

TOWN BOARD
FEBRUARY 12, 2003

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 7:30 p.m.

PRESENT: Sheila Fuller, Supervisor
George Lenhardt, Councilman
Doris M. Davis, Councilman
Daniel G. Plummer, Councilman
Thomas Marcelle, Councilman
Kathleen A. Newkirk, Town Clerk
Robert J. Alessi, Esq., Town Attorney

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Supervisor Fuller welcomed everyone to a regular meeting of the Bethlehem Town Board and invited them to join in the pledge of allegiance.

The first item on the agenda was a request from NIGRO Companies to consider amendments to the Building Project Approval for the Bethlehem Town Center, Glenmont. Supervisor Fuller asked Mr. Sweeney to give an overview of the requests.

Mr. Bob Sweeney, Attorney for NIGRO Companies, said they are here for an amendment to an existing Building Project Approval. He noted Mr. Nigro, Mr. Frank Palumbo from Sere/Brown. Todd Curley from NIGRO Companies and Rob Gess from Lowe's Home Improvement Centers were also in attendance.

Mr. Sweeney reviewed the previous actions taken by the Town Board. He said as part of the approval, there was a Walmart and home improvement center. The home improvement center at that time was not committed to the project so the Board was asked to consider that part of the project on a generic basis. He noted very recently Lowe's Home Improvement Center has approved their participation in the project. He said they are here to present that to the Board and very slight changes in the Building Project Approval to fit this specific design from Lowe's Home Improvement Center. He said the application includes a change in the footprint. He said the most recent of Lowe's building designs is actually smaller than the footprint approved by the Board last year. He said this would be a reduction from about 146,000 square feet to 134,000. He said plans were presented showing the changes.

Mr. Sweeney said nothing else has changed. He said going along with that, there is a specific building façade design which was reserved when the BPA was done. He said that piece of the property was delivered on the plans. He said finally the third element requested was the pylon sign for the project now showing the name, Lowe's.

One last element that has come up as a part of the BPA has to do with offsite

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sidewalk construction, Mr. Sweeney said. He said during the meeting for Final Approval, there was a discussion of a contribution by the project to sidewalk construction. He said it was not included at that time, however, with the advance in the project, the developer wanted to come forward and make the financial contribution that was under discussion at the time. He said a letter has been submitted offering to do that and asked that the Board consider it as part of the amendment to the BPA.

Supervisor Fuller asked if there were any questions. She said on the amendment with the sidewalk, they certainly will be trying to get some help from the NYS Department of Transportation. She said obviously this was talked about before Councilman Plummer had discussed it. She said with the development of the Price Chopper at the K-Mart plaza which has generated a good deal of traffic long before Mr. Nigro was in the ground with his project, perhaps DOT will kick in now. These are 2 major developments and they need to help. Mr. Sweeney said certainly their participation is essential in the design of what would happen between the 2 roads.

Councilman Plummer said he appreciated NIGRO coming forward with the change. He said he did vote against the project when it was before the Board and he did it because of the safety concern in the area that was just identified between Bender Lane and Feura Bush Road. He said he thinks the fact that they are coming forward now will help the Board when they go to the Department of Transportation to try to convince them that it is a project where they need their resources. He thanked NIGRO Companies for this and said he will vote in support of this because they have come forward and are willing to take care of that safety issue which shows the community that they are very much committed to the community and he again thanked them for that. He said he appreciates it and is in support of the project.

Supervisor Fuller thanked Councilman Plummer. She noted the Board has received all the information and have reviewed it. She said this project has been before the Planning Board for over 2 years, close to 3 years she believed, have a BPA and the changes are really of insignificant nature and for that reason, the Town Board will be asked to vote on the amendments to the BPA.

