

TOWN BOARD
DECEMBER 14, 2005

A regular meeting of the Town Board of the Town of Bethlehem was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, NY. The meeting was called to order by the Supervisor at 5:30 p.m.

PRESENT: Theresa Egan, Supervisor
Daniel Plummer, Councilman
George Lenhardt, Councilman
Thomas Marcelle, Councilman
Tim Gordon, Councilman
Kathleen A. Newkirk, Town Clerk
James T. Potter, Esq., Town Attorney

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Supervisor Egan welcomed everyone and invited them to join in the pledge of allegiance.

The Supervisor asked if there were any public comments regarding any item on the agenda.

Mrs. Marie Capone said there is something about the Police Department budget, indicating at the last meeting the Chief was told to forget about an officer and half. She said at the same time, the people in Slingerlands were held up. She said last week the Board said they want cluster housing, asking if the Board can imagine the fights that are going to be in those clusters and you don't want the Chief to have more cops. Supervisor Egan thanked Mrs. Capone.

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Supervisor Egan asked if there were any other comments on agenda items. Mr. Robert Jasinski said there are quite a few items on the agenda and in the past sometimes the Board has pretty well gone by them and he would like to know if some of the items could have more detail. Supervisor Egan said she would be happy to let him comment on the items. Mr. Jasinski thanked the Supervisor. The Supervisor said instead of going through each one, if there is a question please raise his hand and they will try and go through the item in more detail.

Mr. Jasinski said one of the items in the Empire Zone item, asking if the Town was going to get more money from the company than what it is getting from the present owner of the old Daisy Tech building. He asked how the numbers come out. Supervisor Egan said they will talk about that for Plasticware when they get to that item. Mr. Jasinski thanked the Supervisor.

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Mrs. Capone said she forgot to tell the Board that there are 2 doctors in the Town of Bethlehem that told her they do not feel secure in their house. Supervisor Egan thanked Mrs. Capone.

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The Supervisor asked if there were any other comments on the agenda items. Mr. Jarod King said he had 2 comments, the first associated with the Section 8 housing program. He said from what he reviewed it is only limited to 25 people and is apparently only for home ownership purchasing. He said one thing he would point out is that when you have a program like this, whether it is Medicare or other stuff, it artificially keeps the price of houses high because there is a demand created in a market, which suppliers can then keep their prices high because people will be buying unnecessarily. He said he does not want to make this to be a huge problem of 25 people but on the margin, that's always the case. He said there are also non-discrimination rules that apply to this kind of stuff to be thought about.

Mr. King said the second point is the VISTA Technology Center and this is

not going to involve eminent domain type stuff but he said he is not sure why that item is not on the agenda. He said there is a lot of stuff in terms of protection for people around that area when you have additional commercial development and it is wholly appropriate. Mr. King thanked the Board.

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The Supervisor asked if there were any other comments. Mr. Moran said there is a request for the Comptroller to approve transfer to Capital Reserves. He said he would imagine that is the same thing as a surplus, asking if it was a surplus account. Comptroller Kehoe said it is unexpended operating budget. Mr. Moran said he understands that but it is being transferred into surplus then. Supervisor Egan asked that if Mr. Moran had comments, to please make the comments, noting she understood he had already spoke with Comptroller Kehoe. Mr. Moran said that was right. He said he understood that money was used from the surplus account to hold down the tax increase for next year. The Supervisor said that was correct. Mr. Moran said now money is being transferred into and apparently there is more surplus than apparently was proposed. Supervisor Egan said now that it is the end of the year and people have examined their budget that was correct.

Mr. Moran said there was \$400,000 taken from the Highway Department to hold down the tax increase and now money from the General Fund is being transferred to the Highway Department. He asked if that was to make up the \$400,000 that was taken that department. Supervisor Egan said it was a planned budget transfer in the 2005 budget. Mr. Moran said what they are doing is just taking money from one hand and passing it on to the other hand. Supervisor Egan said it was money going from the General Fund to the Highway Fund. Mr. Moran said it is just switching money around to make things look more appropriate for the Board.

Supervisor Egan asked if there was anything else. Mr. Moran said another comment is that things are always being mentioned like accept the 2004 annual report for the Bethlehem Police Department, asking what it is. He said he comes to a meeting, as well as, other people and there is all kinds of items on the agenda and they have no idea what they are. The Supervisor noted the agenda is posted usually on Friday, if not by Monday, and the information is available in the Clerk's office. She said it would be impossible to provide this entire amount of paperwork to everybody that is sitting in the audience. She said all the information is made available prior to the meeting. Mr. Moran said if he comes down on the Friday before the meeting, he can get all this information. The Supervisor said that was correct, if he goes to the Town Clerk's office. Mr. Moran thanked the Supervisor.

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Supervisor Egan said the public hearing is scheduled for 5:45 and therefore some business will be done in the mean time.

The first item was to approve the Town Board minutes of November 9, 2005.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the Town Board minutes of November 9, 2005 as submitted. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Gordon.

Noes: None.

Absent: None.

Abstain: Mr. Marcelle.

Supervisor Egan said the next item was a review of the information from Human Resource Committee. She said Comptroller Kehoe sent a rather detailed outline of the request and the decision or recommendations from the Human Resource Committee asking if there were any questions. There were none.

The motion was made by Mr. Plummer and seconded by Mr. Gordon to approve the recommendations outlined in the Memorandum from Comptroller Kehoe and requested by the Human Resource Committee. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The next item was a request from Commissioner of Public Works, Oliver Holmes, for award of bid for one (1) Standby Generator to the low bidder Kinsley Power Systems, Albany, NY at a bid price of \$24,876.

The motion was made by Mr. Plummer and seconded by Mr. Gordon to approve the award of bid for one (1) Standby Generator to the low bidder Kinsley Power Systems, Albany, New York at the bid price of \$24,876 as requested by Commissioner of Public Works, Oliver Holmes. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The following item was a request from Highway Superintendent, Gregg Sagendorph, for approval of transfer of \$100,000 to Highway Department Equipment Reserve Account; request for approval of adoption of resolution permitting purchase of three (3) vehicles budgeted in 2005 and purchase of track-mounted sidewalk snowplow-snowblower; and approval of going to bid for purchase of track-mounted sidewalk snowplow-snowblower. Could advertised on December 21, 2005 and open bids on January 4, 2006 at 3:00 p.m.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to approve the transfer of \$100,000 to the Highway Department Equipment Reserve Account as requested by Gregg Sagendorph, Highway Superintendent. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The following resolution was presented for adoption:

RESOLUTION AND PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem in the County of Albany, State of New York has on the 14th day of December, 2005, duly adopted, subject to a permissive referendum, a resolution as follows:

WHEREAS, the Town Board of the Town of Bethlehem has determined that it is necessary to replace two medium duty rack trucks, one light duty four-wheel drive dump truck with plow, and a track mounted sidewalk snowplow-snowblower for use by the Highway Department, and

WHEREAS, it is estimated that the cost of said equipment will be approximately \$225,000; and

WHEREAS, in recognition of these needs, funds for such purpose are in the Highway Department Equipment Reserve; and

NOW, THEREFORE, BE IT RESOLVED that it is in the public interest to purchase this new machinery; and

BE IT FURTHER RESOLVED, that the Town Board authorizes the expenditure of the reserve moneys to fund this purchase up to a maximum amount of \$225,000; and,

BE IT FURTHER RESOLVED, that the Town Comptroller is authorized to expend from the Highway Department Equipment Reserve the funds necessary up to \$225,000 in said reserve fund; and

This resolution shall be subject to a permissive referendum, as permitted by law.

