

TOWN BOARD
FEBRUARY 11, 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 welcome everyone to the meeting and invited them to join us in the pledge of allegiance.

The first item on the agenda was to approve the Town Board minutes of January 14 and January 28, 2004.

The motion was made by Mr. Marcelle and seconded by Mr. Gordon to approve the Town Board minutes of January 14, 2004 as presented. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

Abstain: Mr. Plummer, Mr. Lenhardt.

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The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the Town Board minutes of January 28, 2004 as presented. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

Abstain: Mr. Marcelle.

The next item was a presentation by the Bethlehem Tomorrow Group. They presented their report and questions and answers booklet to the Town Board. Ms. Nancy Heinzen thanked Supervisor Egan and the Town Board for allowing the presentation of the final report of the Bethlehem Tomorrow group. She updated everyone on their previous meetings and distributed copies of their materials. Supervisor Egan thanked Ms. Heinzen.

Mr. Caleb Wistar and Ms. Katherine Daniels presented some of their information about the analytical work on the report. Mr. Wistar acknowledged all the members of the group who worked hard on this information. He said the report and the conversations relied on the study circles model in which different people meet to talk about issues with a facilitator to keep the focus of the conversation. He noted students also participated.

Ms. Daniels outlined some of the areas that everyone felt should be retained and protected along with the character of the areas being kept. She noted sidewalks and trails were of issue also. She said small business is another concern within the town and varied housing availability. She noted people are concerned about taxes and having more commercial and industrial business to help balance the tax base. She said this represents broad areas of interest.

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

Ms. Heinzen said this represents a tremendous amount of work and noted there were 18 tables of various interest residents.

Supervisor Egan thanked Ms. Heinzen. Mr. Wistar said the reports presented are not scientific and do not represent all of the views of 31,000 people in the Town of Bethlehem but they feel it does represent a good snapshot of what people are feeling. He said the reaction of that originally were that the people thought the report was a good representation and captured well at least what the 127 people said at the October community conversation.

Supervisor Egan thanked everyone and said she was a participant in the community conversation in October and the way it was set up and by dispersing all of the interest at each table certainly led to some lively conversation and a lot of information was gathered.

Ms. Heinzen said there will be meetings in the future as scheduled by the steering committee. She noted there is a mission statement for the organization. Publication of the dates and subjects to be discussed will be done.

Councilman Plummer said the conclusions seem very similar to the results of the forum that the IDA had. He said he thinks that is very telling and he thinks it is important. He noted Brian Hanifan and George Leveille were in attendance. He said he thinks all of the information will be helpful to the Planning Consultant.

Councilman Lenhardt said no one mentioned that the Large Landowners also had a presentation to the Board. He said he made note of one of Mr. Plummer's comments about the enhanced hamlet idea. He said that was one of the issues that the large landowners very much were in favor of and they incorporated that into their overlay proposal. He feels their proposals must be addressed also with this new study that is about to take place.

Councilman Gordon said that Bethlehem Tomorrow should be commended and what impressed him was that the events were very inclusive to people and did not seem that they had a specific agenda of their own rather than to get everyone together and move forward. He said it was great.

Supervisor Egan asked if there were any other comments. She thanked the Bethlehem Tomorrow Group.

Supervisor Egan said before they go to the next item, because this information is somewhat related, she gave an update with regard to the EPA and a meeting she had. She said GE is involved in a dredging project of the Hudson River and in relation to that there is a dewatering facility or sediment processing or transfer facility proposed. As the process has moved on, there were 24 original sites. She said it has been whittled down to 7 and Bethlehem remains one of the sites. She said one of the sites is part of the Beacon Harbor proposal that is about to be discussed.

The Supervisor said she was surprised when EPA came in to meet because there is a pending project for that particular site, she thought Bethlehem was removed or put on the back burner as a possibility. She said apparently that is not the case and it is her understanding that the owner of the site has not in any way, shape or form removed the site from consideration. She said EPA has continued to move forward with their engineering studies and various other studies of the site. She said it is her understanding that the time frame is they are expecting a report to be submitted sometime around the end of April where they will eliminate some additional sites and make recommendations as to what the last 2 or 3 are going to be and make a final decision some time in August.

Supervisor Egan said as a result of her meeting with the representative, she sent a letter and the EPA a letter indicating that there was a project before the Planning Board with respect to that site that was fairly substantial and in addition to that she had some concern as to whether or not the Town of Bethlehem solid waste code would preclude or come into conflict at least with what is being proposed. She said she further outlined that one thing being done in the Town is to stabilize the tax base and expand some industrial and commercial development and that the Town only has selected areas in which to do that and the site now being considered is one of the areas.

