time in several other communities nearby. But, in any case, whatever the fencing statute is, we ask that as you consider this individual statute that you will also consider the retroactivity of it and grandfathering in of the fence as it stands. The barbed wire fencing is incomplete. He has not completed the entire project. He has left his fence half way complete. This is something which is in progress, so you can act now on something which has not been completed. Thanks very much.

SUPERVISOR FULLER: Thank you. Is there anyone else wishing to speak in favor?

MR. BONVELLE: My name is Sander Bonville. I also live on Dover Drive. I have been there for 10 years and I just want to reemphasize the 3 features that were just mentioned with regard to barbed wire. One is health and safety. There are many young children. There are many teenagers both on that street and in that whole neighborhood. Barbed wire as nasty as it is, is an attractive nuisance for children. It is a challenge for them to get over the barbed wire. The liability issue also falls under this health and safety issue for the homeowners and for the town. The second issue is also a quality of life issue. None of us moved out here to have barbed wire in our backyard because it looks horrible and it is also not very attractive to perspective home buyers. The third issue is simply property values which I know is very hard to put numbers on but there is no question that if I was to sell my house tomorrow the barbed wire would certainly affect the cost. Thank you.

SUPERVISOR FULLER: Thank you.

MR. GUZIK: Good evening, I am Gerry Guzik. I am a homeowner at 34 Dover Drive. Currently in this state, if you rob a bank, you stand a good chance of looking at a tall fence with barbed wire for a good long time, hopefully. Currently in this town, you can work hard, raise a family and look out your backyard and see a tall fence with barbed wire on it. I want to thank you for your interest in this situation because it does greatly impact upon the quality of life in this town. I have been here for about 20 years. I have a 16 year old and a 14 year old. They no longer play in the back yard. They no longer are at risk of climbing that fence and getting entangled in that barbed wire but my neighbors do have small children and I want to thank each of you who have taken an interest, personally, to spend your time to come down to Dover, take a look at what is going on down there, starting with the level of action that you are beginning. Continuing, hopefully, with action that will move to eradicate this town of dangerous barbed wire on top of tall fences because I don't think any one of us want to sit here at a meeting talking about any young child who got entangled in that barbed wire. It is an important issue. It is one that I know is already near and dear to your heart. John, I want to thank you for all the preliminary work that you have done in terms of this issue. And, again, I want to emphasize the current fence at the Dover property site is not a complete fence and we think about grandfathering in, I think we really need to put pressure on that particular property owner to recognize the safety issue that he has created in our town. Thank you for your attention.

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SUPERVISOR FULLER: Thank you.

MR. DEMPFF: Good evening. My name is Chris Demph. I live at 40 Dover Drive. We have 2 small children ages 3 and 5 that are directly affected. Our family is directly affected by this barbed wire fence. We are asking you to establish regulation to eliminate this nuisance. Barbed wire is no less than a nuisance in the Town of

Bethlehem. And, these are 2 strands of wire -- that is all -- that are up, two strands. Not a great investment, not a great cost to the owner. We are asking you to use your police powers to eradicate the town of the existing barbed wire. Retroactivity, immediate removal of barbed wire, that is what we are asking for. And, I have done some research and I am going to hand it up to the Town Attorney. It is appropriate to have a statute in effect that does call for the removal of a nuisance and that is exactly what we have here. Again, I hand this up to the Town Attorney. There is an amortization period. A time period for the removal that could be considered and that could get... avoid a constitutional entanglements here. Again, I submit this to the Town Attorney. Thank you.

SUPERVISOR FULLER: Thank you, Chris.

MR. LASNIK: Hi, my name is Stuart Lasnik and I am Chris Dempf's next door neighbor. I didn't even come here with a speech. I came at the last second, but just to let you know. I purchased this house in 1986 and there were 4 1/2 acres of woodland right behind me and now I have 30 yards from my house a 6 foot barbed wire fence. And, it is very distressing. I have 2 young children, a 5 and a 3 year old. And, I would like to make an impassioned plea for you to do something about this situation. Not just for myself but for anybody who may encounter this problem in the future. Thank you.

SUPERVISOR FULLER: Thank you. Is there anyone else who would like to speak in favor? There were none. Is there anyone who would like to speak in opposition if you are brave enough to come forward? There were none.

Ask for a motion to close the public hearing.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to close the public hearing at 8:03 p.m. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.


Town Clerk

Supervisor Fuller asked if anyone wished to take action on the adoption of Local Law number 11 of 1995, the previous public hearing, indicating she would ask that immediate action be taken to prevent this from continuing in our community. She also suggested a look be taken in regard to the proposal presented by Mr. Dempf particularly in regard to making it retroactive due to this fencing being located in a residential area.

Adoption
of local
law No.
11, 1995

The motion was made by Mr. Webster and seconded by Mr. Putney to adopt Local Law No. 11 of 1995 amending Article XVI, Section 128-67, Front Yards; Article XVII, Section 128-76, Side Yards; and Article XVIII, section 128-82, Rear Yards, regarding fencing. The motion was passed by the following vote:

Article XVI,
Section 128-67
front yards,
Article XVII
Section 128-76,
side yards; and
Article XCIII
section 128-
82 rear yards
regarding fencing

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.

Noes: None.

- - -

The Board agreed that further consideration should be given to look at the other features presented as soon as possible.

Supervisor Fuller thanked everyone for being here this evening.

Public hearing began 8:10 p.m.

SUPERVISOR FULLER: Ask the Clerk to read the call of the hearing.

TOWN CLERK NEWKIRK:

NOTICE OF PUBLIC HEARING
TOWN OF BETHLEHEM
ALBANY COUNTY

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing on December 13, 1995 at 8:00 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, NY in regard to renewal of cable television franchise agreement with Mid-Hudson Cablevision, Inc. All parties in interest and citizens will have an opportunity to be heard at the said hearing.

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

Public Hearing
to renew cable
television
franchise
agreement with
Mid-Hudson Cable-
vision, Inc.

BY ORDER OF THE TOWN BOARD
TOWN OF BETHLEHEM
Kathleen A. Newkirk
Town Clerk

Dated: November 8, 1995

STATE OF NEW YORK
COUNTY OF ALBANY

MARY AHLSTROM of the Town of Bethlehem, being duly sworn, says that she is the Assistant Publisher of 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 29 day of November 1995.

/s/ Mary A. Ahlstrom

Sworn to before me this 29
day of November 1995.
/s/ Kathryn Olsen
Notary Public, Albany County

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 Dec. 5, 1995, 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
6th day of December 1995.
/s/ Catherine T. Picarazzi
Notary Public, Albany County.

I would also like to mention that this notice was also published in the Times Union of Albany, NY.

SUPERVISOR FULLER: May I have a motion to indent the Notice of Public Hearing.

The motion was made by Mrs. Davis and seconded by Mr. Webster 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. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Is there anyone here from Mid-Hudson Cable Company? You sat in the back row so we couldn't find you.

MR. SMITH: I didn't think I would participate in the last meeting, it seemed safer back there. My name is Stuart Smith and I am the Operations Manager of Mid-Hudson Cablevision.

SUPERVISOR FULLER: And, you are here.

MR. SMITH: I hope so.

SUPERVISOR FULLER: For your renewal.

MR. SMITH: Yes.

SUPERVISOR FULLER: You service how many homes?

MR. SMITH: 18 homes.

SUPERVISOR FULLER: In the South Bethlehem area.

MR. SMITH: Well, we are little bit, mostly on 9W and Old Ravena Road. We have 4,000 feet of plant in your municipality. It's about 8/10s of a mile.

SUPERVISOR FULLER: Are there any questions from the Board on this?