The following resolution was presented for adoption:

TOWN BOARD
TOWN OF BETHLEHEM
ALBANY COUNTY, NEW YORK
SEQRA RESOLUTION
CLASSIFICATION OF ACTION AND NEGATIVE DECLARATION
AMENDMENT No. 3 TO BUILDING PROJECT APPROVAL NO. 33
PLANNED COMMERCIAL DEVELOPMENT – RT. 9W
BETHLEHEM TOWN CENTER

WHEREAS, the Town of Bethlehem Town Board (the “Town Board”) has received an application submitted by Nigro Companies for certain amendments to Building Project Approval No. 33 – “Nigro Commercial Development – Rt. 9W” (a/k/a

Bethlehem Town Center); and

WHEREAS, said application entails proposed amendments to a Building Project previously approved by the Town Board on January 23, 2002 and amended on June 11, 2002 and August 28, 2002 (referred to herein collectively as “Building Project Approval No. 33”); and

WHEREAS, the Town Board, prior to approving Building Project Approval No. 33, required and accepted both a Draft and Final Environmental Impact Statement for the development, and issued its SEQRA Findings Statement on January 23, 2002; and

WHEREAS, the proposed amendments to Building Project Approval No. 33 include:

1. A 12,155 s.f. reduction in the size of the home improvement center building (from 146,729+/- s.f. to 134,574+/- s.f.) and approval of the building façade for a “Lowe’s Home Improvement Warehouse” in the northern portion of the site; and
2. A revision to the approved pylon sign drawing to show “Lowe’s Home Improvement Center Warehouse”; and
3. Final approval of the parking lot lighting plan for the site; and
4. H-12, Sidewalk.

WHEREAS, the proposed amendments to Building Project Approval No. 33 are not of sufficient magnitude to alter the general concept of the project, and do not significantly change the scope, scale, layout or design of the overall project, or the SEQRA mitigation measures that are required and will be implemented as part of project development; and

WHEREAS, the Town Board has considered a short Environmental Assessment Form (“EAF”) to assess the potential environmental impact of the proposed amendments to Building Project Approval No. 33, with Part 1 completed by the applicant; and

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

WHEREAS, 6 NYCRR 617.6(a) requires that when an agency receives an application for approval of an action it must:” (1) determine whether the action is subject to SEQRA, (2) determine whether the action involves a federal agency, (3) determine whether other agencies are involved, (4) make a preliminary classification of the action, (5) determine whether a short of full EAF will be used to determine the significance of the action, and (6) determine whether the action is located in an Agricultural District; and

WHEREAS, 6 NYCRR 617.6(b)(4) indicates that for uncoordinated review of an Unlisted action, each involved agency may proceed as if it were the only involved agency when making its determination of significance before acting on the matter before it; and

WHEREAS, the Town Board has considered the information provided in the EAF;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby determines that:

1. The proposed amendments to Building Project Approval No. 33 constitute an Unlisted action which is subject to SEQRA;
2. the proposed amendments do not involve a federal agency, the U.S. Army Corp of Engineers;
3. the proposed action is not located in, or within 500 feet of, an Agricultural

District and therefore, is not subject to the provisions of the Agriculture and Markets Law; and

4. a short EAF is adequate for determining the significance of the proposed action; and

BE IT FURTHER RESOLVED, that the Town Board hereby determines it will not coordinate SEQRA review and will act as lead agency with respect to its own SEQRA review of the proposed action pursuant to 6 NYCRR 617.6(b)(4); and

BE IT FURTHER RESOLVED, that based upon its review of the project, the EAF, and comparison with the Criteria for Determining Significance found at 6 NYCRR Part 617.76(c), the Town Board hereby finds that approval of Amendment No. 3 to Building Project Approval No. 33 constitutes an action which will not have a significant impact on the environment and, therefore, does not require preparation of a Draft Environmental Impact Statement; and

BE IT FURTHER RESOLVED, that this determination is based on the following facts and conclusions:

1. Building Project Approval No. 33, granted by the Town Board on January 23, 2002 authorized the construction of a 363,849 sq. ft. shopping center to be known as Bethlehem Town Center.

2. Prior to receiving its approval, the proposed shopping center was the subject of both a Draft and Final Environmental Impact Statement required by the SEQRA lead agency, the Town Board.

3. The Draft Environmental Impact Statement, the Final Environmental Impact Statement, and the SEQRA Findings Statement for the Project, which are incorporated by reference herein, are on file and available for public review in, among other places, the Office of the Supervisor, the Office of the Town Clerk, and the Town Planning Department.