Supervisor Egan said as the discussion continued, one of the things she inquired about was in the event this dewatering site was going to happen in Bethlehem, what sort of incentives at least could be looked for. She said she was told there are none. She said apparently within the Super Fund funding, financing, there are no incentives that are available. She said depending on how they acquire the site, if they so choose – whether they lease or acquire, it may actually take that site off the tax rolls and the current property and school tax currently collected will not be collected. She said with all that she sent a letter of objection and it went to the EPA this week. She felt this was necessary as a back-drop before moving on.

The next item was a request for amendment concerning Beacon Harbor and Beacon Heights Planned Commercial Development and Planned Residential Development.

Mr. Victor Gush thanked the Town Board for allowing him to present this information. He said he wants this project and that is what they are fighting for. He said EPA told him at their last meeting that this was part of the 7 sites but if this project looked like it was going to go and that is what they are working so hard to have happen, that they will take the site off the list. He noted he has asked them to take this site off the list. Supervisor Egan said she spoke with the attorney for the EPA and Mr. Rosales and she said that is not what they are indicating. Mr. Gush said he would be more than happy to send the EPA a letter and send a copy. Supervisor Egan said he can understand the Town's concern. Mr. Gush said he was not worried about it but now he is.

Mr. Gush brought the Board up-to-date, noting they were discussing the property across the street which is also zoned Heavy Industrial. He said they feel very strongly that with a project like this they need the residential component to enhance the success of the project. He said one of the major concerns was children and there has been a discussion with Mr. Loomis of the School District. He said the school district is okay with this new proposal. Supervisor Egan said the last time she spoke with Mr. Loomis he indicated he had a brief conversation with him but he needed to have further conversation. Mr. Gush said when he gets back he will ask Mr. Loomis to contact the Supervisor, noting they are in good shape there.

Mr. Gush said they have changed the design so that there are elevators, buildings a little bit higher. He said with the change in design they have opened up the space with more green area and trails. He said it is actually a type of design and a type of building that in most cases is not designed with kids running around in them. He said they are mostly designed for what they are looking for and that is professionals and adults and move downs.

Mr. Ranieri, architect and land planner, working on the projects. He said Mr. Gush came to him to try and reduce some of the impacts of the building on the site and allow more green space and natural area. He said one way to do that was to take buildings and stack them on top of each other. He said there are 2 product types – one in the larger building would be a 4 or 5 story building with some 50 units per building. He said some of the products are from a company with national standing and multitude of products they can select from. They will work with them on a joint venture to develop the product further. He said there is interior garage parking for less parking on site and will be entered through the basements.

Mr. Ranieri said they also felt there might be a need for a smaller product and it was an opportunity with the topography to think of something different and they came up with a cluster housing type thing, town house with attached garages as well. He said they would be 10 plex buildings and smaller density.

Supervisor Egan asked Mr. Gush to give the numbers again. Mr. Ranieri said the large buildings on the site are 54 units and there are 70 units which will be the town houses on the small locations and then they have 378 units in the condo buildings. He said each of the large buildings would house 54 units and each one of the smaller would house 10 units. He said there is total units of 448. Seven 10 plex buildings and 7 54 unit condos he noted. He said there will be a club house and a community center, as well as, walking trails that meander through the entire wooded site. Mr. Gush said this site will also be connected up with walking trails down to the river site. He said the other thing from the old plan, they have eliminated all the single family houses.

Supervisor Egan asked how many bedrooms are in the units in the 10 plex buildings. Mr. Ranieri said there are mostly 2 bedroom units. He said they range in size from 1350 to 1560 square feet. Supervisor Egan asked about the 54 plex buildings. Mr. Ranieri said they would have a combination of units ranging from 1027 to 1500 square feet with 1 and 2 bedroom units and 2 bedroom dens.

Supervisor Egan asked if there were any questions from the Board. Councilman Lenhardt said he wished to give a historical perspective for the Board and for the public on this. He said back on August 13 of 2003, when the Board was comprised of a different number of individuals, Mr. Gush came before them with a proposal for Beacon Harbor and Beacon Heights. He said Heights was the residential piece. He said at that time there was concern about having a residence in a Heavy Industrial zone and its potential impacts down the road not only from potential residents but also on the school district. He said it was requested that Bethlehem Central School District be contacted and provide some written comments. He said he never received any and does not know if the Supervisor received any written comments from the District. Supervisor Egan said she has not. Mr. Lenhardt continued that at that meeting, the Board asked Mr. Gush to push the Harbor piece to the Planning Board for a recommendation and hold off on the Heights. Now, he said, Mr. Gush is back with the residential side.

Councilman Lenhardt said speaking for himself he has a concern that if the Planning Board sees both and eventually makes a recommendation that the residential piece will be built and the commercial piece will not. He said he is still in favor of pushing for the commercial piece but not the residential piece.