COUNCILMAN PUTNEY: Question. I was... you also serve the Town of Coeymans too, sir?

MR. SMITH: Yes, we do sir.

COUNCILMAN PUTNEY: And, I was reading in the Ravena News Herald about some complaints that had been made against your service there and I gather you are going to have a meeting there to try and address those complaints. Could you tell me a little about that?

MR. SMITH: We had the meeting Monday night.

COUNCILMAN PUTNEY: Okay.

MR. SMITH: We began service to the Town of Coeymans some 18 years ago at a time when no other cable company was interested in serving it. In order to bring our signals from Catskill, which is some 20 miles south, we used some technology which at that time was quite new and today is quite well known as land based microwave. All right. It is an extremely long shot. It functions at 99.75 effectiveness but when there is a heavy sheeting rain or a wet snow which occurred about 3 weeks ago, it will temporarily interrupt the microwave feed, okay. Our company currently has plans a foot to replace the microwave shot with a fiber cable, okay, which should be installed some time during 1996.

COUNCILMAN PUTNEY: Have a question, if I may, there has been some discussion relative to the density requirement of 35 homes per mile. As you perhaps know, the major cable company in this town is now density of 20 per mile, is this something that you have been able... felt comfortable with in the renewal? Something that I feel is important.

MR. SMITH: I spoke with Mrs. Kehoe or Miss Kehoe... Mrs. Kehoe, I guess, since she is pregnant today and we came to the conclusion that we are surrounded on all 3 sides by Adams Russell Cablevision and there's no place for us to expand. So, really it is a mute point, we have no place to expand to.

COUNCILMAN PUTNEY: There are no properties in your area that are not served.

MR. SMITH: Well, if I were to give you... yes, there are 6 homes that choose not take service.

COUNCILMAN PUTNEY: Okay, but everything else that is on vacant land is not within your service area? Is that correct?

MR. SMITH: You will see, we come up 9W, cross here and go back down. There is about 4,000 feet of plant.

COUNCILMAN WEBSTER: Cut down Old Ravenna Road? Is that what it is?

MR. SMITH: Yes.

COUNCILMAN WEBSTER: Yes, right down here.

MR. SMITH: I don't know...

COUNCILMAN PUTNEY: That is the extent of your franchise here. So, there is no vacant land in your franchise area?

MR. SMITH: Well, there are more homes that could be built along the road there but then they would be served.

COUNCILMAN PUTNEY: Right.

COUNCILMAN WEBSTER: You don't extend into Miller Road or any of that area?

MR. SMITH: I don't know where that is.

COUNCILMAN WEBSTER: No.

MR. SMITH: It would seem to me that since there is really no place for us to expand, it is sort of a mute point.

COUNCILMAN PUTNEY: Then you wouldn't object to having it changed to that, would you?

MR. SMITH: Well, I think we feel more comfortable with having the same standard that we have in the other 23 franchises that we have.

COUNCILMAN PUTNEY: But, the other major cable company in this town has the 20 rather than the 35.

MR. SMITH: Okay. My point is, I don't want to set a standard in Bethlehem, where it is really meaningless where one of our other franchisors could say, well, you have that in your Bethlehem franchise, why don't you put it in our franchise.

COUNCILMAN PUTNEY: The other place where your franchise differs from the major franchise here is the fact that you are paying the town a franchise fee of 3 percent, and the other paying a franchise fee of 5 percent. Would you care to address that one?

MR. SMITH: Certainly. We also are one of the few cable companies in New York State which do not enforce the requirement that the town treasurer give us a credit off our taxes for our special franchise fee which we paid.

COUNCILMAN PUTNEY: And, how much does that relate in dollars per year?

MR. SMITH: I think both our tax and the dollars and the special franchise fee are both under \$100.

COUNCILMAN PUTNEY: It's about 11, I think.

MR. SMITH: What?

COUNCILMAN PUTNEY: About \$11, I believe.

MR. SMITH: Yes. It is so small to be insignificant.

SUPERVISOR FULLER: Any other questions from the Board? There were none. Is there anyone in the audience who has questions on the renewal of the Mid-Hudson Cable franchise agreement? There were none. Is there anyone wishing to speak in favor? There were none. Anyone wishing to speak in opposition? There were none.

MRS. KEHOE: I guess maybe I have raised my hand at a safe time.

SUPERVISOR FULLER: This is Mrs. Kehoe, our Cable Administrator.

MRS. KEHOE: We posted notices on residents in the area served by Mid-Hudson Cable to advise them of this public hearing and to give them a chance to get a copy of the franchise agreement, come tonight to give us their comments or to call me with their comments in advance.

And, I just wanted the Board to know, as a matter of record, that I did receive 2 calls from that. The first was from a Mr. Robert Viviano of 88 Old Ravena Road, who said that overall he was pleased with service from Mid-Hudson Cable. The only complaint that he had was what Mr. Smith had referred to was the... when the bad weather occurred, they did tend to lose their outage or their power. But, they said that the bill was always adjusted and other than the inconvenience of losing the viewing time, overall they were satisfied.

I also received a call from a Mrs. Jean Kaser also of Old Ravena Road who asked for a copy of the agreement and she said historically the service or the picture hadn't been fantastic but it had improved over the last several years to the point that she was now satisfied. She also mentioned if there was any form of participation or precipitation, rather, the picture would go out and... but her bill had been credited also. Very similar to the comments of Mr. Viviano. And, she said that when she had called for service, due to problems with the cable, the level of service had been satisfactory. So, those were the only 2 calls and comments from the residents that I wanted to incorporate within the record tonight.

COUNCILMAN PUTNEY: I have a question for Judi, if I may. Judi, when we last talked, you were... and I mentioned this matter of the 20 houses per mile, I think you thought at that time, that the... an amendment to the proposed agreement was on its way such that the company was willing to go along with the 20 per mile rather than 35. This may sound like a very small point but I am very much aware of what can happen in rural areas and how the cost of providing the service where there is not a great deal of density can be astronomical as far as... in the franchise area. That is why I keep pressing this point.

MRS. KEHOE: Right and we had spoken about that and I did receive a faxed revision from Mr. Smith on this. It did mention 20 homes up to 34. The only stipulation that they had put on that would be, they would provide it at the standard installation rate to other homes if they were within this 20 to 34 home standard but they asked that the 20 homes sign a petition committing themselves to taking the service and then to pay a non-refundable deposit of \$25. Then in further discussions, we looked at the area and what was around there and there didn't seem to be a lot of undeveloped land. Basically, all the homes that were in that area were currently on the line. So, if they wanted access to the cable, they could get it without the astronomical cost that you would associate with this extending a line. So, given that's the case down there, it becomes less of an issue. Are you still willing to go with the amendment as proposed

MR. SMITH: Yes.

MRS. KEHOE: Which would drop it down to the 20 homes -- assuming that there was interest from the residents and they were willing to sign a petition for that. Again, Mid-Hudson Cable was looking for sales revenues to offset the cost of them extending the service to that area. So, they were looking for a certain minimum participation. But... and I can get you a copy of that that you can have for your files and review.

COUNCILMAN WEBSTER: That makes sense, yes.

SUPERVISOR FULLER: And, that will be included for the record tonight, the amendment to the contract.

COUNCILMAN PUTNEY: It would change the proposed agreement.

MRS. KEHOE: Yes.

COUNCILMAN PUTNEY: I would welcome that change myself.

MRS. KEHOE: Okay.

SUPERVISOR FULLER: Doris.

COUNCILWOMAN DAVIS: Mr. Smith, maybe you can answer this. Generally how long a period of time would service be out for under the conditions... what would you say is an average maximum whatever?

MR. SMITH: 15 minutes or half an hour.

COUNCILWOMAN DAVIS: That is it?

