

TOWN BOARD
DECEMBER 22, 2004

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 to a regular meeting of the Bethlehem Town Board. She invited them to join in the pledge of allegiance. The meeting was started with a presentation of song by The Suspended Four -- who are students at the Bethlehem Central High School. They were Elizabeth Hoffman, David Peterson, Federico Rodriguez and Amy VanDeusen. The Supervisor noted she had the privilege of hearing them at the freshman coffee this year and they are great. Supervisor Egan thanked them for coming and singing for the Board and audience.

Supervisor Egan first asked if anyone had any comment on any item on the agenda. There were none.

The next item on the agenda was recognition of the Bethlehem Youth Track and Field Club, Bethlehem Cross Country Team. Supervisor Egan noted the girls are members of the high school cross country team but in the past season, they qualified for the Niki Team National High School Championships. She said they went to Oregon. Supervisor Egan said they finished the season with a 10 and 1 record. She said they won the gold division in Suburban Council, came in 2nd at the section 2 class "AA" championship race, 3rd place in the New York State Federation meet, earning them a ranking of 3rd in New York State for 2004. She said they are ranked 3rd additionally in the northeast region and are currently ranked 21st in the United States. Eight (8) members were invited to participate in the Niki Team Nationals in Portland, Oregon and they finished 13th out of the top 20 teams in the country. She congratulated the girls 2004 Bethlehem Central High School girls cross country team, the Bethlehem Youth Track and Field Club and the coaches on behalf of the Town of Bethlehem for an outstanding season and an exceptional team record.

The next item on the agenda was a request from Terrence Ritz, Engineering Division, Department of Public Works, for approval of discontinuance of former right-of-way of Clapper Road, Selkirk. Supervisor Egan said there were some areas of right-of-way that were created in regard to some work done and the width is in excess of what is required. She said there is a request to discontinue the right-of-way and deed the property back to the property owners.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the discontinuance of former right-of-way of Clapper Road, Selkirk, New York as requested by Terrence Ritz, Division of Engineering, Department of Public Works. 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 Highway Superintendent, Gregg Sagendorph, for approval of Municipal 2005 Rapp Road Landfill Agreement. Supervisor Egan said the current tipping fee is \$52 per ton and it will remain the same.

The motion was made by and seconded by Mr. Plummer and seconded by Mr. Marcelle to approve the Supervisor signing the 2005 City of Albany Rapp Road Landfill Agreement with the tipping fee of \$52 per ton 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 item was a request from Charles Wickham, Director of Field Operations, Department of Public Works, for approval of award of bid for Bender Lane and Delaware Avenue Sewer Pump Station Improvements. Supervisor Egan noted this matter was approved to go to bid previously. She said on November 10th the bids were received and have been reviewed. She said the general construction portion of the bid to William J. Kelleher and Sons Construction Corporation and the electrical construction to Stilsing Electric.

The motion was made by Mr. Lenhardt and seconded by Mr. Gordon to approve the award of bid for the Bender Lane and Delaware Avenue Sewer Pump Station Improvements to William J. Kelleher and Sons Construction Corporation for the general construction and Stilsing Electric for the electrical construction as requested by Charles Wickham, Director of Field Operations, Department of Public Works. 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 Building Inspector, Mark Platel, for approval of issuance of dumping permit for 197 Murray Avenue, Delmar.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the issuance of a dumping permit for J. C. Keller, 197 Murray Avenue, Delmar, New York as requested by Mark Platel, Building Inspector. 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 Building Inspector, Mark Platel, for approval of issuance of renewal of dumping permit for 250 Bender Lane, Glenmont. Supervisor Egan noted this permit had been approved prior to this date and this is for an extension of time.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the issuance of a renewal of dumping permit for property located at 250 Bender Lane, Glenmont and applied for by Linda Jasinski, 333 Bridge Street, South Bethlehem, New York as requested by Mark Platel, Building Inspector. 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 of 2004 budget transfers including transfers to Capital Reserve funds.

**RESOLUTION TO APPROVE
THE TRANSFERS FOR THE 2004 BUDGET
AS PER THE ATTACHED MEMO DATED DECEMBER 17, 2004**

The motion to approve the budget transfers as listed was presented for adoption by Mr. Plummer, seconded by Mr. Marcelle, and passed by the following vote:

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

Noes: None.

Absent: None.

**RESOLUTION TO APPROVE
A SUPPLEMENTAL APPROPRIATION**

RESOLVED, that pursuant to Town Law Section 112, the Town Board does hereby approve a supplemental appropriation for the General Fund in the amount of \$750,000 to fund the net increase in appropriations required to fund the transfers listed on the memo prepared by the Town Comptroller, dated December 17, 2004.

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

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

Noes: None.

Absent: None.

**RESOLUTION TO APPROVE
THE TRANSFER OF FUNDS INTO CAPITAL RESERVES**

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

WHEREAS, the adopted 2004 General Fund budget as revised provides for a transfer to other funds;

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

- | | |
|---|---------|
| <input type="checkbox"/> Future upgrades to computer network | 150,000 |
| <input type="checkbox"/> Facility needs analysis implementation | 250,000 |
| <input type="checkbox"/> Recreation projects, as per established funding plan | 350,000 |

RESOLVED, that the Town Board authorizes the Town Comptroller to transfer up to a maximum of \$750,000 into the following reserves:

- | | |
|---|---------|
| <input type="checkbox"/> General Fund Capital Reserve | 400,000 |
| <input type="checkbox"/> Recreation Reserve | 350,000 |

In the event financial conditions do not warrant the transfer of the full \$750,000, the Comptroller is authorized to reduce the transfer as necessary.