Supervisor Egan asked if anyone else had any comments or questions. Councilman Gordon said he would echo Councilman Lenhardt's concern that we certainly want to have the commercial piece. He said it is a very exciting project and very pleased that Mr. Gush was looking to do something like this in Bethlehem. He said the river is a great asset and we have barely begun to tap it. Mr. Gordon said he does have a concern as they are grappling with zoning across the Town that things are not done in a piecemeal manner. He said he is concerned about heavy industrial development along the river because that is a resource because once it is used for heavy industry then there is no turning back. He said they just want to make sure that the commercial portion happens as well.

Mr. Gush said he can answer that by letting the Board know that they do feel strongly that the residential component is needed to help make the commercial component safe and saleable. He said people like to live and work in the same location. He said what they also realized is that they would prefer to get the residential portion underway. He said right now the commercial is in and will bring the Board up-to-date on that. He said they have turned the environmental portion around noting there was a snafu in getting things delivered but this is in Mr. Lipnicky's hands and the Supervisor's office has a copy of it. Mr. Gush said at the same time what he would like the Board to consider is to be able to take the

residential and take it to the Planning Board to look at it at the same time. He said they have no problem building both. He said they can just about guarantee it will be built at the same time.

Mr. Michael Groff with Charles H. Sells, Inc., Engineers said they were retained by the applicant to prepare all the site plans, EIS and other documents for the project. He said he presented an amended petition to improve the Heights that the Board had last year. He said it includes 2 new EAF long forms, as well as, the conceptual site plans for both projects. He said the statistics were also prepared and are included in the documents regarding the number of units, square footage and all of that.

Mr. Groff said they are continuing to look at other infrastructure that is needed for the site – water, sewer, traffic. He said these will be addressed in more detail later on. He said they are working with a very large planning firm out of New York City. Mr. Tom Yardley said this project is an important piece of the project proposal as well. He said it is important for the Board especially with the dewatering looming to make a decision whether or not to include this piece. He said they believe it is very important.

Mr. Yardley proceeded to explain that under SEQR as long as this project is being proposed, it has to be analyzed along with the Harbor component, otherwise they would be accused of segmentation issues. He said in layman's term this basically means analyzing the impacts of one piece without acknowledging that there is going to be further impacts from the other part of the development which in this case is the Heights. He said with the previous Board at the August 13, 2003 meeting and there was a resolution which was just for the Harbor component. He said in response to concerns at that meeting, the plan has been amended by Mr. Gush to include condominiums which figures can be provided but generally have far less school children. He said Mr. Gush will work with the school district to ensure that they are comfortable with the figures.

Mr. Yardley said with regard to the concerns expressed at the August meeting, they have submitted a revised application. He said this basically requires a new SEQR resolution from the Board and have lead agency status and would require a coordinated review. He said it is a Type 1 action and this means it is subject to a full environmental impact statement. He said a lot of the concerns will be addressed in the statement. He said both parts of the project will be reviewed together. He said there is also an issue of time.

Mr. Yardley requested that the Board accept at least preliminarily to at least agree to look at this component and with the understanding that SEQR affords the Board a full and close analysis of all the environmental impacts of including things like school kids, traffic, etc. He said that is all built into the SEQR process. He said eventually once the Board has declared lead agency status, there will be a scoping session which allows the public to address concerns covering the full project from the school children to engineering issues, architecture, visual analysis. He said all that will be addressed by the Board.

Mr. Gush asked Mr. Yardley if the residential was not built and they went to the commercial, assuming the residential has the higher impact than any commercial offices, are they addressing the higher impact by going to the residential portion of it. Mr. Yardley that would be something to be discussed. He said the impacts are different but not necessarily higher. He said in this case he was not going to speak to the specifics but quite frequently to have a residential adjacent to commercial development is quite beneficial. He said in fact with regard to traffic impacts, peak hours enter differently because obviously people have to be at the office at 9 in the morning but people would have left the residential component earlier to get to the office at 9. He said sometimes they compliment each other with shared parking and function as a mix.

Supervisor Egan asked if there was a concern that it is diagonal to PSEG. Mr. Gush said no, they are actually north of it. The Supervisor said you can see it. Mr. Yardley said not necessarily, only on the southern portion of the property. Supervisor Egan said again with it being heavy industrial, there might be another neighbor that is a factory or something that would fit within that district. Mr. Gush said he does not think that would happen because actually the site to the north is valleys and other topography. He said he does not see that other industrial operations would fit on this land. He said across the street is their entire site. He said on the south portion across the street is the power plant which they are sprucing up and that does not bother him at all. He said on the south end will be a huge green area. He said there is no way that something will be built around the project that they either do not control or can't be built. Mr. Yardley noted there will be drawings showing buffering between the residential portion and any industrial use. He said that is something that can be addressed.