MR. SMITH: Yes.

COUNCILWOMAN DAVIS: Because I live in the center... we live in the center of town and we have that same problem at times, as well. I think it is very often related to the weather. So, and people actually do call and you adjust their...

MR. SMITH: Yes, ma'am.

COUNCILWOMAN DAVIS: Their bill.

MR. SMITH: Yes, ma'am. We do it automatically. As soon as we are... we know that if we get a call from one customer, it is not just affecting one so you would... it would affect all 18, so we just put a credit on the bill.

COUNCILWOMAN DAVIS: So, you would adjust all the bills, whether they have called or not.

MR. SMITH: What?

COUNCILWOMAN DAVIS: So, you adjust all of the customers bills.

MR. SMITH: Everybody in Bethlehem and Ravena and Coeymans.

COUNCILWOMAN DAVIS: And, you said you intended to correct this problem some time during 1996 -- do you have a rough target date month wise?

MR. SMITH: September.

COUNCILWOMAN DAVIS: So, it is toward the end of 1996.

MR. SMITH: Well, we have to... we are going to build a fiber backbone all the way from our Catskill head end up through all the communities we serve up to Ravena. It isn't just running one single little wire. All right, when it takes off from our Catskill head end, it will be about 400 fibers and then they drop off on the way up to serve the different communities.

COUNCILWOMAN DAVIS: Okay.

SUPERVISOR FULLER: Thank you.

COUNCILWOMAN DAVIS: Thank you. Thanks, Judi.

SUPERVISOR FULLER: Any other questions from the Board? There were none. 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 8:17 p.m. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.

Noes: None.

Kathleen A. Newkirk
Town Clerk

Motion was made to approve franchise renewal mid-hudson Cablevision and Cherry Avenue extension

Supervisor Fuller convened the regular meeting following the close of the public hearing. She asked if there was a motion to approve the franchise renewal for Mid-Hudson Cablevision 10 year contract.

The motion was made by Mr. Putney and seconded by Mr. Webster to approve the renewal of the franchise agreement with Mid-Hudson Cablevision for a 10 year period including the amendment. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney, Mrs. Davis.
Noes: None.

Zone change Northwest Corner of New Scotland Road and Cherry Avenue extension

Supervisor Fuller said the next item on the agenda is to consider the adoption of proposed Local Law establishing Planned Commercial District No. 4 pertaining to rezoning of a parcel of land at the northwest corner of New Scotland Road and Cherry Avenue Extension.

Supervisor Fuller said before the discussion begins, she just needs to remind everyone that a public hearing was held October 26, 1995 on this proposal. The discussion this evening was be for the Board Members who have questions. The Planning Department was in attendance, as well as, representatives from Price Chopper and Windsor Development. She said questions need to be answered and the first order of business will be on SEQR. Once the SEQR decision is made, consideration will be given with regard to the Local Law. She asked everyone to be patient and understanding in regard to the questions. She thanked everyone for attending to come and listen to this decision. She noted this is a very important decision for the Town Board.

Supervisor Fuller noted the determination for SEQR can take one of two courses -- the Town Board can issue a positive declaration or a negative declaration. The issuance of a positive declaration would mean a significant impact on the environment and, therefore, a draft environmental impact statement would be prepared. Issuance of a negative declaration would mean that the Board has determined that the rezoning and project would not have a significant impact and, therefore, no draft environmental impact statement will be prepared. For tonight's, meeting, this decision must be made.

Supervisor Fuller first acknowledged receipt of the Slingerlands Homeowners Association's traffic/accident report that was sent in. She asked Mr. Gary Hansen to address this information. She said she forwarded copies of this information to the Town Planner and Mr. Hansen. Mr. Hansen thanked Mrs. Fuller and said they were forwarded a copy of the analysis by the homeowner's association and took a look at it. He said they found primarily that they agree with all the data in this report as accurate and reasonable. However, they did find that the procedure for calculating the accident rate was not correct. One of the big factors missing, according to Mr. Hansen, in the analysis is traffic volume of which there is a significant relationship between traffic volume and the total number of accidents. The methodology by which they calculate an accident rate per the New York State Department of Transportation standards, is to calculate the accidents on the basis of 1 million vehicle miles traveled which, basically, normalizes the differences in traffic volumes under facilities. So, Mr. Hansen said, he took the information provided went by the equations as per the Department of Transportation including the traffic volume and calculated the accident rate based on the million vehicle miles traveled and provided that by letter on Monday. There is, according to Mr. Hansen, a table in that letter that summarizes the accident rates for the 5 locations using the standard equations. What they found when the analysis was done, is that the segment of New Scotland Road, Route 85, actually has the second lowest accident rate of the 5 facilities looked at. The only one with a lower rate was actually Route 9W in Glenmont. Mr. Hansen said this is consistent with information they provided in a letter dated November 29th he believed in response to some of these questions about accidents which found --

based on information provided by Department of Transportation -- that the accident rate on the segment of New Scotland Road, Route 85, was below the state average.

Mr. Hansen said the other question that comes up in terms of some of the information in the analysis and also from the public hearing was -- what impact might Price Chopper plaza have on affecting the accident rate in the area. He said a comparison was made as to if this development would lead to the type of development and the type of problems we have on Delaware Avenue now. The problems on Delaware Avenue now are not a function of the commercial uses, they are the function of a poor access management plan that has been observed over the years. He said there is a lot of uncontrolled, unrestricted driveways with full access that are very closely spaced which cause a lot of problems. He said uncontrolled is meant not controlled by a traffic signal or stop sign and by full access, they allow both right turns in and out, as well as, left turns in and out. When combined, the number and spacing in those types of characteristics with the 4 lane section of Delaware Avenue, and the lack of a center turn lane -- create quite a problem. He said he thinks everyone in the room has experienced this at some point in time. Mr. Hansen said the Price Chopper plaza, however, is a very different design as far as access. There will be 2 access points that will be limited and controlled -- 1 on New Scotland Road, Route 85, will be a right turn in, right turn out driveway with a stop sign. There will be no left turns in and no left turns out which are the primary movements that cause problems at these types of locations. Primary access -- most of the project traffic will be entering and exiting the project via the New Scotland Road/Cherry Avenue intersection and they will be controlled by the signal and also have the advantage of the additional improvements that the project is putting in. From this perspective, the access is much different than Delaware Avenue. There is controlled, limited and restricted access points into this plaza. Mr. Hansen thanked the Supervisor.

Supervisor Fuller asked if there were any other questions, as far as, the letter from the Homeowners association. There were none. She asked if the Town Board had any other questions. Supervisor Fuller asked Mr. Hansen about the intersection of Orchard and Cherry Avenue due to its being raised at the public hearing. Mr. Hansen said they responded to that question in the November 29th letter. He read from the letter indicating they had acknowledged that they would be adding a certain amount of traffic to that segment of Cherry Avenue. He further noted they referenced where the information was contained in the traffic study and it was given a 4.3. On a 24 hour basis, according to Mr. Hansen, the project would add an estimated 1,250 trips per day on that segment of Cherry Avenue near Orchard Street. He said combined with the existing 8,100 cars a day on that segment, the total volume would still be below capacity of the roadway and therefore, not considered to be a significant impact.