4. The Town Board issued its SEQRA Findings Statement for the project on January 23, 2002. Contained within the Findings Statement are various mitigation requirements to minimize the potential adverse impacts of the project. Included are off-site mitigation measures to minimize impacts to area roadways and the Glenmont Elementary School, and on-site measures to address federal wetland and visual impact concerns.

5. The proposed amendments to Building Project Approval No. 33 include:
a. A 12,155 s.f. reduction in the size of the home improvement center building (from 146,729 +/- s.f. to 134,574 +/- s.f.) and approval of the building façade for a “Lowe’s Home Improvement Warehouse” in the northern portion of the site; and
b. A revision to the approved pylon sign drawing to show “Lowe’s Home Improvement center Warehouse”; and

c. Final approval of the parking lot lighting plan for the site; and

d. H-12, Sidewalk.

6. The proposed amendments are not of sufficient magnitude to alter the general concept of the project and will have no material effect on the overall scale, design or layout of the project;

7. All on-site mitigation required as part of the SEQRA Findings Statement will remain in effect and all off-site mitigation, including required highway improvements and improvements at the Glenmont Elementary School, will be implemented as part of Phase

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

BE IT FURTHER RESOLVED, that the Planning Board is hereby authorized to file any and all appropriate notices so that the intent of this Resolution is carried out.

On a motion by Mr. Lenhardt, seconded by Mr. Marcelle and by a vote of 5 for, 0 against, and 0 absent, this RESOLUTION was adopted on February 12, 2003.

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The motion was made by Mrs. Davis and seconded by Mr. Marcelle to approve the four (4) amendments included in Amendment No. 3 to Building Project Approval No. 33, Nigro Commercial Development – Route 9W, Bethlehem Town Center, Planned Commercial District No. 2. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle.

Noes: None.

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Supervisor Fuller thanked Mr. Nigro, Mr. Sweeney and the other gentlemen who were in attendance. She said they look forward to Lowe's Home Improvement Center.

Mr. Nigro said after 3 years he thinks the Board has seen enough of him and said the best thing he can do is to get down to the site and build the project. He said hopefully they will see everyone soon at the ribbon cutting. He thanked everyone for their support. Councilman Davis noted this is clearly proceeding and that is good. Supervisor Fuller noted the community is watching and they are very excited about the activity.

The next 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. Plummer and seconded by Mrs. Davis to approve the appointment of seasonal personnel as listed in the Memorandum dated February 12, 2003 from Nan Lanahan, Administrator, Parks and Recreation Department at the titles and salaries listed. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle.

Noes: None.

The following item was a request from Deputy Chief of Police, Louis G. Corsi, for approval to go to bid for one (1) SOKKIA Electronic Total Work Station. Could advertise February 19, 2003 and open bids on Feb. 26, 2003 at 3:00 p.m. Supervisor Fuller said this is a forensic mapping system for use in reconstruction of vehicle collision

and crime scenes. She noted funds for the equipment will come mostly from Albany County Stop DWI and the remainder from budgeted funds.

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

WHEREAS, the Town desires to advertise for bids for the purchase of one (1) SOKKIA Electronic Total Work Station for use of the Bethlehem Police Department; pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 19th day of February, 2003 and that bids be received up to 3:00 p.m. on the 26th day of February, 2003 at which time the bids will be publicly opened and read.

The resolution was adopted by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle.

Noes: None.

The next item was a request from Chief of Police, Richard J. LaChappelle, for approval of appointment of Telecommunicator effective February 15, 2003.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the appointment of Michael J. Mahan, Delmar, New York to the position of Telecommunicator, effective February 15, 2003 at an annual salary of \$31,598 as requested by Chief of Police, Richard J. LaChappelle. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle.

Noes: None.

The next item was a request from Director of MIS, Jeffrey Dammeyer, for approval of award of bid for surplus equipment to the highest bidder, General Grant Computers, Oklahoma City, OK. Supervisor Fuller noted there were 2 bids received.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to approve the award of bid for surplus equipment to the high bidder, General Grant Computers, Oklahoma City, OK as requested by Jeffrey Dammeyer, Director of MIS, at a bid price of \$1,005. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle.

Noes: None.