The motion to adopt the resolution was made by Mr. Lenhardt, was seconded by Mr. Plummer and duly adopted by the following vote:

AYES: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

NOES: None.

ABSENT: None.

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

WHEREAS, the Town desires to advertise for bids for the purchase of one (1) track-mounted sidewalk snowplow-snowblower, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 21st day of December, 2005 and that bids be received up to 3:00 p.m. on the 4th day of January, 2006 at which time the bids will be publicly opened and read.

The resolution was adopted by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The next item was a request from Nan Lanahan, Administrator, Parks and Recreation Department, for acceptance of donation of a sofa to the Middle School Pit. Supervisor Egan noted this was from Rosemarie McDonough.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the acceptance of donation of a sofa to the Middle School Pit from Rosemarie Mc Donough. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

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

The motion was made by Mr. Plummer and seconded by Mr. Gordon to approve the appointment of seasonal appointments as listed in the Memorandum dated December 8, 2005 as requested by Administrator, Nan Lanahan, Parks and Recreation Department. The motion was passed by the following vote:

The next item was a request from Town Engineer, Erik Deyoe, for approval of reduction in bonding for Waldenmaier PRD Phase 1.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to approve the reduction in bonding for the Waldenmaier PRD Phase 1 from \$42,000

to a new bond amount of \$4,000 as requested by Town Engineer, Erik Deyoe. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The following item was a request from Erik Deyoe, Town Engineer, for approval of acceptance of deeds for Milltowne Plaza, Phase I.

The motion was made by Mr. Marcelle and seconded by Mr. Plummer to approve the acceptance of deeds for Milltowne Plaza, Phase 1, from Traditional Builders, Ltd., Schenectady, NY as requested by Town Engineer, Erik Deyoe. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The next item was a request from Town Attorney, James Potter, Esq., to schedule public hearing for January 11, 2006 at 5:45 p.m. for creation of Special Benefit District for Stormwater Management in Milltowne Subdivision. Supervisor Egan said at this time, this item will be tabled noting the finalization of the final plan, map and other things has not been completed.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to table the request from Town Attorney, James Potter, Esq., to schedule a public hearing for January 11, 2006 at 5:45 p.m. for creation of a Special Benefit District for Stormwater Management in Milltowne Subdivision. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The next item was a request from Director of Economic Development and Planning, George Leveille, to approve resolutions regarding Empire Zone status for the Plasticware, L.L.C., Vista Technology Campus and Scarano Boat Works premises. Supervisor Egan said this is a situation where the County has already passed the appropriate laws in regard to creating the economic development zones or in the case of Vista and Scarano, they are basically sub-zones. She said Plasticware is deemed to be a significant project so they are getting the support of Empire Zone status.

Director Leveille said the tax payments by the Empire Zones are determined by each case standing on its own merits. He said generally speaking, the Empire Zone program has a great local benefit in that New York State reimburses the qualified company for all the local property taxes it pays. He said it really obviates the need for significant abatements from the local taxing jurisdictions. He said this is one really good advantage of Empire Zone program and the County has under the revised statutes for the Empire Zone program designated 6 areas in Albany County including the 2 in Bethlehem for zone status. He said the Plasticware is basically a stand alone application because they are a manufacturing industry, which is a regionally significant project that also makes them eligible for Empire Zone status. He said generally speaking, the intent here under this program is to reimburse the company for the local government taxes it pays, therefore there is no need for any significant abatement.

Councilman Plummer asked if the Albany County Legislature designated these areas Empire Zone areas. Mr. Leveille said this was correct. Mr. Plummer asked if the Town follows suit and does the same thing. Mr. Leveille said this

simply concurs with that. Mr. Plummer asked if once this happens they are automatically designated zones or if there was something else that had to be done. Mr. Leveille said the individual companies will still have to apply for their specific status. He said not every business that moves into the Vista, as an example, might be eligible for Empire Zone status. He said the area now has been designated as an opportunity area where there is the potential for companies being designated as Empire Zone businesses. Mr. Plummer asked practically if any company would take advantage of this program. Mr. Leveille said if they were eligible they certainly would.

Councilman Plummer next asked about Plasticware and its relationship. He said there was an item in the newspaper which stated there was a hearing yesterday. Mr. Leveille said the hearing was Monday night. Mr. Plummer asked once the Empire Zone designation occurs there if there is still a need for IDA. Mr. Leveille said Plasticware's eligibility for zone there would be the company itself because it is a regionally significant business as a manufacturing. He said there wouldn't necessarily be a zone there other than the company itself would be an Empire Zone company because it is a manufacturing use.

Councilman Plummer next asked if it was a manufacturing company whether they had to be in an Empire Zone. Mr. Leveille said it can become a regionally significant project and achieve Empire Zone status for the business operation for a limited period of time. Mr. Plummer asked if they would need the IDA. Mr. Leveille said they may still need the IDA to issue bonds and do some of the other things that IDAs can do. He said many of the other tax incentives and so forth would be available through the Empire Zone program.

Supervisor Egan said that is why there are 2 separate resolutions. She said one for Vista and Scarano because it is a zone area and Plasticware is really because of the business itself. Mr. Leveille said it is really kind of a major shift in the way the program was structured by New York State Legislature last year. He said Scarano was a preexisting approved Empire Zone company and the Vista is a new area being identified by Albany County for Empire Zone status and Plasticware is taking advantage of the regionally significant project designation and has already been approved by Albany County for zone status. Councilman Plummer said that is very significant for Vista especially to get that designation.

Supervisor Egan asked if there were any other questions. There were none. She asked Mr. Jasinski if this information answered his questions. Mr. Jasinski said they did, indicating he wondered if it were a zone or whether it was only for the company. He said it is only for the company. Supervisor Egan said Plasticware is just for the company and Scarano and Vista are zones.

Mrs. Barbara Carkner asked about the mention of this being for a limited period of time. Mr. Leveille said the regionally significant business designation is for 10 years. He said if the program is still in existence they might be able to reapply.

Supervisor Egan thanked Director Leveille.

The following resolutions were presented for adoption:

Resolution No. 35

**TOWN OF BETHLEHEM
RESOLUTION OF SUPPORT AND CONCURRENCE
WITH THE ALBANY COUNTY EMPIRE ZONE
REGIONALLY SIGNIFICANT PROJECT APPLICATION**

Plasticware, LLC

WHEREAS, New York State has created the Economic Development Zone program to encourage industrial and commercial development in selected municipalities across the State, and

WHEREAS, Albany County, as an eligible municipality, received original designation of an Economic Development Zone made up of sub-

zones including portions of the Town of Guilderland and the City of Watervliet, and

WHEREAS, New York State has amended the Zones program to increase benefits and allow additional Empire Zone areas, and

WHEREAS, the Albany County Legislature has passed Local Law "H" authorizing the revision of the Albany County Empire Zone to encourage industrial and commercial development by designating a regionally significant project, Plasticware, LLC, in the Town of Bethlehem at 158 West Yard Road, and

WHEREAS, the Town of Bethlehem is committed to the development of new business within the proposed sub-zone, and

WHEREAS, the Town of Bethlehem wishes to support and concur with the Empire Zone revision application,

NOW, THEREFORE, be it resolved that the Town Board of the Town of Bethlehem, in its capacity as governing body of the Town of Bethlehem, does hereby support and concur with the Albany County Empire Zone revision application.