Supervisor Fuller thanked Mr. Hansen. She said perhaps the issue of the 85 extension should be discussed and asked Mr. Lipnicky to address this issue. She noted this was mainly for the public, indicating the Board has the information. Mr. Lipnicky, Town Planner, said there was a question regarding timing of the Route 85 improvements, Slingerlands bypass improvements. He said at the current point in time, the bypass extension as currently conceived is as a 4 lane roadway basically from the City line all the way to Cherry Avenue extension. At present the project is on the regional transportation improvement program, according to Mr. Lipnicky. The regional TIP is a 5 year plan, program that is developed by the Capital District Transportation Committee which identifies projects for funding throughout the region. He said the project in terms of construction at present is not funded. There is money on the TIP over the next 5 year time period to do such things as engineering work; and preliminary planning and engineering work; right-of-way acquisition type of work but there is no funding currently available on the TIP for actual roadway construction. He said his recollection is that basically the types of numbers that were being thrown out in regard to the cost of doing the project was somewhere on the order of about 25 to 28 million dollars. Basically what has happened is at

the regional level, the project has been identified for funding and is essentially identified as a priority project. He said there were a couple of priority projects that were identified in the last TIP cycle where there wasn't enough funding to do all of the project. He said a number of projects were identified and as additional funding becomes available, those projects have priority. In terms of when the bypass extension will be built, at present there is no definite date. He said the NYS DOT has done a preliminary project proposal for the bypass extension and in that proposal construction has been identified for letting in about the year 2001. Realistically, according to Mr. Lipnicky, the earliest that the project could be built is somewhere around the year 2001-2002 unless the priorities of the State or the regional entities are changed between now and then.

Supervisor Fuller thanked Mr. Lipnicky. Councilman Putney asked Mr. Lipnicky in the event this proposal goes forth and there is some additional traffic generated by the shopping center, would he anticipate that this would then be possible to get higher on the priority level. Mr. Lipnicky said that is a difficult question to answer. What he can say, is that it is 1995 and the 5 year TIP cycle and is reviewed and reevaluated every other year. Essentially, Mr. Lipnicky said at the regional level funds are committed to projects over the next 5 year period. To get this project funded under the current money available, it would mean that other projects would have to be bumped off the TIP unless new money is found somewhere. The reality of getting other projects bumped off the TIP for a large ticket item such as the extension, is not real promising, according to Mr. Lipnicky, unless new money is found some where. Councilman Putney thanked Mr. Lipnicky.

Supervisor Fuller asked in regard to the extension not taking place for a few years, if the Board were to approve the rezoning this evening, what the impact of Price Chopper plaza would be prior to the proposed 85 extension. Mr. Lipnicky said he thinks in fairness to the applicant, the applicant's traffic study has been a pretty objective traffic study. He said they went through a number of cycles, a number of revisions based on comments that came out of the Planning Department, out of CDTC, out of NYS DOT and also out of the Albany County Department of Public Works. He further said he thinks the main issue here is -- we can throw out numbers like level of service is going to fall but the main concern here is really what happens for peak direction traffic. He said what we have currently are a number of intersections which are essentially near or at their capacity in terms of peak directional traffic flow. Obviously, this is a situation in which he thinks anyone who drives through this area understands that there is congestion through a number of the intersections. He said in the morning, the intersection of Route 85 and New Scotland -- in the evening peak hour the intersection of Blessing and also Route 85. The problem in view of the LUMAC study also was not so much -- from their point of view when this study was done -- was not only the intersection problem but it was also really the main line capacity problem. When the number of cars out there are looked at -- and again he said all this information is in the traffic study, there is a theoretical capacity of about 1,000 cars per hour on a 2 lane highway in one direction. The number of cars being carried out there now are really over that theoretical capacity. The impact here is essentially going to be, according to Mr. Lipnicky, that in their view the principal impact is that a number of key turn movements are really going to experience some additional delay. He said in the morning the turn movements are going to be essentially north bound -- Cherry Avenue making the right onto New Scotland; east bound New Scotland Road going through the intersection toward the City of Albany. Those 2 movements plus coming back in the a.m. peak, New Scotland Road west bound making the left turn onto Cherry Avenue extension. He said all those turn movements, essentially number wise, will be functioning over the theoretical capacity of the intersection to accommodate those turn movements. The result of this is added delay, perhaps 18 seconds as stated by the developer. Mr. Lipnicky said the issue overall for the intersection as a whole is that this may be true but for the key turn movements the delay may be more. In the p.m. peak hours similarly at the Blessing/Route 85 intersection there will be additional delay also. He noted this is another main movement intersection. He also noted Price Chopper may add to this. He said the numbers used in the

study were toward the high end of the impact that might be expected. The method used by the developer for the project's results was the use of the highest numbers, according to Mr. Lipnicky, noting it could be lower than the projections.

Supervisor Fuller thanked Mr. Lipnicky. Councilwoman Davis asked what additional review or study could be done of the traffic. Mr. Lipnicky said he does not know that there is anything additional that can be done. In terms of the study itself, Mr. Lipnicky said, the study pretty much documents what the impacts might be. It has been done according to standard procedure. He noted the applicant was asked to look at, in addition to intersection capacity, and did look at the issue of main line capacity through the area. The types of improvements in his view that are being proposed at the intersection are really -- again, in his view -- just about the most that can be done in the absence of actually constructing the bypass extension. He said he does not know, realistically, with a project of 99,000 square feet whether a 99,000 square foot project could afford a 28 million dollar project. He said he thinks this is unrealistic to expect. He said there is also an extension of the 2 lane road from the current swing around Blue Cross/Blue Shield and noted this has been looked at but this is also a multi-million dollar project. He said for a 99,000 square foot center, could that center afford to do that, it is very, very unlikely.

Councilwoman Davis said another issue that has to be addressed or it has to be considered for SEQR, is aesthetics. She said that could, however, be addressed through the building project review process. Mr. Lipnicky said he thinks to a large extent it has been addressed as it is. In the environmental review -- he said in the environmental assessment that was done -- this developer did some pretty sophisticated computer modeling of what the project would look like once it is completed. He said there were a number of prospective drawings, really computer generated drawings, color rendering type drawings, that are not mere artist conceptions that are usually seen. He said this has been an actual perspective drawing that was largely computer generated plus a number of line drawings from different points along New Scotland Road. When this first came to the Planning Department, they looked at the project as it was first proposed and laid out and are very concerned about what would happen when the bypass extension is built and how this project will look from the extension. He said the project was first oriented that the rear of the project would be totally exposed to the bypass extension. He said this was reoriented in such a way that the back of the project now is really tucked to some extent behind a knoll that exists on the project site. He said there has been quite a bit of back and forth between the Planning Department and the developers about how to go about this. He said screening along the bypass extension; double staggered row of evergreens, initial planting height in the range of 14 feet so that by the time the bypass extension is built those plantings will have time to grow; berming is being proposed in various places to help with the aesthetics also. In spite of this, Mr. Lipnicky said, there is still some concern on his part about can more be done. He said he thinks more probably can be done but those types of things can await the next stage of the process, if in fact, the Board decides to approve the zone change.

Councilwoman Davis said that was what her question was about. Mr. Lipnicky said the bottom line here is that the visual impacts can be mitigated but they won't be totally mitigated. He said there will be visual impacts but they can be minimized. He mentioned different items that can be addressed. Councilwoman Davis asked if this was done during the building project review process. Mr. Lipnicky said this was correct. Councilwoman Davis thanked Mr. Lipnicky.

Supervisor Fuller thanked Mr. Lipnicky and asked if there were other questions from the Board. There were none. The Supervisor asked for a decision from the Board regarding the adoption of the SEQR resolution. The following resolution was offered for adoption.

