

TOWN BOARD  
FEBRUARY 9, 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 to a regular meeting of the Bethlehem Town Board and invited everyone to join in the pledge of allegiance. The Supervisor noted the meeting is started with public comment and asked if anyone had any comments.

Mrs. Marie Capone said she thought it was time to stop hearing about the Porco case. Supervisor Egan thanked Mrs. Capone.

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Mr. William Kelleher addressed the issue of the Advisory Committee, noting he was recommending against it. He distributed an information sheet. He said there were 3 reasons. He said there is a major controversy within the State Health Department over the health effects of pcbs in air. He said if the top experts cannot agree on health effects, he did not feel there should be a committee. Secondly, he addressed property devaluation. He said in 1915 concerning tidal waters, clearly it is the United States of America sole jurisdiction over the dredging of the river, ownership of the land underneath the river and construction of docks to serve large vessels plying the Hudson River. He said the Town not any Advisory Committee, should require the U.S. Government provide some kind of compensation to local property owners. Third, he said this to him was the most important part, the report done by Jack McEneny of Albany County shows 3 docks at the Port of Albany and they are high due to serving ocean going docks. He said these docks cannot serve small barges. He said this cost a lot of money that the Corps of Engineers paid for.

Mr. Kelleher recommended that the Town Board, not an Advisory Committee should require that the EPA have a marine architect and engineer prepare plans for the docks at the site. He said the plan should include how the docks and bulk head walls are to be removed or modified to enhance the beauty of the river and to leave a shoreline that can be used by the public. He said EPA should be required to post a bond guaranteeing that the final work will be done after the pcb cleanup is completed.

Mr. Kelleher mentioned the docks that were abandoned at the north end of the Henry Hudson Park. He said the dock was built in 1932. He said the Corps of Engineers did not require Callanan Industries to clean this site up. He also mentioned the decaying dikes along the river noting the Corps of Engineers abandoned the dikes as well.

Councilman Marcelle commented that over the years he certainly has appreciated his insight to the Board. He said he does not dispute anything he has mentioned and found it quite helpful what he pointed out in this presentation. He said the only thing he wants to stress or make clear is that he is not sure that any of the people who support an advisory committee propose to abdicate the Town Board's responsibility. He said what he thinks it will do is get citizens who have

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special knowledge to come together and have a venue in which a public airing by the citizens to instruct the Town Board and help them carry out their responsibility and not abdicate their responsibility.

Mr. Kelleher asked if there were any other questions. There were none. Supervisor Egan thanked Mr. Kelleher.

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Mrs. Marie Capone asked if they could back up the reveal one year. Supervisor Egan said that is not on the agenda and it will be discussed later.

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The next item was a request from Director, Karen Pellettier, Senior Citizen Services, for acceptance of donation of \$500 from JoAna Finger and being made in honor of her parents.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to accept the donation of \$500 from JoAna Finger in memory of her parents as requested by Director, Karen Pellettier, Senior Citizen Services. 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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The following item was a request from Nan Lanahan, Administrator, Parks and Recreation Department, for approval of appointment of seasonal personnel.

The motion was made by Mr. Gordon and seconded by Mr. Marcelle to approve the appointment of seasonal personnel as listed in the information on file with the Town Clerk dated February 9, 2005 as requested by Administrator, Nan Lanahan, Parks and Recreation Department. 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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The next item was a request from Administrator, Nan Lanahan, Parks and Recreation Department, for approval to go to bid for remarketing of the L shape pool at Elm Avenue Park. Could advertise February 16, 2005 and open bids on March 11, 2005 at 3:00 p.m.

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

WHEREAS, the Town desires to advertise for bids for the remarketing of the L shape pool at Elm Avenue Park, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 16th day of February, 2005 and that bids be received up to 3:00 p.m. on the 11th day of March, 2005 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.

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The next item was to acknowledge receipt of the Annual Report of 2004 from the Parks and Recreation Department. Supervisor Egan said the report looks great and noted the numbers that are serviced every year is phenomenal. She thanked Administrator Lanahan.

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The following item was to acknowledge receipt of the resignation of Joseph P. Richardson from the Bethlehem IDA. Supervisor Egan noted Mr. Richardson has been with the IDA for a while. Mr. Richardson is retiring and therefore, he is leaving the IDA. He noted he will be working for the Albany Colonie Chamber of Commerce as Director of Economic Development. The Supervisor noted his resignation is effective February 15, 2005.