The next item was to acknowledge receipt of the 2002 Annual Report from Town Historian, Joseph Allgaier. Supervisor Fuller said he has done a wonderful job for the Town of Bethlehem.

Supervisor Fuller said his activities have certainly kept him pretty busy from renovation of the Veteran's Memorial Park, working with the Town Library with the local history project, "I Spy" website and participation in many meetings to enhance the Four Corners. She said there were many other events and thanked Mr. Allgaier.

The next item was to acknowledge the quarterly franchise fee from Time Warner Entertainment-Advance/Newhouse Partnership for the period October through December 2002 in the amount of \$76,921.21

The following item was to acknowledge receipt of the 2002 Annual Report of the Parks and Recreation Department from Nan Lanahan, Administrator. Supervisor Fuller said well done and it certainly was a busy year.

The next item was to approve the Town Board minutes of January 15, 2003 and January 29, 2003.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the Town Board minutes of January 15, 2003. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.

Noes: None.

Abstain: Mrs. Davis.

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The motion was made by Mr. Marcelle and seconded by Mrs. Davis to approve the Town Board minutes of January 29, 2003 as submitted. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle.

Noes: None.

Supervisor Fuller asked if anyone wished to address the Board. Mrs Marie Capone, resident, said at the last meeting she complained about Gregg Sagendorph and the snow banks. She said the next morning it was leveled perfect and everybody is glad about it. Supervisor Fuller said that is what Gregg does and that he probably did it during the night. Mrs. Capone said it was done at 9 a.m. in the morning.

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A student asked the Board if the Glenmont School was considered with regard to the Bethlehem Town Center. Supervisor Fuller noted it already went through that process of discussion. She said Lowe's is part of the entire shopping center. She also noted there is a playground to be built for the Glenmont School by Nigro Companies. Councilman Lenhardt said the Planning Board did review that as part of the SEQR process. He said these aspects are reviewed at that time and traffic was also one of the issues. Councilman Davis noted the developer agreed on the playground in the back of the school to accommodate some of the impacts of the development.

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Supervisor Fuller noted there is one item to be added to the agenda. Town Clerk Newkirk said the item is the redistricting of election districts within the Town of Bethlehem due to the new Legislative District lines that were approved by the Albany County Legislature.

Mr. Michael Cirillo, Engineering Services Administrator, displayed the map and presented information regarding the changes in election district lines. Mr. Cirillo noted a handout was presented to the Board Members. He explained that after the 2000 census, Albany County Legislative lines had to be redrawn and within the Town there are 30 election districts. He said there are several County Legislative districts within the Town – 12, 11, 10, 34, 35, 33 and 36.

Mr. Cirillo further explained that our election districts cannot be split or bi-sected by a County Legislative line. He said we have to realign our lines. He said out of the 30 districts, 16 were directly bi-sected and were kind of fixed on what could be done. He said there were 2 choices – 1. to allow Albany County to redraw our lines or 2. do the work ourselves.

Mr. Cirillo noted that we had basically 5 business days to realign these. He said we tried to hold the integrity of each of the districts and then append to or deduct therefrom, streets with the relative voters and try to keep the size about the same as the original district. He said we were limited by the areas of the districts.

Mr. Cirillo said the best way to handle this if there was sufficient time would be to take the 22,600 voters and try to put 750 in each district and make the shape something square, rectangular or of this type that would be uniform. In order to adapt to the Legislative lines, the districts had to be adjusted accordingly. He said some districts exceed the 950, however, approval of the Albany County Board of Elections can be given for these.

Councilman Plummer asked if we were changing the County Legislative districts. Mr. Cirillo said we cannot change those lines, we are only changing our election districts to honor the Legislative lines.

Councilman Marcelle said he knows this was a demanding process to put these election districts in order the way the Town was carved up. He said he wanted to take an

opportunity to talk about this. He said it concerns him to his core what happened to the Town of Bethlehem during Albany County redistricting. He said the Town of Bethlehem has a population of about 32,000 and would entitle us to 4 full seats in the County Legislature which is almost exactly 4 full seats. He said as Mr. Cirillo started the presentation, we are divided into 8 different districts. He said we were carved up like a Halloween pumpkin and we had Legislators from this Town voting in favor of that plan. He believes Bethlehem was the fastest growing Town in Albany County and deserved the additional representation and what we got was butchered. He said he thinks it was wrong and this exercise that the Town Engineer had to go through having our election districts bi-sected in 26 out of 30 or whatever it was, is just part of the problem you see when politics come into play when they redistrict instead of redistricting fairly based on the increase in population that Bethlehem saw.

