

TOWN BOARD
JANUARY 28, 1998

A public hearing 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
Robert C. Johnson, Councilman
Susan Burns, Councilman
Bernard Kaplowitz, Esq., Town Attorney
Kathleen A. Newkirk, Town Clerk

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SUPERVISOR FULLER: We will begin with our pledge of allegiance, Doris, if you would like to, lead us in the pledge please. Thank you. We begin tonight's Board meeting with a public hearing on adding a new section to our tax law. It's for property owners with disabilities and limited tax exemption. I would ask the clerk to read the call of the hearing, please.

TOWN CLERK NEWKIRK:

NOTICE OF PUBLIC HEARING
TOWN OF BETHLEHEM

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing on January 28, 1998 at 7:30 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, New York to consider proposed Local Law No. 2 of 1998, Amending Chapter 111, Taxation, Section 3 to add new section entitled Property Owners with Disabilities and Limited Income Tax Exemption. Public Hearing
Local Law No. 2
Disabilities
and limited
income tax
exemption

All parties in interest and citizens will have an opportunity to be heard at the said hearing.

The Town of Bethlehem provides reasonable accommodations for the disabled. Disabled individuals who need assistance in order to participate should contact David Austin at 439-4131. Advanced notice is requested.

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

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State of New York)
County of Albany)

MARY AHLSTROM of the Town of Bethlehem, being duly sworn, says that she is the Assistant Publisher of THE SPOTLIGHT, a weekly newspaper published in the Town of Bethlehem, County of Albany, and that the notice of which the annexed is a true copy, has been regularly published in said THE SPOTLIGHT ONCE A WEEK FOR 1 WEEK consecutively, commencing on the 14 day of January 1998.

/s/ Mary A. Ahlstrom

Sworn to before me this 20th day of Jan. 1998.

/s/ Kathryn Olsen
Notary Public, Albany County

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STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

KATHLEEN A. NEWKIRK, being duly sworn, deposes and says that she is the Town Clerk of the Town of Bethlehem, Albany County, New York and that I posted on January 2, 1998, a Notice of Public Hearing, a copy of which is hereto attached, on the sign board of the Town maintained pursuant to subdivision six of Section thirty of the Town Law.

/s/ Kathleen A. Newkirk
Town Clerk

Sworn to before me this
28th day of January 1998.
/s/ Catherine T. Picarazzi
Notary Public

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The motion was made by Mr. Johnson and seconded by Mrs. Davis to indent the Notice of Public Hearing, Affidavit of Publication and Affidavit of Posting on the minutes of the meeting. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Johnson,
Mrs. Burns.
Noes: None.

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SUPERVISOR FULLER: Mr. Leaffer, who is our Assessor, will explain what this law is all about.

MR. LEAFER: Buried in all of the recent media hype on the Star program, is this poor little exemption that has actually been bounced around for a couple of years now. The Governor signed it into law in July. It provides for a real property tax exemption to persons with disabilities who have limited income. The set-up of the law is very similar to the current senior exemption that exists in a couple of parts. 1. The residency requirements, it has to be the person's primary residence and the party... the owner has to be the person with the disability. If it is a husband and wife, only one of them has to be the disability. If it is a brother and brother, sister and sister, brother and sister only one of them has to have a disability.

The disability has to be certified. Typically, the 2 main certifications that come to mind would be the social security disability certification and the railroad pension certification. There are probably a couple of others that would be legally acceptable. The other way that it is very similar to the senior exemption is that it follows the same sliding income scale as the senior exemption, as well as, the same percentage of exemption related to that scale. And, I am not going to go through it because it is printed out on your... I hope on the material you have plus the material I left at the table. But, basically, if a person's income... they have a certified disability and their income is under \$26,900 they will qualify for some percentage of exemption. If their income is under \$18,500 they would qualify for the maximum exemption of 50 percent. That would be 50 percent of their exemption... 50 percent of their assessment... their assessed value.