Councilman Marcelle said he was not sure he was at the August meeting but it may have been the one previous to that. He said he expressed a concern and asked Mr. Gush if the 2 projects were independent of each other. He said he asked if the Harbor Project could stand on its own or did it need the Heights project. He said his recollection at that time was that the Harbor could stand on its own and was independent of and not financially dependent upon the Heights project. He said he thought he was hearing something slightly different and asked if that was correct. Mr. Gush said yes and no. He said to give a direct answer, the 2 projects could stand on their own, no question about that. He said the Harbor project would be enhanced tremendously from their research and they have come to the conclusion and been told that having a residential component like this connected to the site would definitely enhance the marketability of the site. He said he thinks even Lamar Hill, whom they have met with and he has said the same thing.

Councilman Marcelle said that made perfect sense to him. He said he has seen one down in Kendall, Miami this winter that has like this and has a built in mall and right on top of it there will be town homes and apartments, office buildings. He said it is living where you work and eat and sleep and buy and never have to move more than a quarter mile from where you live. He said he guesses that has a certain attractiveness to some people.

Councilman Marcelle said his concern is that the Town will wind up with the Heights but not the Harbor. He said he is not opposed to the project. He said he is concerned about that because there will be residents living there and if for some reason the Harbor does not follow through, even though the whole surrounding area is zoned heavy industrial everyone who lives on that site will come to the Board and tell the Board how they live there, never expected a commercial project to be developed there. He said maybe it is not a lot of families but it could be grandchildren, walk on the beautiful trails, have bicycles and horrors of horrors there is a plan to put a business in Town. He said that is a concern because it was highlighted a little tonight, one of the big concerns and we do understand that we have to increase our commercial/industrial tax base in this Town if we want to support the kinds of schools that our citizens need and deserve. He asked what assurances, what can he tell the Board to alleviate that concern.

Mr. Gush said he has been at this thing for 30 some years and he is well aware in many cases they build their own enemies into the projects as they go. He said the way this is handled and has been handled in the past -- and they are getting better at it as they go through the years and get a little more experience -- is that they actually market the projects together. He said when they are actually selling the units the actual package comes complete with the entire development including the riverfront community also so that it tells the people when they are moving in they are moving into a community that has all these components in it. So, he said consequently they cannot go to anybody and say that this was a surprise. He said not only do they do it here but as part of their closing package. He said it is all on file.

Councilman Marcelle said he appreciated that and proceeded to make one comment. He said he grew up in Town and in the 1970s every time he went down Route 9W there was a big sign that said Southgate mall coming soon, noting it is the location of the new Bethlehem Town Center. He said it was surprising how many people living in that community even though it was a planned site for a commercial/retail center, and he was not on the Board at the time but he was at the hearing, walked in with very hostile attitude that that land was actually being used for the purpose for which it was planned. He said he just made that comment and other question was is there an order in which these 2 projects will be built.

Mr. Gush said the plan right now, honestly – at one time they were going to build the Heights first and then do the Harbor – but at this stage of the game what’s happening is the Harbor is going faster than the Heights. He said the ideal thing would be to build them both together. He said in practicality it will probably be – if it can’t be simultaneously – the Harbor will probably go first before the Heights only because of the approval process and what is happening.

Councilman Marcelle noted it is a grand project and complimented Mr. Gush on his vision and the use of space that is a clean use and puts a good use of our riverfront in Town. He said he thinks it will be tremendous. He said his only question was if Mr. Gush could share his comfort level with this and that it will be a profitable venture and can be done. Mr. Gush said basically they would not be doing it if it would not produce a profit. He said as they get into projects, they break the project down and each one has its own little profit centers. He said things are built simultaneously so there is a cash flow from the rentals and the retail component. He said there may be 20 categories and it is evaluated and marketed to 30 or 40 or 100 different companies. He said the companies will pick their component. He said in most cases before they start the construction of the buildings, they have leases for 50 percent of the building. He said as a matter of fact they have that much interest right now.

Mr. Gush said they feel the way this is designed for recreation – the water parks, the museum, the theater – to be part of it and it is a place to live. He said it is a regional place to live. He said it is not just come live in Bethlehem, everybody is going to say did you see the place in Bethlehem. He said the State and various people going around the world are going to be marketing it. He said they are going around marketing the Capital District as a high tech center. He said they have to have a component in that marketing to show how progressive the area is. He said there is a regional place for everybody to go. Councilman Marcelle thanked Mr. Gush.

Councilman Plummer said he has a conflict of interest on this matter and therefore he would recuse himself from the issue. He said General Electric is a client although not working on this site or the EPA, however, he has a conflict and he cannot as a Town Board Member vote on this issue or deal with this matter either as it deals with the Harbor or the Heights.

Town Attorney Potter asked Mr. Gush if this was approved whether there was anything that was going to tie the residential area legally to the commercial area. He asked what the form of ownership was going to be and if there were common areas on the commercial side that the residential side will have so the two are forever connected. Mr. Gush said basically yes. He said first of all they are condominiums and as part of that plan there are trails and they are connecting up the trails. He said they are giving the ability to the owners of the condominiums to come down and use some facilities in the marina, harbor and items. He said a lot of that is open to the public anyway. He said the condominium portion is not going to support anything that is happening on the commercial end of the plan.