Councilman Lenhardt asked about a couple things on the maps. Mr. Cirillo said they have 25 of the maps done and must write up the descriptions yet to have these submitted by Friday. He said because of the short period of time they had to do this, they did the best they could and based the figures on what the Albany County Board of Elections gave and added and subtracted from that. He said he feels in the very near future, we are going to have to go back and address this when there is more time and come up with the 750 per district where it should be. He said one option would be to add another election district in North Bethlehem. He said there are committee people trying to take care of a certain election district, 2 people have a very large area to take care of 1,000 voters.

Councilman Lenhardt asked about the 8 districts that have over 950 voters and require approval from Albany County, further asking what happens if Albany County does not approve them. Mr. Cirillo said he did not have the answer to that. Town Clerk Newkirk said the Albany County Board of Elections has said that normally when someone does request approval to have more than the 950 allowed by the State Election law that the County does not usually disapprove it but will approve it. She said that was all the word she had on it. Mr. Lenhardt said he assumed those would be targeted to have a closer look at when you have more time. Mr. Cirillo said basically the numbers were estimated and anything that approached 950 he included in there.

Councilman Davis asked why there was such a short period of time to review this, asking if this was standard. Mr. Cirillo said what happened was that there was a court action and we could have gone through this whole process at an earlier date and found out the court action prevailed and all the work would have been for nothing. Luckily enough we got a start on it by producing the base map and then as of late Friday, we were notified that the lawsuit did prevail and the County Legislative lines will remain as they are and we had to realign the districts by February 15, which is Saturday.

Supervisor Fuller asked if there was action required by the Town Board. Town Attorney Alessi said the Board needs to approve them because they are the legislative body.

Councilman Marcelle said he wanted to correct something for the record. He said there has not been a lawsuit over the districts yet, although he suspects there will be one in the near future because of some of the minority concerns in the City of Albany. He said he believed the reason it got to us so late is that although the Albany County Charter required this to be done 2 years ago, it was not taken up by the Legislature until this year and was not passed until December. He said the County Executive signed it into law at the end of this year. He said the law cannot become effective, it has to sit with the Secretary of State, so it was a delay at the County Legislature. He said it may well be that Mr. Cirillo and Town Clerk Newkirk will be back at the drawing board after the Federal lawsuit is finished.

Supervisor Fuller said because the Town Board is the legislative body, there needed to be a motion on the redistricting. She asked if we had a choice. Mr. Cirillo said he would defer to the Town Clerk. Town Clerk Newkirk said the choice is that if we do not redistrict by February 15, according to the Albany County Board of Elections, as of February 16 the Board can go ahead and redistrict the Town of Bethlehem. She noted we are trying to avoid that issue by having the redistricting submitted on February 14.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the redistricting as prepared by Engineering Services Administrator, Michael Cirillo and Town Clerk, Kathleen A. Newkirk to be submitted to the Albany County Board of Elections on February 14, 2003. The motion passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle.

Noes: None.

Supervisor Fuller asked if anyone else wished to speak to the Board. There were none.

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

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

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle. Noes: None.

EXECUTIVE SESSION

Supervisor Fuller reconvened the regular Town Board meeting at 8:10 p.m. She asked for a motion to approve the settlement with Warehouse Services, Inc.

The motion was made by Mr. Marcelle and seconded by Mrs. Davis to approve the settlement of Warehouse Services, Inc. in the amount of 6.9 million dollars

Councilman Plummer noted he had to recuse himself from this action because it involves a client of his. He noted he was not present nor did he take part in the deliberations on this matter in the Executive Session.

The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Marcelle.

Noes: None.

Recuse: Mr. Plummer.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to adjourn the regular Town Board meeting at 8:30 p.m. The motion was carried by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle.

Noes: None.

Town Clerk