It differs somewhat from the senior exemption in that you don't have to be 65 years of age to be able to qualify for it. There is a catch 22 in the law in that if you are currently receiving... you are 65 and over and your income is under \$26,900 and you qualify for the senior exemption, you will not qualify for this exemption also. It is kind of a double dip situation that they wanted to eliminate. That basically is the law in a nut shell. The impact that this will have on the total taxable assessment base is minuscule. To date, since the notice of this exemption has come out in somewhat limited fashion in the media, we have had at most 2 dozen phones inquiring about it. We have had a couple people who have already come in to look at processing and some of them have not been able to provide a certification. I am guessing at most, we will have maybe a couple of dozen people in Town who really will qualify for it and, as I say, the impact on the overall taxable base, as well as, the impact on the other property owners who would have to pick up the difference, is very minuscule so I see no problem with this and certainly nowhere near the headaches that we've had implementing the Star applications.

SUPERVISOR FULLER: And, this basically is for the property taxes now for the school... does the school district have to adopt this then?

MR. LEAFER: Oh, okay, yes. This is a local option law. So, in order to be put into effect... the County has already passed it. If we pass it this evening or whenever, then it will be in effect basically for the Town, Town highway and County portions of the general property tax bill in January, if it is passed, we will send notification to the school... the various school offices... the 3 school offices, if they elect to pass it and they have in the past elected to do so with things like the senior exemption and the veteran's exemption, then it will apply also to school tax bill as well. But, it must be passed by the school boards, as well as, by ourselves and as I said, the County has already passed it.

SUPERVISOR FULLER: Thank you, Dave. Are there any questions from the Town Board? Okay. Anyone in the audience wishing to speak in favor of adoption? Anyone wishing to speak in opposition? May I have a motion to close the public hearing.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to close the public hearing at 7:40 p.m. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Johnson,
Mrs. Burns.
Noes: None.

Kathleen R. Newkirk
Town Clerk

The Supervisor convened the regular Town Board meeting following the close of the public hearing.

Supervisor Fuller asked for a motion to adopt the new law and indicated it is another break the Town is able to give some of the residents.

Local Law No.2
Disabilities
and Limited
Income Tax
exemption was
passed

The motion was made by Mrs. Burns and seconded by Mrs. Davis to adopt Local Law No. 2 of 1998 amending the Code of the Town of Bethlehem, Chapter 111, Taxation, by adding a new section entitled, Property Owners with Disabilities and Limited Income Tax Exemption. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Johnson,
Mrs. Burns.
Noes: None.

Commissioner
of Public Works
award of bid
for materials

The next item on the agenda was a recommendation from Bruce Secor, Commissioner of Public Works, for award of bid for Materials as listed.

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to approve the award of bid for Materials as listed on the Memorandum dated January 22, 1998 from Bruce Secor, Commissioner of Public Works, to the companies indicated at the prices stated. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Johnson,
Mrs. Burns.
Noes: None.

Commissioner
of Public Works
award of bid for
Chemicals

The following item was a recommendation from Commissioner of Public Works, Bruce Secor, for award of bid for Chemicals as listed.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the award of bid for Chemicals as recommended in the Memorandum dated January 21, 1998 from Bruce Secor, Commissioner of Public Works, to the companies indicated at the prices stated. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Johnson,
Mrs. Burns.
Noes: None.

Commissioner
of Public Works
to go to bid for
Town Hall
building
addition

The next item was a request from Bruce Secor, Commissioner of Public Works, to go to bid for the proposed town hall building addition. Advertise in the February 4, 1998 SPOTLIGHT and open bids March 4, 1998 at 2:00 p.m. Supervisor Fuller noted the proposed Town Hall building addition is for an elevator, handicap accessibility and enclosed fire escape.

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

WHEREAS, the Town desires to advertise for bids for the proposed Town Hall building addition, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 4th day of February, 1998 and that bids be received up to 2:00 p.m. on the 4th day of March, 1998 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. Johnson,
Mrs. Burns.
Noes: None.

The next item was a request from Gregg Sagendorph, Superintendent of Highways, to go to bid for one four-wheel drive utility vehicle. Could advertise in the February 4, 1998 SPOTLIGHT and open bids February 18, 1998 at 3:00 p.m. Supervisor Fuller explained this is a vehicle that was budgeted in the 1998 Highway Department budget.