Town Attorney Potter further asked who was going to own the trails. Mr. Gush said there will be a condominium association and recreation association that will handle the trails. He said these will be shared by both projects. He said this is pretty similar to what they did in Lake George where they have 2 associations

along with the condominium. He said they are doing this on their exit 12 project also.

Supervisor Egan said a couple of things. She echoed Councilman Marcelle's sentiments that it is an extremely exciting project and it certainly is one of a kind for this area. She said she applauded his vision on this. She said there are 2 concerns and she asked in the event that the Board decides not to go forward with the residential is it his intention to pull the commercial piece and pursue the EPA and the dewatering facility. Mr. Gush said it has not been his intention to do that. He said if he gets turned down on everything, that would be an entirely different situation. Ms. Egan said her understanding is that the commercial is in and that has been proceeding. She said her question only had to do with this particular request. Mr. Gush said he was hoping that does not happen because again, it is a buffer between residential and the commercial down below. He said they want the commercial to go and if they had to withdraw the residential which they really do not want to do because they think it is important to the project, they would probably eventually end up building commercial on the other side as well.

Supervisor Egan said as they have discussed and as she has been public about, within the next couple weeks they hope to propose moratorium language that she thinks will directly affect this project. She said she is not sure how that is going to impact this project. Mr. Gush said there is a big problem on their hands because of the studies they are doing. He said for this project they have to include the upper piece of property. He said at one time one of the attorneys on the Board said they could segment and they looked into it and he thinks it is a segmentation issue. He said they are very concerned about it and his hope is that they will be able to go forward with the studies and move it along and come back to the Board. He said at least it keeps them moving.

Councilman Marcelle asked about an optimistic time frame, if the Board gave the approval, of when ground would be broke realizing all the processes that have to be done. He asked what the optimistic projections would be. Mr. Gush said they would love to be able to – and it all depends upon the approvals, the time and the agencies and various things, not just the Board – noting they have gotten most of the agencies pretty well in agreement and they have gotten through most of the studies and have talked to most of them. He said it would actually be fabulous if they get started this fall. He said in reality it is probably going to be next spring if they get all these components in place.

Mr. Gush said the reason they are fighting so hard, is they would like to beat the EPA so that they do not have the problem. He said the closer they get to having a final approval and a go ahead, he thinks they will go away. He said that was what they told him face-to-face. He said that was why he put that in the letter. Supervisor Egan said that was good because that was not what was said to her this week. Mr. Gush said this is the director.

Councilman Marcelle asked Town Attorney Potter if there is a way legally to tie the 2 projects together. Town Attorney Potter said that was why he asked the question and said possibly. He said he would have to give some thought to whether in the Planning Board's approval you could in some way link the 2.

Councilman Marcelle next asked if the moratorium was going to be a temporary or permanent moratorium. Supervisor Egan said definitely temporary. Mr. Marcelle asked if a temporary moratorium was adopted would that necessarily mean the Planning Board could not go ahead with something like Beacon Heights if it were projected to start after the end of the moratorium. Town Attorney Potter said that depends on the language of the moratorium. He said certainly – and he was not sure if this is what was being addressed by Mr. Gush – the developer can do whatever independent studies they want to in anticipation of the moratorium coming to an end. He said they do not have to stop their work during that period of time. He said the Planning Board can meet with them and go forward during that time may be a different question. Mr. Roth mentioned the SEQR resolution would

have to be amended. Town Attorney Potter noted this was true and there would have to be consideration given to the language. He said certainly no approvals could occur during the course of a moratorium whether work could be done to advance a project depends on the drafting. Mr. Groff said because the SEQR regulations require the Town Board to declare lead agency and to coordinate review for a project like this and it is a very formal process. He said he does not know how a moratorium would deal with that. He said it depends on the language as the Town Attorney has mentioned.

Mr. Gush said what they were also hoping was to connect the 2 and that is what they were talking about and they think it is a mandatory thing in a way legally. Town Attorney Potter agreed noting he did not think you can segment them. Mr. Gush said if there is support to this, the Planning Board could receive it and it would exempt that portion of it out of the moratorium. He said he thinks that would allow them to continue while the Board still has control of the project. Supervisor Egan said they have not come up with the proposed language for the moratorium, and her concern is that Mr. Gush asked for an exemption and exception and every other person that has a project that they want to proceed with is going to come in and ask for an exception.

Councilman Marcelle asked if there is some type of coordination as the Board goes forward with the moratorium that the impact will be known or is that something about the process that is being done. Supervisor Egan said one of the things she was going to suggest, noting to Mr. Gush that she is sensitive to the time spent and appreciate the fact that he has returned based upon the concerns of the previous Board to address the school district concerns, not to purposely put off this project but because they have some substantial issues here is the timing of the 2 projects together and the interplay of the SEQR and the moratorium and the actual language of the moratorium itself. She said she is hoping as this proceeds, noting they were going to talk about this toward the end and give everybody an update, to have the proposed moratorium language by the end of this month.