The foregoing resolution was presented for adoption by Mr. Plummer, seconded by Mr. Marcelle, and 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, for approval of increase in fee for returned checks. Supervisor Egan explained that

under Section 85, General Municipal Law, the Town Board by resolution can establish a charge for dishonored checks. She noted the current fee authorized is \$15, however, the charge cannot exceed \$20. The recommendation is that we increase the fee to \$20 and it be applied mostly because the banking charges are approximately \$30 per item.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the increase in fee for returned checks to \$20 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.

Supervisor Egan on behalf of the Board, extended condolences to Mrs. Kehoe, Comptroller, on the loss of her father.

Supervisor Egan next did updates on items. The first was to congratulate Town Clerk, Kathleen A. Newkirk, on being reelected to the New York Association of Local Government Records Officers board for the term January 1, 2005 through December 31, 2006. Town Clerk Newkirk thanked Supervisor Egan and the Board.

The Supervisor said she has heard from the County Executive in regard to a reimbursement of costs that the Town incurred for holding the special election and after review of the applicable statues, the County cannot find any reason why not to pay this back. She said the County has asked for the specifics about the \$24,4856.50. Town Clerk Newkirk noted she has requested the breakdown on the figure from Deputy Comptroller, Richard Webster. Supervisor Egan said hopefully we will find reimbursement for these expenses.

Supervisor Egan said an update in regard to the speeding fines being taken away from the Town Justice Court. She said after a large outcry, the justice court fine distribution has been returned to the state before this whole thing happened. She said it is back to where it was about 3 months ago and thanked everyone for their support on this matter.

Supervisor Egan said in regard to the Porco situation -- noting everyone has been following it and there have been lots of questions there was a grand jury session the day before. She said at this time, it is her understanding that Mrs. Porco has been released and is actually returning to her brother's home to complete her rehabilitation as outpatient and said everyone wishes her the best of luck. She said the investigation continues and as information can be released, they certainly will do that.

The Supervisor said in regard to the most recent announcement on the PCB dewatering facility possibly being sited, Bethlehem has made it to the final 2 along with Fort Edward. She said at this time, it is still unknown as to what type of facility Bethlehem may be hosting. She said as has been said before, they have worked at keeping it out of Bethlehem and said it has been a multi-year process. She said they continue that and EPA and GE has made the decision to site something here and in Fort Edward. She said they are waiting that and hopefully know what that is in February. She said as she has indicated, the first and foremost priority is the health and safety of the residents with respect to this project. She said they remain very active since the beginning of the year with EPA and other interested parties in respect to working on the community health and safety plan with respect to finishing the detail and raising the bar on the quality of life

standards for any noise, odor, sound, lighting and all of that. She said they will continue to be very involved in that as it moves forward.

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Supervisor Egan said since this is indicated as a superfund clean up site, there are no dollars associated with host community fees or mitigation fees. She said they will remain active and last week did a presentation to an inter-agency working group of over 30 agencies with regard to where the Town is going with the comprehensive planning process and the impacts a project like this might have. She said this was done to get their input and assistance. She said since the announcement, she has been in contact with DEC Commissioner and set a meeting for early January to see what role DEC can play in regard to the watchdog matter. She said in addition, she thinks the County Legislature on Monday night resolved or passed a resolution having the County Health Department be involved in regard to air monitoring.

Supervisor Egan said they will continue to see not only on the health matters but also any sort of economic benefits we can derive out of this. She said she wanted to be clear that this isn't something that was wanted, was petitioned for, it is something that went through an entire long process. She said as most people know this has had to do with the PCB dredging in the upper Hudson which most people believe is in the best interests of the clean up of the river and the dewatering facility or the transfer station is a necessary component of that. She said they will continue, again, as has been done throughout the year to do updates, as she knows them. She said certainly if anyone has any questions, she would be happy to answer them at any time.

The Supervisor asked if there were any other comments. Councilman Marcelle said in regard to the EPA situation, first he gave the Supervisor a copy of the resolution complementing the Legislators from Bethlehem for directing the County Health Department to monitor what goes on down there. He said he also had an opportunity to talk with all the Board members, except Mr. Plummer and knew he has traditionally recused himself from this matter, about the possibility of getting an opinion letter from outside counsel as to what the legal options are. Mr. Marcelle said he knew he was well versed in the law in this area and it may be after it is looked at that there are no good options and that may well be the case. He said he would encourage the Board to set aside maybe \$10,000 to \$15,000 that could be talked about at the next meeting. He said he had a good conversation with the Supervisor today and he thinks there is somewhat a consensus that we should at least have the legal options handy as we proceed. He said he wanted to get this out for consideration. Supervisor Egan said that was fine.

Town Attorney Potter said he has had an opportunity to take a look at the legal issue involved and the Town's rights and he recommends to Councilman Marcelle's attention a statute 42USC 9613. He said Congress anticipated that there would be lawsuits to try to stop EPA clean ups by host communities and this statute appears to address that question. He said also there is a lawsuit involving the Hudson River, Farmers Against Irresponsible Remediation against the EPA, it was the site of the northern district. Supervisor Egan noted they will get copies of all of that.

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Supervisor Egan asked if there were any other comments from the Board or the audience. There were none. She announced this is the last meeting of the year and the next meeting will be the organizational meeting on January 12, 2005. She wished everyone a very happy and healthy holiday season and a prosperous 2005 as we go forward. She said they are looking forward to some exciting stuff.

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

The motion was made by Mr. Lenhardt and seconded by Mr. Gordon to approve adjourning to Executive Session to discuss pending litigation. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

The motion was made by Mr. Lenhardt and seconded by Mr. Gordon to adjourn the regular Town Board meeting at 6:00 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

EXECUTIVE SESSION

There was no formal action taken at the Executive Session.