The Supervisor thanked Mr. Richardson on behalf of the Board and noted they continue to look forward to working with him in his new position.

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The next item was a request from Supervisor Egan to approve modification of the Emergency Management Plan in regard to the order of succession. She said this was coming from Director of Emergency Services, Jack Brennan. She noted the plan had an order of succession that was not clear. This will clarify the fact that the order for Town Board Members will be determined by their time of service on the Board.

The motion was made by Mr. Marcelle and seconded by Mr. Gordon to approve the succession order to include the fact that Town Board Members will be done by their time of service on the Town Board. 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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The next item was a request from Commissioner, DPW, George Leveille, to approve the sewer agreement with the Town of New Scotland. Supervisor Egan said this will not be discussed this evening due to some blanks in the information. She said this will come back to the Board.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to table consideration of approval of the sewer agreement with the Town of New Scotland. 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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The next item was a request from Comptroller, Judith Kehoe, to approve appointment of auditor. Supervisor Egan noted the rfp is done every 5 years as a matter of good practice so it is the recommendation to reappoint Marvin and Company.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the appointment of Marvin and Company, CPAs to be the Town's auditors for the year 2004 at a cost of \$11,900 and based upon the hours required to complete the audit. 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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The next item was to acknowledge receipt of prints from the Delmar Progress Club. Supervisor Egan noted she wished to table this until the next meeting.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to table the acknowledgement of the receipt of prints from the Delmar Progress Club. 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 invited anyone who wished to stop by her office to see the prints.

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The next item was a request from Nan Lanahan, Administrator, Parks and Recreation Department, to go to bid for sodium hypochlorite solution. Could advertise February 16, 2005 and open bids on February 25, 2005 at 3:00 p.m.

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

WHEREAS, the Town desires to advertise for bids for the purchase of sodium hypochlorite solution for the pool at the Elm Avenue Park, pursuant to law, NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 16th day of February, 2005 and that bids be received up to 3:00 p.m. on the 25th day of February 2005 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.

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Following item was to discuss creating a Citizens Advisory Committee in regard to the proposed EPA/GE Dewatering Facility. Councilman Plummer excused himself from this item due to a conflict. Supervisor Egan said she brought this item up at the last meeting. She apologized for not having proposed criteria together.

The Supervisor said the request was prompted by one of the things is that the Town does not know what is happening yet. She said one of the things that Fort Edward did was to institute a Citizens Advisory Committee quite a while ago. She said they have been dealing with this issue a lot longer than Bethlehem. She said the Supervisor of Ft. Edward said it has been very effective because it allows members of the community that have an interest but who may have an expertise to offer to come together and become a sounding board. She said again, she would like to echo Councilman Marcelle's comments, this is not a proposal to abdicate any Town Board authority, or any Town Board communication with EPA. She said the Board would still be the point but the committee is something that could help advise the Board and provide information.

Supervisor Egan said one of the other very important things that is going to happen over the next 9 to 12 months, in the event we do receive either the transfer and/or dewatering facility, is that the community health and safety plan is going to have to be created. She said it is a fairly large document and requires a lot of input. She said it deals with very technical things right down to some basic information in

regard to how to deal with emergencies for the neighbors, for adjoining landowners. She said this is how she kind of looks at it. She said it is kind of a conduit to allow the community to have a conduit to get to the Board and get information together that can make recommendations or provide information to the Board but certainly, ultimately, the Town Board would be any final decision maker or any final contact with either the EPA, GE or any other entity that comes into being over the next several months.

Councilman Marcelle said he supports that thinking for a lot of reasons, some of which have been mentioned. He said there is concern about the project. This gives the people with the greatest interests and greatest expertise and greatest knowledge a forum of which to collectively meet together and, he suspects, it does not require Town approval and something like this may arise anyhow. He said he thinks it is good that the Board is being proactive and acknowledge existence of these people, and the lines of communication be opened and he thinks this is one of the things that make government function properly and easy for the people. He said he supports it and whatever the details are, they can be worked out. He said he thinks this should go forward. Supervisor Egan thanked Councilman Marcelle.

Councilman Gordon added that he thinks a citizens group will be formed whether the Town Board communicates with them or not. He said the group is going to want to talk to EPA and may sometimes feel they are battling EPA so he thinks it is very important that they feel that the Town government has their full attention. Supervisor Egan thanked Councilman Gordon.