Supervisor Egan he said she is wondering if what the Board should do is put this off for 2 weeks, work on the language, see what projects are being impacted by it and see what can be done with it and go from there. Councilman Marcelle asked if that was for the next Board meeting. Supervisor Egan said for February 25 and have the language out to everybody before the 25th. She said she does not know that this can proceed because she has some concern about how the moratorium is going to affect this project in regard to where it is frozen and how it is frozen. She said she has been discussing this with Bill Sharp at the Secretary of State in regard to how to frame it so it is enforceable and justifiable. She said her concern is independently they can do whatever they want but she is not sure where in the process it can be frozen. She said she does not want to freeze it in one place for one and freeze it some place else. She said at this point she thinks it would be better to see if this can proceed at the same time together and try and work something out as opposed to trying to make a decision at this meeting. She noted she did not think the question of the SEQR or the joining question could be answered at this time. She said she did not feel a decision should be made that would adversely affect this project down the road.

Mr. Gush said it is very important to them also because there is another component that everyone is forgetting about and that is in the Harbor itself there are some residential components in there which are the real high end unit that are on top of some of the buildings. He said there are some high end condominiums in there. Supervisor Egan said she did not know if that would necessarily be affected by the moratorium because it is really part and parcel of the commercial project which is not subject, in her vision, to the moratorium.

Councilman Lenhardt said his position is that this is a Heavy Industrial zone and he realizes the zoning allows anything heavy industrially related and below that to go in there, however, it was designed for heavy industry and has a real problem putting residents in a zone like that. He said he certainly would not stop going to

the Planning Board for a recommendation but he had to admit he is not in favor of that particular piece. He said he would not want Mr. Gush to waste a lot of time and money if the rest of the Board or the majority of the Board felt the same way.

Mr. Gush said one of the things that is going to be a problem if they go to heavy industrial or commercial is plateaus and it is full of a lot of ravines and that is one of the reasons you see a lot of these things happening. He said it would be kind of impossible, noting not getting him wrong when he says, it really lends itself to this type of design – the residential design and a building setting like this. He said it could go office building but how much office building do you want to put in the whole project and do away with the residential component of it. He said he guesses that is the question. Mr. Groff said if you make the residential part appealing enough, people will come regardless and there are lots of ways of buffering especially on a site this size.

The motion was made by Mr. Marcelle and seconded by Mr. Gordon to table the request for an amendment concerning Beacon Harbor and Beacon Heights, PCD and PRD until the meeting of February 25, 2004. The motion was passed by the following vote:

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

The next item was a request from Vollmer Associates to set public hearings regarding South Albany Water and South Albany Sewer District. Supervisor Egan noted there is a grant being submitted in connection with these districts. She said the first public hearing is required by the program to be held before the application is completed and to inform the residents of the grant application process and how they would benefit if the grant was awarded. She said the second public hearing is a resolution to authorize the Supervisor to submit the application. She said it must be a separate meeting according to the grant guidelines.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to set a public hearing on March 10, 2004 at 5:30 p.m. in regard to the South Albany Water and South Albany Sewer Districts in regard to a grant application in order to inform the residents of the grant application process and how they will benefit if the grant is awarded. The motion was passed by the following vote:

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

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The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve setting a public hearing on March 24, 2004 at 5:30 p.m. in regard to the South Albany Water and South Albany Sewer Districts to authorize the Supervisor to submit the grant application in accordance with the program's guidelines. The motion was passed by the following vote:

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

The next item was a request from Building Inspector, David Rice, for approval of a dumping permit for property Elsmere Avenue, Delmar.

The motion was made by Mr. Plummer and seconded by Mr. Gordon to approve the dumping permit as requested by Michael F. Waldenmaier, 108 Beacon Road, Glenmont, NY for premises located on Elsmere Avenue with stipulations from the Engineering Division and as requested by Building Inspector, David Rice.

Councilman Lenhardt asked if the adjacent landowners were notified of this request. Supervisor Egan said she understands that they have and mentioned it is for the permit subject to the stipulations entered by the Engineering Division which are attached and will become part of the permit. Mr. Lenhardt further mentioned that last year there was a policy passed that adjacent landowners be notified of an action like this in the event of any complaints before the permit was approved. Supervisor Egan noted she has not heard anything from anybody.

The motion was passed by the following vote:

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

The next item was to approve appointment of Counsels to the Town Attorney.