SEQR
Resolution of
Price Chopper
Plaza

TOWN BOARD
TOWN OF BETHLEHEM
SEQR RESOLUTION
DETERMINATION OF SIGNIFICANCE/NEGATIVE DECLARATION
PRICE CHOPPER PLAZA
APPLICATION TO ESTABLISH A PLANNED COMMERCIAL DISTRICT

WHEREAS, the Town Board of the Town of Bethlehem has received an application from Windsor Development Group, Inc. to establish a Planned Commercial District (PCD) on lands located at the northwest corner of NYS Route 85 and LaGrange Road; and,

WHEREAS, establishment of the PCD would amend the current zoning on a 20.4 acre parcel of land from Residence "A" District and Residence "AA" District to Planned Commercial District; and,

WHEREAS, the proposal for subsequent development of the parcel would entail construction of a 99,000 square foot shopping center (Price Chopper Plaza) with parking for 506 vehicles; and,

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

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

WHEREAS, the "Memorandum of Understanding between the Town of Bethlehem Town Board and Planning Board for Planned Development Districts" (MOU), adopted by the Town Board on February 27, 1991, sets forth the procedure for incorporating the requirements of Article 8 of the New York State Environmental Quality Review Act (SEQR), with the requirements of Chapter 128, Article V, of the Code of the Town of Bethlehem for the establishment of Planned Commercial Districts; and,

WHEREAS, in accordance with the SEQR regulations at 6 NYCRR Part 617.5(a), the Town Board at its meeting of June 8, 1994: (1) determined that the PCD application constituted an "action" subject to SEQR; (2) identified other involved agencies for the purpose of coordinated review; (3) classified the action as a "Type I action"; and (4) required a Full Environmental Assessment Form to assist the lead agency in its determination of significance; and,

WHEREAS, in accordance with the SEQR regulations at 6 NYCRR Part 617.6 the Town Board at its meeting of June 8, 1994 also initiated a coordinated review of the action, declared itself lead agency and subsequently circulated the PCD application, full EAF and supporting materials to all involved agencies; and,

WHEREAS, in accordance with the procedures outlined in the MOU, the Town Board referred the PCD application to the Planning Board for a recommendation on both the application and on a SEQR determination of significance; and,

WHEREAS, the Planning Board at its meeting of September 19, 1995, after careful review of the PCD application and its potential environmental affects, adopted a Resolution recommending that the Town Board issue a SEQR Negative Declaration and approve the PCD application; and,

WHEREAS, the Town Board has independently reviewed and considered the PCD application, the full Environmental Assessment Form and an "Expanded Environmental Assessment and Application for Establishment of a Planned Commercial District" submitted by the applicant; and,

WHEREAS, the "Expanded Environmental Assessment" document includes supplemental materials to the EAF, including, but not limited to, preliminary project plans, a traffic study, a Federal wetlands delineation report, a water supply and sewage disposal report, a storm water management report, relevant excerpts from an archeological report, historic structure inventory data, a visual analysis and simulation of the project, and analysis of potential impacts on topography, soils, water resources, vegetation, and wildlife; and,

WHEREAS, the Town Board has reviewed and considered the Planning Board recommendation, various staff memorandum prepared by the Town Planning Department, as well as comments on the application that were received from a number of involved agencies, all

addressing the adequacy of the materials submitted and the potential environmental impacts of establishing a PCD and constructing a shopping center at the proposed location; and,

WHEREAS, the applicant has submitted revised and new materials responding to the memorandum and comments noted above, and said materials satisfy the Town Board; and,

WHEREAS, the Town Board at its meeting of October 26, 1995 held a Public Hearing on the PCD application to consider public comments both for and against establishment of the PCD; and,

WHEREAS, the Planning Board has conducted its own independent analysis of the application and its potential environmental effects;

NOW, THEREFORE, BE IT RESOLVED,

that the Town Board of the Town of Bethlehem hereby confirms it is lead agency with respect to SEQR review of the Windsor Development Group, Inc. application to establish a Planned Commercial District in the Town; and,

BE IT FURTHER RESOLVED,

that based upon its review of the PCD application, the full EAF, the "Expanded Environmental Assessment" and other supplemental materials submitted by the applicant, as well as the recommendation of the Planning Board, comments on the application submitted by the Town Planning Department and involved agencies, its own independent analysis of the application, and comparison with the Criteria for Determining Significance found at 6 NYCRR Part 617.11, the Town Board hereby finds that approval of the Windsor Development Group, Inc. application to establish a Planned Commercial District, for the purpose of constructing a 99,000 square foot shopping center, constitutes an action which will not have a significant impact on the environment and, therefore, does not require preparation of a draft Environmental Impact Statement; and,

BE IT FURTHER RESOLVED,

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

BE IT FURTHER RESOLVED,

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

BE IT FURTHER RESOLVED,

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

A. Project Description

1. The parcel proposed for rezoning from Residence "A" and "AA" District to Planned Commercial District consists of 20.4 acres of land. At the request of the Planning Board, the amount of acreage proposed for rezoning has been reduced by the applicant from 30.8 acres of land as originally contained in the application.
2. The parcel is located at the northwest corner of the intersection of NYS Route 85 (New Scotland Road) and NYS Route 140 (Cherry Avenue Extension). Both NYS Route 85 and NYS Route 140 serve as arterial highways in the Town and as major commuter routes linking Bethlehem with employment centers in Albany and elsewhere in the region.
3. The project site consists of an undeveloped parcel characterized by a combination of successional old field vegetation, woodland, and red maple--hardwood swamp. Topography is gentle to moderately sloping. A predominant feature of the site is a steep, 20+/- foot high hillside which traverses the site in a northwest-southeast direction.
4. Land use in the immediate vicinity of the parcel consists of a combination of non-conforming commercial uses, low density single family residential uses, transportation corridors, and undeveloped land.
5. Zoning in the immediate vicinity of the parcel is primarily Residence "A" and "AA" District, both of which are single family residential zones. A Planned Residence District, which permits higher density housing, including multi-family units, is located to the southeast.

6. As part of the PCD application, the applicant has submitted preliminary plans for construction of a 99,000 square foot shopping center at the site. The plans indicate that the proposed shopping center would include a 63,000 square foot supermarket, 25,000 square feet of additional retail space, and two outparcels, one containing a 4,000 square foot bank and the other a 7,000 square foot office building. Parking for 506 vehicles is proposed along with accessory loading facilities.
 7. The preliminary plan for development is designed to accommodate a future extension of the Slingerlands Bypass. Although not yet funded, this project is on the current Regional Transportation Improvement Program and is anticipated for construction in or about the year 2001. The alignment of the roadway would be located along the western boundary of the parcel and would connect the Bypass directly to the intersection of NYS Routes 85 and 140. A 3.86 acre right-of-way is reserved on the preliminary plan to construct this project.
 8. Preliminary plans also include provisions for storm water management, water supply, sanitary sewage disposal and site grading. A preliminary landscaping and tree retention plan has been developed to soften and/or screen views into the shopping center from both NYS Route 85 and the future Bypass extension. Upon completion of the project, approximately 8.7 acres of the 17.7 acre development site (excluding area devoted to the Bypass), or 49.6%, would remain as greenspace consisting of landscape area, natural woodland, and natural wetland.
 9. Preliminary plans indicate that the principal access to the site would come initially from LaGrange Road, the northwestern leg of the intersection of Route 85 and Route 140. A second access to the site would be provided from Route 85 at a location approximately 640 feet northeast of the aforementioned intersection. This secondary access would permit "rights-in" and "rights-out" only.
 10. Upon completion of the Slingerlands Bypass Extension, the preliminary plans indicate that the LaGrange Road access to the site would be closed, and the secondary access along Route 85 would be converted to the main driveway.
- B. Past Studies and General Planning Considerations
1. There is a documented need in the Town of Bethlehem for shopping facilities of the type proposed in the application. A comprehensive survey of Town resident opinions on planning issues, conducted in 1990 by the Town's Land Use Management Advisory Committee (LUMAC), concluded that an additional supermarket and associated community scale retail facilities were significant needs expressed by Town residents. Of 1,686 survey respondents, approximately 70% reported there was a "strong need" for a "large supermarket" in Town. An additional 13% said there was a "moderate need" for such a facility. Since the time of the survey, this need has not been satisfied. Rezoning of the parcel to PCD and subsequent construction of the shopping center would contribute significantly to satisfying this community need.
 2. The location and land area of the proposed Planned Commercial District, and the scale of the proposed shopping center, are consistent with recommendations contained in the Town's draft Master Plan, prepared by the LUMAC in 1994. The land use element of the draft Master Plan identifies the project parcel for commercial use, particularly for planned commercial development where the emphasis is on community scale shopping opportunities. The types of commercial establishments proposed in the PCD application are of the type envisioned for the parcel in the LUMAC study.
 3. A major consideration given in the draft Master Plan for recommending the parcel for commercial use is the parcel's location along the arterial highway network at the junction of two such roadways. The study concluded that commercial development at this location would benefit from existing traffic volumes on the highway network, and