The Supervisor said one of the things that she wants to make sure is clear is that at this point, the Town is asking for technical assistance to be paid for elsewhere and she would see that person also being a conduit to this group. She said when they talk about a Citizens Advisory Committee, she wants to be clear, this is not a Board mandated group. She said it is a little bit different than what was advocated for BPAC. She said BPAC is a statutory created group. She said this is an ad hoc thing and would not be subject to FOIL. It is not, it is just an advisory committee, the Supervisor reiterated.

Councilman Lenhardt said he did not have any problem with the description of this group. He said he was concerned that the Board was abdicating their responsibility directly to our constituencies. He said certainly in the past there has been other advisory groups that have come about in Town. He said a few he thought of were Bethlehem Citizens for Responsible Planning; Bethlehem Work on Waste; Clearwater for Bethlehem; SAFER; BREATH; Bethlehem Tomorrow and he was sure he has missed some. He said he has no problem with this. He said there is a gentleman who is an attorney that lives in the community and has offered to participate in this, noting he deals directly with EPA on many other matters. He said he would give the name to the Supervisor.

Supervisor Egan said she has received a couple emails from people that have indicated that they have some expertise and they would like to be involved. She said she did reach out, again, noting PSEG did make a presentation at the last public meeting that EPA sponsored and noted she has asked them to remain involved because with their permitting process, they are very familiar with noise, sound, air and all that sort of stuff. She said she has gotten a very positive response to that.

Supervisor Egan said if everyone is comfortable is just vote to get it started and then recruit people and pass the names. She said then the Board can come up with the criteria as need be especially as this moves forward over the next six weeks or so.

Councilman Lenhardt said one other comment to address Mr. Kelleher's comments. He said if he had his way the Town would not even be worrying about docks and things like that. He said they would not be citing in our Town. Supervisor Egan noted she would echo that with Councilman Lenhardt also.

The Supervisor said to clarify for Mr. Kelleher's benefit, while we are not the dredge site, because we are the site of a dewatering facility, we are part of the Superfund delineated site. She said we are, unfortunately, even though we are not where the contamination is because we are part of the clean up by association, part of the Superfund delineated site.

Mr. Kelleher said he understands that, but again emphasized history clearly shows that the United States Army Corps of Engineers is responsible for this entire site. He said you can go back to a Supreme Court case by John Marshall, the father of the Supreme Court, who ruled against the State of New York and said it was the responsibility of the United States government. He said do not let EPA, the Corps of Engineers – in other words, the United States government – drop out of their responsibility for making sure that this shoreline is returned to its original state. He said we do not want another dock sitting out there deteriorating and kids falling off of them.

Supervisor Egan thanked Mr. Kelleher and noted they will follow-up with the EPA on this.

The motion was made by Mr. Gordon and seconded by Mr. Marcelle to approve the creation of the Citizens Advisory Committee in regard to the EPA/GE dewatering/transfer site in Glenmont. The motion was passed by the following vote:

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

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Supervisor Egan noted she will report to Councilman Plummer that this will not have to be done again. She said if anyone is interested or knows of anyone interested in participating, please contact her. She said the list will be put together and move ahead.

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Supervisor Egan asked if there were any other comments. Mrs. Capone said because of all the pending needs and stuff, she asked if the reval could be backed up one year. Supervisor Egan said this can be discussed with the Assessor. She asked Mrs. Capone if she has talked with the Assessor. Mrs. Capone said the senior citizens are the people that are hit the most. She said 2 doors from her, a woman sold her house she could not afford to live here any more.

Supervisor Egan thanked Mrs. Capone.

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Following a Bethlehem Central student requested the Board declare an emergency for the students to have a snow day tomorrow. Councilman Lenhardt suggested he go to the School Board meeting at 7 p.m. and make his request there. Supervisor Egan said they do have jurisdiction to make those decisions. She thanked him. Councilman Marcelle suggested he approach the Highway Superintendent at the back of the room and ask him not to plow the roads. Highway Superintendent, Gregg Sagendorph, noted he is scared to death and he is not getting involved.

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The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to adjourn the regular Town Board meeting at 6:10 p.m. The motion was passed by the following vote:

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

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Noes: None.  
Absent: None.

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Town Clerk