Resolution was adopted on December 14, 2005
Theresa Egan Kathleen A. Newkirk, MMC
Supervisor, Town of Bethlehem Town Clerk, Town of Bethlehem

Resolution No. 36

TOWN OF BETHLEHEM
RESOLUTION OF SUPPORT AND CONCURRENCE
WITH THE ALBANY COUNTY EMPIRE ZONE

REVISION APPLICATION

Vista Technology Campus and Scarano Boatworks Sub-Zones

WHEREAS, New York State has created the Economic Development Zone program to encourage industrial and commercial development in selected municipalities across the State, and

WHEREAS, Albany County, as an eligible municipality, received original designation of an Economic Development Zone made up of sub-zones including portions of the Town of Guilderland and the City of Watervliet, and

WHEREAS, New York State has amended the Zones program to increase benefits and allow additional Empire Zone areas, and

WHEREAS, the Albany County Legislature has passed Local Law "G" of 2005 authorizing the revision of the Albany County Empire Zone to encourage industrial and commercial development and to allow for the creation of additional Empire Zone areas in the Town of Bethlehem including the Vista Technology Campus and Scarano Boatworks sub-zone areas, and

WHEREAS, the Town of Bethlehem is committed to the development of new business within the proposed sub-zone areas, and

WHEREAS, the Town of Bethlehem wishes to support and concur with the Empire Zone revision application,

NOW, THEREFORE, be it resolved that the Town Board of the Town of Bethlehem, in its capacity as governing body of the Town of Bethlehem, does hereby support and concur with the Albany County Empire Zone revision application.

Resolution was adopted on December 14, 2005
Theresa Egan Kathleen A. Newkirk, MMC
Supervisor, Town of Bethlehem Town Clerk, Town of Bethlehem

Hearing began: 5:47 p.m.

SUPERVISOR EGAN: Kathy, could you read the notice please.

TOWN CLERK NEWKIRK:

TOWN OF BETHLEHEM PUBLIC HEARING

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

**ANNUAL PLAN FOR 2006
TOWN OF BETHLEHEM
SECTION 8 HOUSING CHOICE VOUCHER PROGRAM
DECEMBER 14, 2005 – 5:45 P.M.**

The Town Board of the Town of Bethlehem will hold a public hearing on Wednesday, December 14, 2005 at 5:45 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, New York 12054 for the purpose of receiving comments from the public on the Town's proposed Agency Plan for 2006 for the Section 8 Housing Choice Voucher Program.

Copies of the Agency Plan and all supporting documentation are available for review by the public at either of the following locations:

Town of Bethlehem	Joseph E. Mastrianni, Inc.
445 Delaware Avenue	242 Union Street
Delmar, NY 12054	Schenectady, NY 12305
(518) 439-4955	(518) 372-4739 Ext. 26.

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 the Town Clerk's office at 439-4955, Ext. 183. Advanced notice is requested.

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

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Notice published in THE SPOTLIGHT, a weekly newspaper published in the Town of Bethlehem, County of Albany, and that the notice of which the annexed is a true copy, has been regularly published in said THE SPOTLIGHT ONCE A WEEK FOR 1 WEEK consecutively, commencing on the 26th day of October 2005.

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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 October 26, 2005, 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
14th day of December 2005.

/s/ Julie McNeil
Notary Public

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The motion was made by Mr. Plummer and seconded by Mr. Lenhardt 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: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

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SUPERVISOR EGAN: You ready. It's your show. This is Joe Mastrianni who is our administrator for the Section 8 program.

MR. MASTRIANNI: I have a hand out tonight. Excuse me. Thank you for holding a public hearing. In the past we've sent a summary about 3 months before the hearing because we are required to start it that early and we've stopped that and now this is as of today or actually December 1st. It's more up-to-date and I think also it will keep me on track. I think I can get through this in 4 or 5 minutes, is that okay?

SUPERVISOR EGAN: Sounds excellent.

MR. MASTRIANNI: Okay, we started this program in 1985 so we are 21 years into it. Federal Government supplies about \$240,000 each year. There are no funds... or no funds made... or no funds that the Town has to contribute to the program and our company, we like to think, does all the work.

We have 49... well, we started out when we... when HUD used to fund the program a little more generously, we could help 49 families with something called the housing choice voucher and that's just a rental voucher that people are given when they come off of the waiting list to help them pay their rents and it's mostly to elderly and disabled and some other low income families as we will go into a little more detail later.

We in addition have a 10 unit main stream program which is reserved strictly for families where the head or spouse is disabled and those units are always filled. So, in total or in theory, we could help 59 families. We also have a family self-sufficiency program that involves 25 families or could. We can only help 10 right now because that is all we can get out of your program. I'll go into that a little later. We have 3 of the families that have escrow accounts which means they weren't working when we got to them, they are now working and as their incomes goes up, their rent goes up and we match that increase – let's say their rent goes up \$100 a month, we match that increase into a savings account for them and at the end of the program when they are fully employed, off of welfare, and off of Section 8 they can have the balance in that account. And, we've had 3 graduates this year and as you know, they all get a dozen roses from us and this year we're buying I think 46 dozen roses across all our programs and we're certainly glad to do that.

One thing on the family self-sufficiency program, this year the application that we filed for the Town of Bethlehem was not funded. I was debriefed by HUD and I'm still not convinced because they said you didn't meet a couple of things that you should have met. And, I said well I have 3 other just like that that you did fund. And, they said well we can't talk about it and I'm not going to talk about it either. But, I just want you to know you are not following the regulation. Okay, and they said you also have some money left over and the regulation says that after you've fund all your agencies that you wanted to fund, then you go back to the ones that didn't meet fully the regulations – well, what are you going to do about that. And, they said that's an internal matter we're not talking about it. There's about 3 and 1/2 million dollars left over that they should have funded, they haven't. I did write the Supervisor a letter stating that no person who is now on the program who wants or a person who wants to be on the program will be denied. Our company has resources and we'll continue to fund this family self-sufficiency program because we think it is a darn good program. So, next year we'll try again and if it doesn't we'll continue. It's a good program and we want to see to it that it continues.

Home ownership – we can now use Section 8 rental assistance for home ownership. We were working with 1 family and understand that we are taking families with little or no income, bad credit, credit score below 600, no budgeting skills, maybe maxed out on 3 or 4 credit cards and we're saying you can buy a home. Well it takes 3 to 4 years to work with that family and we have worked with those families that started out on welfare and I know in the next 6 months we have 10 closings scheduled. Last year, I think, we just got this program really going, we did 7 closings. And, we really prepare people for home ownership because we want no foreclosures. And, we were working with a wonderful family that we thought was going to buy a home under the program and they became ineligible because their income went up too high. Now they are buying a home and I say that is success because if we've got them into employment where they are not longer eligible for

Section 8, that's good too. Now, the problem is we don't get paid. That's okay. We can absorb that.

The program area is for the Town of Bethlehem and the Town of New Scotland. We have 80 applicants on your waiting list that are in the program area. 44 of those applicants are either elderly or disabled. The next person that is offered assistance and we may not do that for a year, was placed on the waiting list May 22, 2003. That is a little over a 2 and ½ year wait for the assistance. As I said, we could assist 59 families, we are assisting 54 and I'll get to that later as well. 68 percent or 69 percent actually are either elderly or disabled. So, your program primarily serves elderly or disabled and that's why we can't fill your family self-sufficiency program because most of your people are elderly and disabled and typically they don't join the family self-sufficiency program although we do have disabled people in it and in the village of Scotia, one of those people just bought a house.

Inspections, we conducted 93 inspections, 66 of them passed. 24 of them failed, I said in another community next day the paper said housing problem in this community. We are talking non-working smoke detectors, missing handrails, non-working burners, non-working... we're not talking a housing problem in the Town of Bethlehem. Lead based paint, we had 2 of those that passed and one that failed and we've talked about lead base paint and how important that is to follow-up on that and we do send our wipes to a laboratory and we will not put anybody in a house where there has been evidence of lead paint and there is a child 6 or under unless we get a clean bill of health from our laboratory analysis.