- therefore, would be a desirable location from the perspective of a commercial land developer.
4. At the same time, the LUMAC study also concluded that an arterial location for commercial development, near the periphery of the community, would also serve to benefit the community in general. Such a location would minimize traffic impacts on local residential streets and would help to minimize vehicle miles traveled within the Town.
 5. The LUMAC study also considered that commercial land use in Town is currently concentrated along the Delaware Avenue and Route 9W commercial strips. The study concluded that a Townwide benefit would be gained in terms of resident convenience, improved access to services, a reduction in the need for crosstown travel, and a long term reduction in traffic congestion in existing commercial areas, if commercial land use were strategically decentralized to areas of Town where commercial services are now lacking. A rezoning of the subject parcel for commercial land use is consistent with these objectives in that it would provide commercial services convenient to the hamlets of Slingerlands and North Bethlehem.
 6. The location and preliminary plans for the Planned Commercial District are generally consistent with the transportation element of the draft Master Plan. The LUMAC study identifies two proposed roadway corridors in the immediate vicinity of the parcel. One corridor would traverse the parcel and connect the Slingerlands Bypass with NYS Route 140. The second corridor would connect the Slingerlands Bypass with NYS Route 85-A in the Town of New Scotland. As previously mentioned, a right-of-way is reserved through the parcel to accommodate the first project. The second corridor would be located northwest of the parcel and its alignment would not be impeded by rezoning or subsequent development of the site.
 7. Upon completion of the Slingerlands Bypass Extension, the parcel would be bounded on three sides by arterial highways. Given the parcel's size (17.7 acres upon completion of the Bypass), its depth (approximately 960 feet) and its physical relationship to the future highway network, the parcel's long term viability and appropriateness for single family residential use, as currently permitted under the Residence "A" and "AA" District classifications, is highly suspect. As a matter of long term land use compatibility with the highway system, the site would be more appropriately zoned for commercial, office, or multi-family use. The application is consistent with this observation.
 8. Rezoning of the parcel to PCD is not wholly consistent with one recommendation of the draft Master Plan. Recognizing that congestion problems currently exist in the travel corridor, the LUMAC study recommends that zoning changes on the parcel "...not occur until it can be shown that sufficient highway improvements are in place to mitigate the traffic impacts of commercial development at the location". Although all practicable highway improvements to mitigate impacts are proposed by the applicant as part of shopping center construction, the proposed improvements would provide only partial mitigation of the shopping center's traffic impacts in the vicinity of the site. However, construction of the shopping center at the proposed location may help to reduce traffic elsewhere in Town.
 9. Notwithstanding Item 8 above, upon completion of the Slingerlands Bypass Extension, traffic congestion problems in the Route 85/Slingerlands Bypass corridor would be substantially resolved. As previously noted, the Bypass extension project is currently on the Regional Transportation Improvement Program. Any adverse impacts resulting from construction of the proposed shopping center would be reversible and temporary in nature and not significant under SEQR.

C. Site Specific Project Development Considerations

1. The project site contains approximately 2.9 acres of Federal regulatory wetlands. There are no State regulated wetlands on the parcel. The applicant's "Federal Wetland Delineation Report for the Price Chopper Plaza", dated January 1995, indicates that the wetland areas consist of red maple - hardwood swamp. These wetlands are located in low lying areas on the northeastern half of the parcel.
2. The project is designed to minimize wetland impacts by concentrating development on the southwestern section of the site. Approximately, 0.9 acres of wetland will be impacted from fill activity during project construction. This quantity of fill would qualify the project under Army Corps of Engineers Nationwide Permit No. 26. Two acres of wetland area would be avoided and retained as part of the project.
3. Potential construction impacts to remaining wetlands will be mitigated by various techniques to be further addressed at the time of Building Project review. Techniques proposed by the applicant to mitigate impacts include, but are not limited to: use of sediment control devices such as hay bales and silt fencing at the limits of fill and grading activity; use of similar devices at the foot of disturbed slopes and along drainageways; physical marking of the wetland boundary to avoid accidental intrusion during construction; and, prompt re-vegetation of areas that are cleared during construction.
4. Long term functional and ecological values of wetland areas will be maintained by directing site generated storm water runoff to on-site detention basins. These basins will control the release of storm water to pre-development levels and will act to settle out particulates prior to release of water to the wetlands. Implementation details on all wetland protection measures will be addressed during Building Project review.
5. There are no State regulated streams or other State regulated surface waters on the parcel. The site is drained by intermittent streams and drainageways which flow in a generally northward direction to a Class C tributary of the Normans Kill. As noted above, and as described in preliminary project plans and the applicant's "Stormwater Management Plan", post development storm water flow will be controlled through the use of storm water detention basins which will control the first 1/2 inch flush and restrict outflow to pre-development levels.
6. Drainage channels and streams will be protected from sedimentation with erosion control measures as noted in Item 3 above. Erosion control will be designed to comply with guidelines contained in "New York Guidelines for Urban Erosion and Sediment Control" (October 1991). The applicant will provide a more detailed erosion and sediment control plan during the Building Project review stage.
7. Measures to control erosion in general during the construction phase of the project are listed in the applicants "Expanded Environmental Assessment" and will be incorporated in any approvals given the project at the Building Project review stage.
8. Construction of the shopping center would remove approximately 14 acres of existing vegetation from the 20.4 acre site. This includes approximately 5.3 acres of old field vegetation, 7.8 acres of woodland and 0.9 acres of wetland. Approximately, 6.4 acres of natural vegetation would be retained as part of the project plan. Approximately, 4.9 acres of disturbed area would be reclaimed as landscape area.
9. To mitigate potential impacts on remaining vegetation, the applicant will delineate the limits of clearing in the field by means of stakes, fencing or other suitable measures. Mitigation will also entail erosion control measures as discussed elsewhere in this Resolution.
10. Project construction will result in the loss of some wildlife habitat on the site, and will likely cause some mortality to individual animals and the displacement of

others to adjoining land. Due to the relatively small amount of affected land area, and the availability of undeveloped lands adjacent to the parcel, the overall impact to wildlife is expected to be minimal. Partial mitigation will be provided on site by retention of approximately 6.4 acres of natural area as noted above in Item 8.