The motion was made by Mr. Plummer and seconded by Mr. Gordon to approve the appointment of Andrew W. Kirby, Esq., Delmar, New York to the position of Counsel at the salary set at the Organizational Meeting to serve at the pleasure of the Town Board, in the capacity of Counsel to the Justice Department s but subject to the direction of the Town Attorney who may assign him to any additional subject matter or capacity, as and where needed. 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 motion was made by Mr. Plummer and seconded by Mr. Gordon to approve the appointment of Thomas A. Newman, Jr., Delmar, NY to the position of Counsel on a claim basis to serve at the pleasure of the Town Board, in the capacity of Counsel to the Water and Sewer Departments but subject to the direction of the Town Attorney who may assign him to any additional subject matter or capacity, as and where needed. 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 motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the appointment of Michael J. Smith, Delmar, NY to the position of Counsel on a claim basis to serve at the pleasure of the Town Board, in the capacity of Counsel to the Police and Personnel but subject to the direction of the Town Attorney who may assign him to any additional subject matter or capacity, as and where needed. 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 acknowledged Mr. Newman and Mr. Kirby and thanked them and congratulated them.

The next item was to approve the appointment of Alternate Voting Machine Custodians.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the appointment of Clifton B. Thompson, Glenmont, NY and Gregg Sagendorph, Jr., Delmar, NY to the position of alternate voting machine custodians. 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 to adopt a resolution to authorize the Supervisor to send letter in support of amendment to CPLR 4545.

Supervisor Egan asked Town Attorney Potter to give some explanation as to what this is. Town Attorney Potter explained that this is one of the issues that will be addressed at the Association of Towns meeting in New York City. He said CPLR 4545 is a procedural rule that applies in the event of personal injury lawsuits. He said as it is currently written, if a person recovers an award against a private defendant, that award is offset by the amount of other benefits the person will receive under disability insurance. He said that rule currently does not apply to Towns so that the plaintiff would receive both the full award from the Town and receive the disability insurance payments that they would otherwise be entitled to.

Mr. Potter said there is in essence a double recovery for the same disability. He said the Association of Towns has sought to do and what this request is for is to have towns be treated in the same way as private defendants.

Supervisor Egan said her understanding is that Albany County has already supported it together with the cities of Albany, Cohoes, Watervliet, Town of Colonie, Town of Westerlo, City of Watervliet.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to authorize the Supervisor to send a letter of support for the amendment to CPLR 4545. 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 Assessor, M. David Leafer, for approval to postpone effective completion date of reassessment update. Supervisor Egan asked Mr. Leafer to give background regarding this item.

Mr. Leafer distributed a sample of an update. He said in January he requested a meeting with Supervisor Egan to express his concerns that there was a big lag in the timetable for completing the 2004 reassessment update in time. He said the field review process and evaluation had to in fact be done by the end of January in order to have the printer get the impact notices mailed out and keep the project on schedule.

Mr. Leafer explained the major reasons and asked to have the date extended to March 1, 2006. He noted they will continue to work with the information they have to complete the update. Councilman Plummer asked when this would be completed. Mr. Leafer explained it would impact notices and they could be put out a little earlier probably the 1st of February instead of the 1st of March to give a full 2 months for informal hearings. Councilman Plummer said that would be February or March of 2006. Mr. Leafer said that would be the impact notices. He said he has a revised timetable for public notice and gives the time to do the job right.

Supervisor Egan inquired about any State guidelines, rules or anything else. Mr. Leafer said there would not be any problem but would be in line with what should be done. He noted update notices are received and this was discussed

previously. Supervisor Egan asked what the effective date would be now. Mr. Leafer said it would be March 1 taxable status date of 2006. He said May 1 would be the tentative roll. He said there is a 2 month opportunity for people to come in and complain. He said they will and the values will be changed. Any adjustments found in the office, according to Mr. Leafer, will be ironed out before May 1 and assessment change notices will be sent out. He said May 1 is the tentative roll, and the regular grievance period will take place.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to approve the extension of the completion date of the reassessment update to March 1, 2006 as requested by M. David Leafer, Assessor. 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 to acknowledge receipt of the quarterly franchise fees from Time Warner Entertainment-Advance/Newhouse Partnership for the period October through December 2003 in the amount of \$83,606.41.

The next item was to acknowledge receipt of Preliminary Plat for the Hedgefield Subdivision, Weisheit Road and Wemple Road, Glenmont from the Planning Board for information purposes.

Supervisor Egan added the appointment of John Flanigan, Slingerlands, NY to the Building Department to help with the absence of the Building Inspector. This will be a part time position.

The motion was made by Mr. Marcelle and seconded by Mr. Plummer to approve the appointment of John Flanigan, Slingerlands, NY to the Building Department on a 20 hour per week basis at the rate of \$30 per hour. 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 updated everyone on some issues. She said the moratorium was mentioned earlier. She said the RFQ that went out in the fall in regard to the land use management and zoning consultant has been narrowed down from 15 to 3 of the responses. She said the interviews will take place this week.