One thing here and it kind of surprised me and we're going to do it a different way next year, how long families stay in the program. On average all families stay in the program about 4.6 years. The elderly or disabled 4.5 which is unusual. Usually that runs 7 to 10 years. I don't know why it is different in Bethlehem. All other families 5.2 years. This is based on families who are in the program now, next year we'll do an analysis of families who have left the family, I think that's more telling.

On the back we have a couple of economic things. The average income of families in the program monthly is \$1100, take \$700 of that away for rent and utilities and there's not a lot left to live on. If they're in the program, let's say we pay \$350 toward their rent that gives them an extra \$350 a month purchasing power and that helps them get through the month.

The final thing I want to talk about is our budget and we've never really showed you this. But, this is a budget where we have control of neither expenditures nor revenues and we have to come out in the black at the end of the year. It's kind of a magic trick. As you can see, HUD gives us just about... just under \$1700 a month to pay rental assistance and our expenses, for example in January were a little over that so we had a deficit of \$397 and we had 56 people in the program. As we go down you can see that in November and December we had deficit situations. We finished the year \$207 to the good. Now, let me tell you that's cutting it close. We did not know coming into this what our budget was and we didn't find out until January 24th. We do not know what our 2006 budget is going to be. If it is the same, we're not going to be able to put any people in and what we do, is we watch it for 6 months. We watch the deficit and if it gets too big through portability and through all the other communities where we provide services, we can port people to other communities where there is a surplus. I can assure you this, that we will not kick anybody out of the program – that's a crude way of saying it – and we will end up in the black by December. We also this past year were able to get some more funding out of HUD for some of our programs. We will try that but right now, we're looking at a deficit in December of \$1465 if we don't get more money each month from HUD we will go into 2006 with that deficit. We have to do something about that, we will, it will not affect people who haven't left the program on their own and you will end up in the black by December of 2006.

That's all I have to say.

SUPERVISOR EGAN: Thanks Joe, excellent job. Does anybody have any questions of Joe? Joe, I would just like to comment too in regard to the cut back. Based on the value of the program that you run and administer, the continuing representation that you will run this program no matter what happens, is truly admirable and certainly appreciated not only by the people you are servicing but by the Town. So, I want to thank you for that continued support.

MR. MASTRIANNI: Thank you, we love to work with the Town. We love the program. We think it is good. And, we think people really need the assistance.

SUPERVISOR EGAN: Great, thank you. Does anybody else want to be heard in regard to this particular matter?

MR. KING: Hi, I'm Jarod King. I just want to kind of elaborate on my points I made very briefly earlier. Whenever you have a program like this, you are assisting certain people who are... but in the process of doing that you are raising the prices of available housing stock to others who do not qualify whether it be based on income. Whether... I know that at least several years ago there were certainly Section 8 programs that were only appropriate for women with children and things like that. So, we... the comprehensive plans, one of the goals of that plan was specifically to make housing more affordable. What this does is it makes housing more affordable to certain people who qualify for the program or who... if we are dealing with a case of rationing, certain people who get in... let's say early before others apply, and makes housing more unaffordable to those that don't qualify.

In my situation, you know, when I was living in New Haven, I was very well aware of it. In fact, I moved out of New Haven specifically because at this point young men are not... qualify for Section 8 funding, it was generally women with children. So, my rent that I pay was artificially high and unnecessarily so.

The other thing I think that you should be aware of there is non-discrimination rules associated with HUD. So that and I'm not sure that I understood this correctly whether this was the self-sufficiency program only or this was the total program, 69 percent of the people taking advantage of this program were senior citizens or disabled but you can't opt to say this is just for senior or just for disabled per se because there are non-discrimination rules. So, basically, anyone who is income eligible can apply for the program.

So, that's something else you should just keep in mind, you know, with respect to the program. Thank you.

SUPERVISOR EGAN: Thank you. Any other comments? Motion to close the hearing.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to close the public hearing at 6:05 p.m. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

Town Clerk

Regular Town Board meeting resumed following the close of the public hearing.

Supervisor Egan asked if there was any further discussion by the Board. There was none.

The following resolution was presented for adoption:

Resolution No. 33

Resolution Adopting an Annual Plan for 2006

For the Town of Bethlehem Section 8 Housing Choice Voucher Program

WHEREAS, the Town of Bethlehem operates a Section 8 Housing Choice Voucher Program funded by the U.S. Department of Housing and Urban Development, and

WHEREAS, the Town of Bethlehem is required by the U.S. Department of Housing and Urban Development to prepare and adopt a written Annual Plan that establishes local policies for administration of the Section 8 Housing Choice Voucher Program in accordance with regulations of the U.S. Department of Housing and Urban Development, and

WHEREAS, the Town Board of the Town of Bethlehem has caused a written Annual Plan for 2006 to be prepared establishing local policies for administration of the Section 8 Housing Choice Voucher Program in accordance with regulations of the U.S. Department of Housing and Urban Development, and has reviewed such written plan,

NOW THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Bethlehem hereby adopts the Annual Plan for 2006 for operation of the Town of Bethlehem Section 8 Housing Choice Voucher Program.

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

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

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Supervisor Egan thanked Mr. Mastrianni.

The following item was a request from Department of Economic Development and Planning for motion referring application to the Planning Board for review and recommendations in regard to Beverwyck PRD, Phases IV and V. Supervisor Egan said a couple meetings ago there was a Beverwyck item on the agenda. She said tonight is to take the plans and make the official referral over to the Planning Board in accordance with the new rules and regulations.

The motion was made by Mr. Plummer and seconded by Mr. Gordon to approve the referral to the Planning Board for Beverwyck PRD, Phases IV and V. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The next item was a request from Department of Economic Development and Planning, Deputy Town Planner, Janine Saatman, for declaration of Type II action under SEQR and referral of proposed amendment for Terramere, PRD, Slingerlands to the Planning Board for review and recommendation. Supervisor Egan said it is a 2 fold process and asked for a motion to declaration of SEQR as Type II action.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the declaration of a Type II action under SEQR regarding an Amendment to Terramere, Slingerlands as requested by, Deputy Town Planner, Janine Saatman. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

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Supervisor Egan next asked for a motion to refer the application for the amendment to the Planning Board. Councilman Plummer asked about the proposed amendment, indicating it is pretty simple because it refers to lot 9 Tennyson Common, Slingerlands in the Terramere Planned Development District. He said it seems like a minor request. Ms. Saatman said it is minor but there was no language put in the code to differentiate in terms of types of amendments. Supervisor Egan noted it is an amendment to a PRD. Mr. Plummer said he understands that but asked if it required it to be sent to the Planning Board. Ms. Saatman said it does require this. Director Leveille added under the amendments that are going to be looked at, they will look for simple, administrative actions and address them. He said it will simplify some of these types of things.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the referral for review and recommendation to the Planning Board for the proposed amendment to Planned Development District Terramere to permit addition to residence located at 9 Tennyson Common, Slingerlands. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The following item was a request from Comptroller, Judith Kehoe, to approve the Administrative Services Contract between the Town and the Bethlehem Industrial Development Agency. Supervisor Egan said the Memorandum from Comptroller Kehoe together with the proposed contract. She asked if there were any questions. Councilman Plummer said he is supportive but asked if it was going to be done for 2006, just for 2005. Director Leveille noted for 2005 and wanted to clean that up for this year's budget. He said it is very straight forward and the IDA is in the process right now of establishing its priorities and action plan for 2006. He said that is the basis for the service agreement and as soon as they complete that and make their commitment to the things they want to support this year, then they would come back to the Town Board.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the Administrative Services Contract between the Town of Bethlehem and the Bethlehem Industrial Development Agency as requested by Comptroller, Judith Kehoe. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The next item was a request for adoption of Resolution for the Quality Communities Grant Application. Supervisor Egan said this is a grant application that came through Quality Communities. She explained Commissioner of Public Works, Oliver Holmes, put this together. She said this is the grant in conjunction with the City of Albany to look at various alternatives for planning for alternate water sources.