11. Consultation with NYSDEC Natural Heritage program indicates that there are no known occurrences of endangered, threatened, or special concern wildlife species, rare plant, animal or natural community occurrences, or other significant habitat on the parcel. The absence of significant habitat and species was further confirmed by a field visit to the site by a professional Botanist/Terrestrial Ecologist employed by consultants to the applicant.
12. The project site is located within the boundaries of both the public water supply district (Water District No. 1) and the public sanitary sewer district (Bethlehem Sewer District). No district extensions are required for the project. Water is available adjacent to the site from a 12 inch water main along NYS Route 85 (New Scotland Road). Sewer is available from an 8 inch gravity sewer which also runs along NYS Route 85. The "Price Chopper Plaza Water Supply and Sewage Disposal Report", submitted by the applicant, indicates that the development will place minimal demands on these systems.
13. An archeological survey was conducted in the project area in 1980 by the New York State Museum as part of the Slingerlands Bypass project (NYS DOT PIN 1125.00). The parcel proposed for rezoning to PCD was included within the survey area. The study did not find any areas of archeological significance in the project vicinity and recommended that there was no need for further investigation. A more recent letter, dated May 23, 1995, from the NYS OPRHP Historic Preservation Field Services Bureau, indicates that the findings of the 1980 study remain valid and that further archeological investigation is not warranted.
14. There are no sites or structures in the vicinity of the parcel which are listed in the State or National Registers of Historic Places. However, there are two structures within close proximity to the parcel which are eligible for inclusion in the National Register. These structures are the Slingerland-Breeze House located at 1397 New Scotland Road, and the McCutcheon-Reilly House located northwest of the parcel. Neither structure is located on the project parcel itself. Consequently, neither structure will be physically altered by construction of the shopping center.
15. Consultation with NYS OPRHP indicates that potential visual impacts from the shopping center on the integrity of the Slingerlands-Breeze House will be sufficiently mitigated by the preliminary landscape plan proposed by the applicant. The plan will place landscape plantings so as to provide partial screening of views between the center and the home. Final details to minimize potential impacts will be reviewed at the building project approval stage.
16. NYS OPRHP consultation also indicates that with respect to the McCutcheon-Reilly House, sufficient distance exists between the construction site and the home such that the project would not present a visual intrusion on that structure. Furthermore, the conceptual landscaping plan has been designed to substantially screen views into the center from the direction of the McCutcheon-Reilly House.
17. As part of the applicant's "Expanded Environmental Assessment", the applicant presented a thorough analysis of the shopping center's potential visual impacts as seen from both NYS Route 85 (New Scotland Road) and the future Slingerlands Bypass Extension. The analysis included visual simulation of the project as seen from various locations along these roadways. Although project development would result in a notable change in the visual

- character of the parcel as seen from these locations, potential impacts to the visual environment would be substantially mitigated by appropriate earth contouring and landscaping as suggested by the analysis.
18. In order to mitigate project visual impacts, the applicant is proposing to maintain natural vegetation and an existing knoll to the rear of the parcel. These measures would help to screen the rear facade of the structure and loading areas from views into the site as seen by motorists along the future extension of the Slingerlands Bypass. In addition, a double staggered row of evergreens is proposed in order to maintain this screen as one proceeds further down the future Bypass toward New Scotland Road. Initial plantings are proposed at 12 to 14 feet in height and will be installed at the time of shopping center development. This will give the plantings additional time to grow and "fill in" prior to construction of the Bypass.
 19. Along New Scotland Road, visual impact mitigation is proposed through a combination of tree retention, berming and evergreen and deciduous plantings. The effect will be to filter and/or screen views into the center from this location. Final details of the landscaping plan, and other aesthetic elements of the project, such as site lighting, signage and architectural design, will be resolved at the time of Building Project review.
 20. The "Price Chopper Plaza Traffic Analysis" dated August 12, 1995, and prepared by Creighton-Manning, Inc., indicates that construction of the shopping center would result in incremental increases in traffic delays and no appreciable impact on level-of-service (LOS) at three of four intersections that were studied. Analysis was conducted for the a.m. and p.m. weekday peak hour, and the Saturday peak hour, for the Slingerlands Bypass/New Scotland Road intersection, and for the p.m. and Saturday peak hour for the Blessing Road/Slingerlands Bypass and Kenwood Avenue/Cherry Avenue intersections. All of these intersections will operate on average with acceptable delay (LOS D or better) with the shopping center in place. The one exception is the Blessing Road/Slingerlands Bypass intersection where delay can be considered marginal (LOS E). However, this level of delay is also the existing condition at the intersection.
 21. Only two turn movements at the above intersections are projected to experience increases in delay that might be characterized as noticeable.
 22. Notwithstanding the above analysis, a number of turn movements at the above intersections which accommodate traffic in the peak direction are currently operating at or near capacity, and will continue to operate at or near capacity with the project in place. This condition, however, is not caused by the proposed shopping center, but rather is a reflection of current congestion in the corridor. There is no practical mitigation that can be undertaken by the applicant to resolve the existing condition.
 23. The traffic study indicates that at the intersection of New Scotland Road and Cherry Avenue Extension, under the with project condition, weekday a.m. peak hour LOS would diminish from LOS D to LOS E. Weekday p.m. peak hour LOS would diminish from LOS B to LOS D. And, Saturday peak hour LOS would diminish from LOS B to LOS C. Despite these increases in delay, the intersection on average would continue to operate within acceptable parameters of delay during both the weekday and Saturday periods. Conditions during the a.m. peak hour, however, would be marginal.
 24. The most noticeable increases in delay at New Scotland/Cherry would occur for traffic moving in the peak direction from Bethlehem toward Albany during the a.m. period. All such movements would be at or near capacity. The intersection on average would also operate at or near capacity. However, this is also approximately the current condition of the intersection.

25. In order to help mitigate impacts that would otherwise occur at New Scotland/Cherry, the applicant is proposing a number of improvements at the intersection to be constructed at the time of shopping center development. These improvements include: (a) construction of a second left turn lane on the westbound New Scotland Road approach to the intersection; (b) construction of a left turn lane on the northbound Cherry Avenue approach; (c) construction of left, thru and right turn lanes on the southbound LaGrange Road approach (this leg of the intersection would also be designed to accommodate future extension of the Slingerlands Bypass); and, (d) modification of signal operation.
26. The above improvements would provide partial mitigation of the project's impact at the intersection of New Scotland Road and Cherry Avenue Extension. However, the proposed improvements do minimize impacts to the maximum extent practical given current congestion in the corridor and the unmitigated impacts of the project are not significant. It is not reasonable to expect that the ultimate solution to the congestion issue -extension of the Slingerlands Bypass- can, or should be provided by the applicant.
27. As previously noted, the Slingerlands Bypass Extension project is currently on the Regional Transportation Improvement Program and is anticipated for construction in or about the year 2001. Although the applicant will provide partial mitigation for the interim period, the traffic impacts of the development, which cannot be mitigated, are reversible and short term in nature and would be largely eliminated by the Bypass extension.
28. In order to accommodate the eventual Bypass project, the proposed shopping center has been redesigned by the applicant to reserve a right-of-way through the parcel.
29. Other transportation improvements proposed by the applicant include: (a) construction of a sidewalk and installation of a pedestrian signal at the Cherry/New Scotland intersection (ie., the current sidewalk in front of the Post Office would be extended into the center); (b) construction of a left turn lane and signal (if warranted) at the New Scotland Road driveway when this driveway is converted into the main access to the shopping center; and, (c) modification of signal operation at Kenwood/Cherry.
30. The project site contains approximately 18.5 acres of soil classified within soil groups 1 through 4 of the NYS Land Classification System. Much of this agricultural resource will be lost with project construction. The impact, however, should be considered relatively minor since the project site is not currently farmed and no evidence can be found that the site has been used for agricultural purposes in the recent past.
31. Short term construction impacts associated with project development, including the generation of dust and noise, will be minimized by mitigation measures proposed in the applicant's "Expanded Environmental Assessment". These measures include: (a) limiting the hours of construction activity; (b) providing proper maintenance and muffling of construction equipment; (c) watering the construction site as necessary to control dust; (d) establishing temporary vegetative cover to control dust; and, (e) promptly replanting disturbed areas.
32. Review of the site in the field and with available environmental data revealed no other environmentally sensitive characteristics of the parcel which have not been addressed or areas requiring further study.
33. Notwithstanding the mitigation measures proposed by the applicant and as stated above to minimize project impacts, the Town Board shall reserve the right, at the time it conducts its Building Project review, to impose any additional measures it may deem appropriate to minimize potential impacts on the environment.