Supervisor Egan said the moratorium language is also being worked on. She said she hopes to have this for the next meeting also.

The Supervisor said with the rails to trails on the D & H rail path, she talk to the County and they are pursuing and it is her understanding that there is progress made in getting the rails removed and then it will move on to the purchase of the property. She said it is being spearheaded by the County. She said the Town will be kept apprised.

Supervisor Egan asked if there were any questions or discussions from the audience. Resident Marie Capone asked about the project on the waterfront and whether the fire trucks could navigate that area. Councilman Lenhardt said the Planning Board will review this during the review of the development.

Mrs. Capone said in regard to the people of Bethlehem Tomorrow, she would rather be Bethlehem Today. She said they want sidewalks and the people in certain areas do not want sidewalks. She said she tried to get sidewalk on Delaware Avenue because the kids have to cross at the Library and cross again. She said small business, there is Jimmy McCarroll at the corner doing financially very well between Price Chopper and Hannaford. She said they want to have an active government and there has never seen any of the people at the IDA meeting. Mrs. Capone said she is the only one there and it takes 17 minutes to cross Delaware Avenue at 7:30 in the morning. She said they want to recreate everything but don't try to raise the taxes.

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Supervisor Egan asked if there were any other comments. Resident Victoria Graf, Bethlehem Central High School PIG class and she was wondering about Beacon Harbor and Beacon Heights and noted she is familiar with the area asking if there is any contamination of that area and the residents who are affected long term whether if they were to sue if the Town of Bethlehem, ultimately can the Town Board be held responsible for those claims or would they go to the builders of the project. Town Attorney Potter said the party who is responsible for the pollution would be responsible for the injuries that were caused by the pollution. He said before they could develop on the project site, they will have to be assured that there is no contamination there. Ms. Graf thanked the Town Attorney.

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Resident David Farber said he was also a student and asked about the affect of crime at Walmart and other aspects of what will happen because of the Walmart. He asked how that is being taken care of and whether more police officers were going to be hired. Supervisor Egan said she would answer for the Chief of Police since he was not in attendance. She said the Police Department keeps an eye on it and asked if this was from the Spotlight article last week. Mr. Farber said this was just in general. The Supervisor said there certainly has been increased calls to the area because of the Walmart and Lowe's. She said she has talked to the Chief and said he is not alarmed by the number of things that are happening and it was pretty much within the anticipated levels. She said at this time, although there may be some discussion at budget time, the manpower is fine to cover everything that is happening.

Councilman Lenhardt said in last year's budget time they authorized an additional officer to the force in anticipation of increased activity there.

Supervisor Egan thanked Councilman Lenhardt.

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Supervisor Egan asked if anyone else wished to address the Board. Resident William Kelleher said he was here tonight to support the Town Attorney. He said we are in desperate need of legal advice concerning the Town's law suit against Earth Tech and Waste Management. He said there is a very ridiculous situation. He said the fix is going to fail, no question about it, he guarantees it. He said the Town is going to have to go to court and prove that it has failed. He addressed the people who will be involved in all this matter. Mr. Kelleher noted the Town does not have an engineer who can go to court and testify. He said he has testified before as part of his duties as a State officer and he knows what is absolutely necessary. He said there is not a P.E. on the staff. He said there is no law that requires a licensed P.E. on the Town staff but when the Town goes to court, there will be a need to hire a licensed engineer to testify for the Town.

Mr. Kelleher said he recommends in order to help the Town Attorney that there be some legal advice gotten from Matthew Clyne. He said the reason for that is that in 1994 the only practicing engineer or lawyer who supported him and went public in his prediction that this was going to be a financial disaster to the Town was Matthew Clyne. He said he does not see any conflict of interest.

Supervisor Egan thanked Mr. Kelleher. Town Attorney Potter appreciated Mr. Kelleher's observations and he was absolutely right. He said in the event that this matter proceeds further in litigation and if it ultimately came to trial the Town would need appropriate expert witnesses to testify. He said those expert witnesses as a litigation strategy matter should be independent. So, the Town would in all likelihood, according to Mr. Potter, have to go out and retain a professional engineer. He also noted the Board cannot comment at this time because it is a matter in litigation.

Mr. Kelleher commented about the 16 wells to be constructed. He noted that there was a licensed engineer from Earth Tech representing the Town., not the Commissioner of Public Works. He addressed the testing and the results.

Supervisor Egan said she would acknowledge receipt of his letter which all the Members of the Board received. She said until they know exactly how this is going to proceed, they really cannot comment any further. She said they understand his concern and that Mr. Potter adequately put it that we are going to have to wait and see at this point in time and proceed accordingly. Mr. Kelleher said he agreed and he appreciated the opportunity to express himself. He commented that the previous Town administration did not. Supervisor Egan thanked Mr. Kelleher.

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Supervisor Egan asked if there was anyone else.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to adjourn the regular Town Board meeting at 7:18 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