The following resolution was presented for adoption:

RESOLUTION No. 37

RESOLUTION

Resolution Authorizing the Filing of an Application for a State Grant for a Shared Water Supply Feasibility Study with the NYS Quality Communities Program and Signing of the associated State Contract, Under the Appropriate Laws of New York State.

WHEREAS, the State of New York provides financial aid for community development programs; and

WHEREAS, The Town of Bethlehem

Herein called the MUNICIPALITY, has examined and duly considered the applicable laws of the State of New York and the MUNICIPALITY deems it to be in the public interest and benefit to file an application under these laws; and

WHEREAS, it is necessary that a Contract by and between THE PEOPLE OF THE STATE OF NEW YORK, herein called the STATE, and the MUNICIPALITY be executed for such STATE Aid;

NOW, THEREFORE, BE IT RESOLVED BY the Town Board of the Town of Bethlehem

1. That the filing of an application in the form required by the State of New York in conformity with the applicable law as of the State of New York including all understanding and assurances contained in said application is hereby authorized.
2. That Theresa Egan, Supervisor, is directed and authorized as the official representative of the MUNICIPALITY to act in connection with the application and to provide such additional information as may be required and to sign the resulting contract if said application is approved by the STATE:
3. That the MUNICIPALITY agrees that it will fund its portion of the cost of said Shared Water Supply Feasibility Study.
4. That five (5) Certified Copies of this Resolution be prepared and sent to the NEW YORK STATE DEPARTMENT OF STATE, ALBANY, NEW YORK 12231-0001, together with FIVE complete applications.
5. That this resolution shall take effect immediately.

The motion was made by Mr. Plummer and seconded by Mr. Gordon to adopt the resolution. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The following item was a request from Comptroller, Judith Kehoe, to approve transfers for 2005 budget. Supervisor Egan said there were a series of transfers for year end purposes. She asked if there were any questions. There were none.

The motion was made by Mr. Gordon and seconded by Mr. Plummer to approve transfers for the 2005 budget as requested by Comptroller, Judith Kehoe. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The following item was a request from Judith Kehoe, Comptroller, to approve transfers to Capital Reserves. Supervisor Egan said as a result of the transfers and as talked about earlier, the request is made to approve the transfer into the Capital Reserve Accounts. She noted it appears that \$65,000 to be put into the Recreation Reserve.

The motion was made by Mr. Plummer and seconded by Mr. Gordon to approve the transfer of \$65,000 to the Recreation Capital Reserve Account as requested by Judith Kehoe, Comptroller. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The next item was a request from Comptroller, Judith Kehoe, for approval to transfer funds from the General Fund to the Highway Fund. Supervisor Egan noted the 2005 General Fund budget included a \$500,000 allotted transfer to the Highway Fund. As was discussed, the Supervisor said, during the budget process,

this is consistent with the multiple year plan to supplement the tax revenue of the Highway Fund to minimize the tax increase in the Highway Fund.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the transfer of \$500,000 from the General Fund to the Highway Fund as allotted in the 2005 Budget and requested by Comptroller, Judith Kehoe. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

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Councilman Plummer noted, from a point brought up earlier, that the appropriation is there but for 2006 that drops down to \$125,000 and that is part of the plan. He said there is an effort to make that happen and will not be constant. Supervisor Egan said that was correct and it was a multiple year plan started 3 years ago.

The next item was a request from Comptroller, Judith Kehoe, to appoint a Hearing Officer relating to a personnel matter. Supervisor Egan said hopefully they will be able to report that they did not need it based on some developments over the last couple days but at this time this request is being made.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to approve the appointment of a hearing officer related to a personnel matter as requested by Comptroller, Judith Kehoe. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The following item was a request from Chief of Police, Louis Corsi, for approval of acceptance of donation to DARE Program. Supervisor Egan said this was \$55 from Nancy Farr, noting this was 2 different donations.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to accept the donation of \$55 from Nancy Farr to the DARE Program. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The next item was a request from Chief of Police, Louis Corsi, for approval of acceptance of gift/donation. Supervisor Egan said this is \$25 made by Mr. And Mrs. Grand.

The motion was made by Mr. Gordon and seconded by Mr. Plummer to accept the \$25 donation from Mr. And Mrs. Grand to increase the police equipment line item. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The next item was a discussion of the Vista Technology Campus. Supervisor Egan noted she gave the Board Members a copy of a letter forwarded by Mr. Herbert, Vice President of BBL Development Group. They are the

developers of the Vista Technology Campus according to the Supervisor. She said they are meeting on a regular basis with BBL at this time and as pointed out earlier, they were very fortunate to receive the Empire Zone status from the County. She said they are very interested in getting this moving and they expect formal application in January.

The Supervisor said they are working on a feasibility study having to do with the access to the campus. She said the Route 85 extension is off and running, in the process of final design at this point. She said it is incorporating 3 roundabouts at New Scotland, Blessing and Mahar Roads. She said as a result of that, BBL needed to regroup and redesign the proposed access to the campus. She said as a result of that they are putting together this feasibility study to present to the Town Board for consideration with the idea that if the Board supports this, they would ask the Town to approach DOT with a betterment proposal for that roundabout. Supervisor Egan said this is something BBL would have to secure with their funds but it is actually an application made by the Town to DOT. She said they had a phone meeting this date with BBL.

Supervisor Egan wanted to present this to the Board for Mr. Herbert, noting he had hoped to provide some formal presentation on December 14 but she asked him as opposed to doing a presentation, to actually provide some type of feasibility analysis to the Board Members. She said they anticipate having that for the first meeting in January 2006.

The Supervisor asked if there were any questions. Councilman Lenhardt said since he will not be with the Board for the presentation who the proposed tenants will be for this park. Supervisor Egan said they do not at this time. Mr. Lenhardt said he was not asking who but he was curious. Director Leveille said they will be participating in a meeting in the next week with the first perspective tenant that would be new to the entire Northeast region of the United States. He said it sounds very exciting and they are coming to negotiate a letter of intent to be the first tenant. He said they are very clean, very appropriate for what they are trying to accomplish in the vision that is expressed in the comp plan. He said there is progress and it was pointed out today that when this is built there will not be one stop light between this site and the New York State Thruway, Interstate 90 or the Northway. In terms of access, Mr. Leveille said, it is highly appealing because of this roundabout system. He said there is real strong market interest in the project and hopefully within a month or so, they will have an identified first tenant for the park.

Councilman Lenhardt said that would be encouraging to hear that it will be a new tenant. He said his concern is that they have just displaced tenants that already existed in Town into a new location and then leave an empty building. He said again this is encouraging and thanked Director Leveille.

Supervisor Egan said as soon as she knows they are coming in, she will notify the Board Members. She said they anticipate it being in January.

The next item was a discussion of a donation to the Albany County Volunteer Recruitment Task Force. Supervisor Egan said she provided a letter to the Board Members but it appears in the past there has been a contribution. Comptroller Kehoe said when this program originally started up, the Town made a small donation maybe \$500 or \$550 and probably about 8 years ago. She said she understands that the local fire departments approved donations to this as well because they were asked by the County. She said those gifts are in the \$250 range. Councilman Lenhardt noted Slingerlands was \$250 this year. He said there have been years when they have not contributed.