On a motion by Mr. Putney, seconded by Mrs. Davis and a vote of 4 for and 1 against, and 0 absent, this RESOLUTION was adopted on December 13, 1995.

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Supervisor Fuller asked Mr. Lipnicky if his office would do the notifications to the various agencies. Mr. Lipnicky said SEQR regulations require various notifications and as part of the resolution, the Planning Department is directed to file those appropriately.

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Supervisor Fuller said the next item of business was for adoption of the local law regarding the rezoning. She requested someone speak to the change in the acreage. Mr. Joe Sporko of L.A. Group addressed the issue of the submission to the Board -- a legal description and property survey which shows the proposed boundary of the parcels to be rezoned. The change made is a slight down-sizing of the parcel from 21.6 acres to 20.4 acres. It represents a change of 1.2 acres reduction. He said the reason is to avoid any potential discrepancies along the southerly boundary line of the project. He said the rezoning as depicted on the map does not change any of the calculations regarding set backs. All the set backs were calculated from the proposed right-of-way line. The set backs for all the buildings are being met. Also, the green space calculation does change very slightly from 50 percent green down to 55.6 percent green. Supervisor Fuller said this would be an increase. Mr. Sporko said no, a slight reduction because the size of the parcel is slightly smaller to be rezoned. Mr. Sporko noted it was 58 percent down to 55.6 percent. There was a discrepancy in the percentage stated originally. He said the numbers without the right-of-way are slightly different. They are 49.6 percent green space.

Mr. Sporko asked if there were any other questions regarding this. Mr. Lipnicky noted the area that has been reduced is area that is realistically identified for future extension of the bypass itself. The change does not affect the layout of the preliminary site plan.

Supervisor Fuller said the local law establishes the planned commercial district and amends the zoning map of the Town of Bethlehem. It changes the zoning district designation of certain lands from Residence A district and Residence AA district to Planned Commercial District. The public hearing was held back in October on this local law. The Supervisor asked for a motion to approve the Local Law.

Adopt local
law 12
establishing
Planned
Commercial
District No 4
Northwest
corner of
New Scotland
Road and
Cherry Avenue

The motion was made by Mr. Putney and seconded by Mrs. Davis to adopt Local Law No. 12 establishing Planned Commercial District No. 4 and amending the Zoning Map, Town of Bethlehem, Albany County, New York by changing the zoning district designation of certain lands from Residence A District and Residence AA District to Planned Commercial District for premises located at the northwest corner of New Scotland Road and the Cherry Avenue Extension, Slingerlands, Town of Bethlehem. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Putney, Mrs. Davis.
Noes: Mr. Lenhardt.
Absent: None.

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Discussion
by Board Members
on Price
Chopper
rezoning

Councilman Lenhardt read the following statement.

For the record, tonight this Board is being asked to approve rezoning of property that has been residentially zoned for over 43 years. We received numerous letters from residents throughout our community requesting that we adhere to the proposals that are identified in the Town Master Plan as developed by dedicated community members. These letters indicate that this is not a NIMBY issue as some would have us believe since they were written from residents of Selkirk, Delmar, Glenmont and Slingerlands. Although I do not agree with all aspects

of the LUMAC Master Plan, I do support the majority of the concepts and ideas that are detailed in the document. Many hours were spent by men and women of our community to develop this excellent document and I fully intend to follow the majority of the plan when it conforms with the desires of the community and makes the most sense. However, that is an issue that we will discuss at future meetings. This evening's decision is the first trial this Board must face regarding implementation of recommendations found in the Master Plan. The plan provides an indepth study regarding the direction the Town should take in rezoning the particular parcel of property in question. A quote from page B4 of that plan, 'LUMAC believes that the site should not be rezoned commercial or office park until such time that appropriate roadway improvements are in place'. The traffic engineers have admitted that the level of service will diminish at various intersections until the bypass extension is built. Traffic volumes will increase and the window of opportunity to exit or enter driveways for residents along New Scotland Road, Cherry Avenue and Kenwood Avenue will be closed even further. Since the roadway improvements are not in place nor even near construction this proposal does not conform with the Master Plan design and that is the reason I vote no to the request to rezone.

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Supervisor Fuller thanked Mr. Lenhardt. Councilman Putney made the following statement:

I would like to make a statement relative to my vote because I am the one person on this Board who was a member of LUMAC, who was a signatory to its recommendations and was dedicated very fiercely to its passage and implementation. There are very few things in my view that surpass the importance of the adoption of LUMAC but one of them in my view is the need for a competitive supermarket in this town. I think that we have suffered long enough from what I personally view as significant monopolistic practices on the part of Grand Union and that this needs to be ended and a competitive supermarket permitted in this town. While many of us would like to have seen a competitive supermarket go to some other place that was already been zoned, the applicant here has chosen the location in Slingerlands. And, I happen to believe that this need for a competitive supermarket is one of the few things that override my strong views on LUMAC and that is why I have voted in favor of the applicants.

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Supervisor Fuller thanked Mr. Putney and asked Mr. Webster if he wished to make a statement. Councilman Webster declined.

Supervisor Fuller said she will speak for 30 seconds or less as I usually do and I have to tell you these are one of the tough decisions that the Board has to make. I, like Mr. Putney, agree there has not been a bigger issue in our community than the lack of competitive shopping. I was well aware of it long before I got involved in town government and certainly have worked very hard to try and bring competitive shopping to our town. We need to provide service to all of our residents. This decision is not one that any of us have taken lightly. This decision has required a great deal of studying and thorough studying. This is not a decision where Price Chopper arrived here yesterday and the decision was reached tonight. This has gone on over a year and a half, this time when Price Chopper returned. I would ask that we all join together and hopefully we will move on. The applicant does have to return with application for Building Project Approval. At that stage it will be back with the Town Board. The Town Board will then be sending it on to the Planning Board which is where there will be another opportunity for public hearing. Thank you all for being here this evening.

Councilwoman Davis made the following statement:

I understand the concerns that many of you have. I have worked very hard as a resident of my own neighborhood in similar type of concern that you have, the work that you have done. I want to assure you that I have read every letter from beginning to end from every resident who wrote a letter on this particular issue no matter what part of town that they were in. And, I have particularly read most

carefully and in some cases 2 and 3 times, the letters from the residents of Slingerlands because of your immediate concern about this particular issue. This is difficult. It was a difficult decision for everyone. I know that it is difficult for you but it was not taken lightly. I attended almost every Planning Board meeting since this issue first came before us. It was shortly after I was appointed to the Town Board that the project was first presented to the town then considered by the Planning Board and I made it a point to attend as many of those meetings as I possibly could watching this particular issue develop. I did not vote on this lightly. I don't want anyone to feel that this is something that is just being done.

Supervisor Fuller thanked Councilwoman Davis.

Supervisor Fuller thanked everyone for being in attendance.

The motion was made by Mr. Putney and seconded by Mr. Webster to meet in Executive Session following the close of the regular Town Board meeting to discuss negotiations. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

The motion was made by Mr. Putney and seconded by Mrs. Davis to adjourn the regular Town Board meeting at 8:53 p.m. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Webster, Mr. Lenhardt, Mr. Putney,
Mrs. Davis.
Noes: None.

Kathleen A. Newlin
Town Clerk

EXECUTIVE SESSION

There was no formal action taken at the Executive Session.