Supervisor Egan noted she wanted to bring it to the Board's attention and get a feel for how everyone felt about it. Councilman Marcelle said he is in favor of this because it is critical to the health and safety of the citizens. He said as Councilman Lenhardt could probably testify and Councilman Gordon, this is critical and it is harder and harder to recruit and retain volunteer firemen. His

question was that he knows there is a provision in the New York State constitution that prohibits municipalities from giving gifts to persons or entities other than other government entities. He said he did not know if that applies here and noted he is in favor if it is permissible. Town Attorney Potter said he is familiar with the provision but off the top of his head he wouldn't know where this falls but he can certainly look into it. Councilman Marcelle said he is in favor of it but that would be his only reservation.

Supervisor Egan suggested this be tabled until there is a legal determination with regard to the bounds of the law. She asked if the Board, in principle, was in support of it. Councilman Lenhardt said in principle he is in support of it but on various occasions there have been situations like this where they were led to believe they were not allowed to contribute for whatever the entity was, noting there may be varying degrees of entities that qualify and do not qualify. Supervisor Egan said they will check into it and table it until the next meeting.

The next item was to accept the 2004 Annual Report from the Bethlehem Police Department. Supervisor Egan said everyone received the report and they will acknowledge and accept the report.

Supervisor Egan said the only other thing that is not on the agenda that Councilman Marcelle has asked the Board discuss is consideration of a proposed resolution in regard to the eminent domain proceedings of the Supreme Court case from 2005.

Councilman Marcelle said this was a resolution that originally proposed when the Town was looking at the comprehensive plan. He said traditionally what eminent domain is, of course, is the power of the government to take private property and convert it to public use. He said for the longest of time, that power had been thought to be limited to takings for, public use – sidewalks, roadways, and telephone lines. He said in June 2005 the United States Supreme Court expanded the government's power to take private property. He said in particular, it allows the government now to take private property and turn it over to other private citizens to develop the property to increase the tax base of the municipality. He said in particular, the case was called Kelo vs. the City of New London where people who had lived in a part of Connecticut that overlooked the ocean, some people went back generations in their family and some had lived in their house for 50 years and did not want to give it up to see it turned into an office complex. He said the City condemned the property to take it over and the Supreme Court said New London was within their rights.

Councilman Marcelle said a number of municipalities around the country have adopted a similar resolution. He said he put it forth, understanding that sometimes it really helps the Town to be able to wheel the sword to help private parties come to a meeting of the minds, and without this power it could influence the expeditious development of property within Town. He said he appreciates that.

Councilman Marcelle said it is consistent with his thought of individual liberty and the rights to private property that the Town never interfere between 2 private entities when it comes to property in particular even though it may seem in the short run expeditious to use this as leverage for someone to sell their house to a private developer or house for economic development to another private entity. He said he thinks in general it erodes the basic freedoms that are guaranteed by the Constitution in the sense it is no longer guaranteed by the Constitution. He said he thinks everyone cherishes these rights even though the United States Supreme Court has in a sense retracted individual rights in this matter he thinks the Town should at least by this resolution recognize we want to respect those rights.

Supervisor Egan said she has had a conversation with Councilman Marcelle having to do with this. She said she thinks from the Town's perspective they have consistently expressed the Town's desire through the comp plan to work with willing landowners. She said several times throughout the comp plan meetings,

hearings, private meetings as well as public, there was question raised about whether the Town intended to exercise eminent domain, for example to take water from property. She said the answer was categorically no. She said similarly with larger rural landowners was it the Town's intention to take by eminent domain their properties to make it forever green or allow trails to go through it. Again, she said it was not. She said through the Executive Summary it does repeat the phrase willing landowners consistently. She said there is a decision now from the Supreme Court that does say and subject to change, what they think today may not be what they think tomorrow. She said at this point in time, there is a determination that it certainly is consistent with the United State Constitution in certain and particular cases that this would be used.

The Supervisor said she hoped they could reach some compromising language on this. She said she does have concerns about this. Town Attorney Potter added that there is a great deal of concern across the State on this. He said the State Bar Association has appointed a task force to study this, noting he is part of the task force, and charged with not only the task of reviewing this but also reviewing various resolutions before the State Legislature and various bills that are coming before the State Legislature because it is a significant concern regarding how you strike a balance between preserving private property interest and advancing the public good. He said there has been a very robust debate in the initial meeting, noting one official noted when you put in a road you are effectively benefiting private individuals at the expense of the person whose property is condemned. He said it is an exceedingly difficult line to draw and it is currently the subject of great study and debate. He thinks, regardless of what the Town does, there will be developments on a State level within the coming year.

Councilman Lenhardt mentioned he just read an article and asked Town Attorney Potter if there haven't been some states that have put forth or proposed laws to address what was done with the Kelo case. Town Attorney Potter said there certainly has been proposed and some already adopted. Mr. Lenhardt said he thought it was a number like 10 that had already done something. He said he is a little concerned about tying the hands of the Town with the wording in this proposed resolution. He said as far as still allowing the Town to put in sidewalks and roads. He said he would like to see wording that does convey to the public that the Town is not in the business of enforcing eminent domain to the benefit of another individual. He said unfortunately, he does not think the wording is in this resolution.

Councilman Marcelle said he thinks if you look at the resolution, it is very limited in a sense. He said it is limited only to private residential property and it says it cannot be transferred, noting the Town cannot take it and transfer it to a private developer for the purpose of improving tax revenue or expanding the tax base for the purpose of economic development. He said this because there are a number of qualifying and limitations on the resolved clause to the extent that you obviously took it and property remained in the Town's title, like a sidewalk or a road or a right-of-way for power. He said the key is the transfer to another private party and that's what he is concerned about.

Councilman Plummer asked what do you do in a scenario, using Vista as an example, that is a private developer and what do you do where there is a residential parcel there and someone is unwilling and all the other pieces are put together. He said practically speaking, how would this work. He asked when you take a parcel by eminent domain isn't there a process that you would undergo to establish a fair market value, noting that it is not as if a community is just taking the property and the residential owner is left without getting anything for that parcel. Councilman Marcelle said that was correct, they would get what is deemed a fair market value. Councilman Plummer asked what you do in a situation where somebody is truly just holding out for as much as they possibly can get when you have as situation where the whole community is going to benefit from an increase in the tax base. He said there might be situations like that where you have to have a balance. He said he did not know enough about the eminent domain laws to know how you establish the fair market values. Town Attorney Potter said that is currently under study as well. He said people are concerned about that they want to use this on the

task force as a springboard to make that process fair as well.

Councilman Gordon said the decision of the Supreme Court is utterly preposterous and very disappointing. He said he cannot control what happens in other towns but as a Member of the Town Board here, he was fully in support of the resolution as worded. He said people have a right to their property. He said we have survived this way since the Town has been in existence and what is right is right. He said if the Supreme Court does not get it right, he thinks the Board has the opportunity to get it right. He said he is in support of it as written.

Councilman Marcelle said traditionally private developers when they want someone's house will pay above the fair market value. He said they will pay more than the Town will ever pay. He said what you normally have is someone gaining a windfall and 99 times out of a hundred it is not an issue. He said the point where in New London, this would clearly help the citizens if they could tear down the houses and put up this office park and everything else that they wanted there. He said his guess is there has to be a balance but he thinks when you are talking about someone's home that is something different.

Supervisor Egan said having to do with compromise and trying to address everybody's concern, she thinks in principle everyone agrees. She said no one is interested in going in and grabbing somebody's property to give it to a private developer to make all sorts of money. She said she thinks that is clearly the intent of everybody sitting at the Board. She asked if the wording was changed to – be it resolved that the Town shall not exercise its power of eminent domain without compelling reason and unless it is in full compliance with the Town comprehensive plan upon private, etc. She thinks it echos what has been agreed to and authorized through the Town comp plan and the burden would then still be upon the Town to find a compelling reason.

Councilman Marcelle said that is very insightful and something he would wholeheartedly support to alleviate concerns. Economic Development and Planning Director Leveille said one suggestion he had was to make sure the Board understands what other authority there might be for accommodation, the IDA has the power of utilizing eminent domain so would this be binding on the IDA as well. He said his experience with this is that this tool is a tool that disinvested urban areas have been looking for for many years. He said we don't share those circumstances they share on a day-to-day basis trying to encourage new investment and prevent the flight of wealth and income and education from their community. This is really an urban area, he said, and he does not see the context in our Town where this tool would need to be employed to support development when you have ample green fields throughout the Town, many many areas where there are opportunities for new development to occur, so he thinks the context is very unlikely to occur in Town for the purposes that are described in this resolution. He said for public safety related issues and public improvements and those, there is a need to reserve the right to continue to utilize that tool but he thinks the context that is being discussed here is symbolic in the sense that there should not be a need for the Town to have to intervene to take private residential property to support new development. Councilman Plummer asked Mr. Leveille as the Director of Economic Development if he was okay with the resolution. Mr. Leveille said he thinks the intent of this is clearly consistent with the comprehensive plan and would not deter development nor is it consistent with any plans that they have to reinvest in areas of Town. He said that case was really oriented about urban areas.

Councilman Lenhardt said he thinks the operative phrase in the resolution is cease residential property and transfer it to a private developer, still allows the Board to continue to do what they need to do in certain situations. Supervisor Egan said the highway and the sidewalks are unaffected by what the Board does because it is done under other provisions. She said that continues but asked Councilman Marcelle if the language was okay. Councilman Marcelle said that was reasonable.

The Supervisor asked if there were any other comments on this. Councilman Plummer asked just one to Mr. Leveille's point, how does it impact the IDA or can we can or cannot legally. Supervisor Egan said they will have to look into that

indicating they do not know the answer to that one. She said from a Town Board perspective if the Town does not feel it should be done, she did not know if there should be an arm of the Town doing it either. She said they will look into it and report back.

The following resolution was presented for adoption:

Resolution No. 38

**TOWN OF BETHLEHEM
RESOLUTION**

IMPOSING A RESTRAINT ON THE EXERCISE OF THE POWER OF EMINENT DOMAIN

WHEREAS, the state law grants the Town of Bethlehem the power of eminent domain to condemn property for any public purpose; and,

WHEREAS, the Town Board believes that the exercise of the Town's power of eminent domain should be balanced with the State and Federal Constitutional protections of private property; and,

WHEREAS, on June 23, 2005, the U.S. Supreme Court in its decision in *Kelo v. City of New London*, found it permissible under the Fifth Amendment of the United States Constitution for a municipality to seize residential property and transfer it to a private developer in order to promote economic development; and,

WHEREAS, the Town Board respectfully disagrees with the United States Supreme Court's interpretation of "public use" in the Fifth Amendment of the United States Constitution; and,

NOW, THEREFORE, BE IT RESOLVED that without compelling reason, and unless in compliance with the Town Comprehensive Plan, the Town shall not exercise its power of eminent domain upon private residential property and transfer it to a private developer for the purpose of improving tax revenue or expanding the tax base or for the purpose of economic development.

The foregoing resolution was presented for adoption by Mr. Marcelle, seconded by Mr. Lenhardt and adopted by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

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Supervisor Egan said that she knows the agenda reads the next Board meeting is not until January 11, 2006. She said there may be a need to have a meeting on December 28, 2005 regarding some storm water management issues and other potential Vista issues. She polled the Board, noting Councilman Plummer will be out of town, asking if the other Board Members are available. The remaining Councilmen said they would be available for December 28, 2005.

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Supervisor Egan asked if there was any other public comment. Mrs. Marie Capone asked Councilman Marcelle why he brought this up since he will not be on the Town Board anymore. She said if they could not have a firehouse without voting why don't the Board have the people vote on your Vista. She said there is going to be many millions spent and the Town is going to be stuck with it. Supervisor Egan said the Town is not spending millions, this is a private development. Mrs. Capone said yesterday on the news she saw something astonishing, Mr. Stratton in Schenectady is liked so much, he is going to go higher in the politics. She said Schenectady is twice the size of the Town of Bethlehem. She said the last sentence was Mr. Stratton as the Mayor of Schenectady makes \$60,000 a year. Supervisor Egan thanked Mrs. Capone.

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Councilman Lenhardt had 2 things he wished to bring up since this may be his last opportunity. He beseeched Mr. Leveille and the economic organization to pursue the modifications that they outlined as quickly as possible especially the possible overlay on Kenwood Avenue. He said also he was requested by an individual that has written numerous letters, Mr. Jakovic, noting he wrote on December 9th and would like to know if this administration plans on sending him a

written response. Supervisor Egan said Mr. Leveille and she had been in touch with Mr. Jakovic and noted he does not represent correctly what has happened in the last several months. Councilman Lenhardt again said his question was whether or not he will have a written response. The Supervisor said he has already received a written response. Councilman Lenhardt thanked the Supervisor and said his work is done.

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Supervisor Egan asked if there were any other comments. Mr. Jarod King said he wanted to thank Councilman Marcelle for bringing up the resolution. He said he knows he will be leaving but he is leaving with a flourish.

Mr. King said he would take the opportunity since he knows a lot about eminent domain because he has a lawsuit pending regarding it and he can give some answers to questions. Supervisor Egan noted at this point the Board has already passed the resolution so she was not sure they needed that. Mr. King said okay, basically fine. Supervisor Egan thanked Mr. King. Mr. King said he thinks it should be part of the comp plan and there are times when you may want to shackle Mr. Leveille noting that if the Vista Technology Center was not a willing landowner and it was an unwilling landowner, there is situations where there is the balance in terms of weighing the tax base needs with respect to the rights of individuals. He said with respect to Rievera Beach, that is not what would be considered a blighted community but rather a lower income community in Florida and it is disturbing to him to see private individuals being forced off of their property. He said that could be any kind of Delmar resident, maybe not the upper income people, but people being pushed out specifically for the benefit of private developers who make nice donations to elected officials and get something in return.

Mr. King said the eminent domain can also contain something else regarding public necessity. He said it required proof of public necessity and in fact, the statutes require that but it is being ignored and certainly ignored in his case also by the trial judge.

Mr. King said there is also externalities that often time come into play with respect to access and things like that. He said he was very struck when he was getting petitions signed against the comp plan and knocked on a door and the resident gave an earful about what the distance of Price Chopper next to his property has done and even the post office delivering trucks at all hours. He said when commercial development is done, in this brave new world of the comprehensive plan, some people who are immediately next to it do suffer. He said if you are in a fully developed area like Delmar, people are not going to see that. He said he thinks the Town should be very considerate of that fact and he thinks this kind of thing should be in the comp plan itself. He thanked the Board. The Supervisor thanked Mr. King.

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Supervisor Egan thanked Mr. Jasinski, noting he was very patient. Mr. Robert Jasinski said he had a couple questions, asking on the Vista that there may be a tenant in the works, if as the building goes on by BBL will he look for occupancy every time you build a building or will a number of buildings be built and at that point start getting occupancy. He said in other words, his concern is to put a building up and not have an occupant. He said the other question is, how many buildings are anticipated for this area. He noted there are 400 acres if he was not mistaken. Mr. Leveille said that was correct. He said this is a developer question and they believe the developer at this point intends to have a tenant for the first building he puts up and he may choose to build a spec building without a tenant in place to help move the project forward so that it is easier to recruit a tenant when they see there is a real project there. He said he thinks right now they are working on the basis of having a tenant in place for the first building and then they will really try to respond to market opportunities. He said nobody today wants to be holding empty buildings in the hope that tenants come. He said they agree with that. He said he thinks if they are able to land a tenant upfront that will be the best way to start this project off.

Mr. Jasinski asked if the Empire Zone will take in that whole 400 acres. Mr. Leveille said the Empire Zone will be approximately 400 acres, however, each potential business that locates in there will have to individually apply for its own benefits. He said they do not know how many ultimately be zoned. He said the property, he believes, are proposing something on the order of 1.4 million square feet of office and related space. He said there will probably be 10 plus or minus buildings.

Mr. Jasinski apologized to the Board for these questions but he probably will not be here for a couple of months so he usually enjoys coming to these. Supervisor Egan thanked Mr. Jasinski.

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Mr. Moran said the Town spends \$503,000 to put in sidewalks in Elsmere. Supervisor Egan said she believed that was Elsmere and Maple Avenue. Mr. Moran said he understands that. He asked if there was a cost analysis made to determine whether asphalt would have been cheaper. Highway Superintendent Sagendorph said asphalt would be cheaper than concrete but it does not hold up like concrete does. Mr. Moran said it is all over Route 85, on parts of Elsmere already. Mr. Sagendorph said that was true. Mr. Moran asked why they are spending that kind of money. He said there is talk of needing sidewalks in other areas, a lot more of that money could have been used to pave other areas. Mr. Sagendorph said there has been discussion and the determination with the prior administration and the current administration. He said they had the engineering consultant in 2003 do a cost analysis on Phase 1 of the Selkirk sidewalks. He said there was a 15 percent cost differential between concrete versus blacktop. He said he has heard estimates that concrete is going to last 2 to 3 times longer than blacktop. He said if he spend 15 percent to get to even last twice as long, he would make that decision every day of the week. Mr. Moran said concrete is not as flexible as asphalt and up here you have freezing weather and get increases and decreases in the temperatures and get freezing under there, water and everything else. Mr. Sagendorph said this was correct, it is not as flexible but if you put in good sub-base and good drainage, you will have no problem with the concrete.

Mr. Moran said the only sidewalks he saw that were any good was when they were put in by the WPA in 1935. Mr. Sagendorph said they are still around. Mr. Moran said they are still around but he hasn't seen them lately. Supervisor Egan thanked Mr. Sagendorph.

Mr. Moran said the next comment is the fact that on the corner of Fisher Boulevard and Delaware Avenue, there is an apartment house or a condo that is in bad repair right now, people moved out of there and everything else. He said his question is if the Town has any responsibility since they approved the plans and all that. Supervisor Egan said again, projects are approved based on the developer's engineering plans. It was the Town, according to the Supervisor, that made the determination that people needed to be removed from that building to be safe. She said to that extent that is the Town's involvement but the representations are done by the private developers engineering staff.

Mr. Moran asked if the Town, even though they approve the plans and all that, has no responsibility. Commissioner of Public Works Holmes said it is the developer's design and engineers who have the responsibility. Supervisor Egan thanked Mr. Holmes.

Mr. Moran said he has brought up the subject many times about the water situation, breaking of water lines. He said there is another break on Route 85 just above the Tollgate and he said there is another break just below the old SAAB building and he did not see any pylons there but there is a lot of water in the field. Commissioner Holmes said if there is and they are not aware of it, they will be tonight. Mr. Moran said it just seems we keep having breaks and breaks. He said at the rate we are going, we will not have to put in a new water line because we are replacing it in sections. Supervisor Egan said this has been talked about at several meetings, is that there has been some deferred maintenance on this system and they

are engaging in studies to figure out exactly the best way to handle it. She said they have talked about it over and over. She said they are dealing with those issues. She said they have a lot of very old infrastructure in the ground.

Mr. Moran said that has been happening for the past 4 or 5 years and he does not see any resolution of it. Commissioner Holmes said it is going to take a comprehensive look as Supervisor Egan was talking about to really go into what is called asset management. He said what has to be understood is that the Town now owns over 160 miles of water line that is an age of probably 100 years old to 2 years old. He said most towns, including Bethlehem, elected to not make any investments in their assets. He said that asset if it was looked at today at \$100 a foot and 160 miles is an enormous asset that has not been managed and maintained. He said they have to look at how best to afford that so while they are developing a strategy, they will have to continue to fix the breaks as they occur.

Mr. Moran asked what that is costing over a period of time versus replacing it. Commissioner Holmes said they are analyzing that. Mr. Moran said there has been analyzing going on for 4 or 5 years, asking when there will be a decision made. Commissioner Holmes said when he has all the data. Supervisor Egan said they have made the decision, noting there is a decision regarding the New Salem line, decision on doing hydraulic studies this winter. She said decisions are being made and investment and commitment to make the investment for the improvements has been made. Mr. Moran thanked the Board. Supervisor Egan thanked Mr. Moran.

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Mr. Jarod King said a comment about the Plasticware project. He wanted to give everyone a compliment. He said what Mr. Sagendorph said is absolutely correct, there is a lot to criticize with respect to the failure to measure whether the sidewalks are necessary, in terms of traffic levels, speed, etc. but the one thing that he loves that is done is the proper investment in doing concrete sidewalks because they last a lot longer and it is definitely the cost of ownership over the time is definitely the right way to go. He said always be careful of the fact that you have to maintain the ones that down.

Mr. King said quick comment on Plasticware having attended the IDA meeting and commented about the lack of equity in that project and his concerns are even heightened. He said he thinks there is talk about \$6 million dollars in a \$50 million dollar project. He said generally speaking, there was an article in the Times Union about the acquisition of Baskin and Robbins and Dunkin Donuts by Thomas Lee Carlyle Group doing a 1 to 3. He said when you get into leasing it is about 1 to 6 and that is even less than that. He said he would have some real concerns. He said when these deals are done, the tax lien is now no longer there and actually have a contractual relationship with that tax and now the level of equity in a project is a real concern. He thanked the Board. Supervisor Egan thanked Mr. King.

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Supervisor Egan asked if there was any other public comment. Mrs. Barbara Leonard Carkner said she wanted to publicly thank the Supervisor and the Town Board and all the staff for all the work that has been done this year. She said particularly she wanted to thank Councilman Lenhardt and Councilman Marcelle for all the effort and work they have put into the Town Board. She said it has been appreciated and appreciated the resolution from Councilman Marcelle and Councilman Lenhardt's wholehearted enthusiasm and dedication to the Town of Bethlehem. She said she knows they will be seeing them both around Town. She said she appreciates all the people who faithfully come to Town Board meetings and Planning Board meetings and have an interest in Town. She said she thinks it has made a big difference and they have done tremendous work. She told Director Leveille she hoped he continued to work this year and take a few breaks because it is going to be a heavy load this year. She thanked the Board. Supervisor Egan thanked Mrs. Carkner.

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Supervisor Egan thanked all the students for their attendance even though they know they have to be at the meeting.

Councilman Gordon said he wanted to follow-up on Mrs. Carkner's remarks and thank Councilman Marcelle and Councilman Lenhardt for their service. He said he would resolve or make a motion that the Board deem December 31, 2005 as George Lenhardt day in the Town of Bethlehem. Mr. Marcelle seconded by motion and it passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

Abstain: Mr. Lenhardt.

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Supervisor Egan said they were going to reserve accolades to both Councilman Lenhardt and Marcelle because she thinks they will be back on December 28, 2005, and they have better plans.

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The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to adjourn the regular Town Board meeting at 7:00 p.m. The motion was carried by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

Town Clerk