Superintendent
of Highways to go
to bid for one
four wheel drive

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

WHEREAS, the Town desires to advertise for bids for the purchase of one (1) four-wheel drive utility vehicle, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 4th day of February, 1998 and that bids be received up to 3:00 p.m. on the 18th day of March, 1998 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. Johnson,
Mrs. Burns.
Noes: None.

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

Parks and
Recreation
approval of
seasonal per-
sonnel

The motion was made by Mrs. Burns and seconded by Mr. Johnson to approve the appointment of the following seasonal personnel:

Recreation Supervisor I at a rate of \$5.15 per hour.

Jennifer A. Ceas	Mary E. Gecewicz
686 Feura Bush Road	18 Vista Lane
Delmar, NY 12054	Selkirk, NY 12158

Recreation Instructor III at a rate of \$8.95 per hour.

Charmaine L. Wijeyesinghe
147 Dumbarton Drive
Delmar, NY 12054

The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Johnson,
Mrs. Burns.
Noes: None.

The next item was to acknowledge receipt of the 1997 Annual Report from David Austin, Administrator, Parks & Recreation Department. Supervisor Fuller noted the report is available in the Town Clerk's office for review. She congratulated Mr. Austin for an excellent job with all the parks within the Town and noted that certainly the Town park is a real jewel in the Town. She thanked Mr. Austin and his staff for a great report. Councilman Johnson noted there was great attendance. Mr. Austin noted it was a good year. Councilman Davis said it was a great picture of the boat launch on the front cover of the report. Supervisor Fuller also stated it was certainly a busy year for the parks with the addition of fields and the boat launch.

Receipt of Parks
and Recreation
annual report

Acceptance
of drainage
easement
for Cedar Ridge
subdivision

The following item was a recommendation from Michael Cirillo, Engineering Services Administrator, for acceptance of drainage easement for Cedar Ridge Subdivision, Section 3.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the acceptance of a drainage easement for Cedar Ridge Subdivision Section 3. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Johnson,
Mrs. Burns.

Noes: None.

Update from
Leboeuf, Lamb
Greene and
MacRae
regarding
ground
water
infiltration
system

The next item was the legal update from LeBoeuf, Lamb, Greene and MacRae L.L.P. regarding the ground water infiltration system.

SUPERVISOR FULLER: The next item on tonight's agenda is the legal update from LeBoeuf, Lamb, Greene and MacRae, L.L.P. regarding our ground water infiltration system.

I begin by letting everyone know that this was placed on the agenda yesterday morning. We had the opportunity to have counsel here and I chose to have it in the public so the Town Board will be hearing about this for the very first time as those in the audience are hearing about it for the first time. So, we are all getting the information together. I did not feel it was necessary to go to Executive Session for something like this. This has been a project in our community, certainly a very visible one, and everyone is as interested as each and every one of us are here tonight. So, I thank those of you that did come. I saw that the Spotlight was nice enough to make it their headline so, hopefully, people had a chance to read it and know that this was on our agenda for tonight.

Just to go back a little bit, in July 1997, the Town Board hired O'Brien and Gere to review the infiltration system. We also, the same evening, hired the... approved retaining the services of LeBoeuf, Lamb to represent the Town. On August 13, we had a report to the Town Board from O'Brien and Gere and at the next meeting on September 24th, the Town Board authorized LeBoeuf, Lamb to hire independent engineering consultant, Gannett Fleming. This was for review of design and construction of our ground water infiltration system. December 15th we had received a letter from Mr. Rudy with LeBoeuf, Lamb telling us that based on Gannett Fleming's oral report of its work to date, as of December 15th, it appeared that its final report to us will allow us to advise the Board that the Town has a basis for seeking legal recourse against certain parties resulting from the system's inability to produce the intended approximately 6 million gallons of water per day. Our formal advice to the Board in this regard will be submitted to the Board soon after our receipt and review of Gannett Fleming's final report in January of 1998.

So, here we are in January of 1998 and I would like to present this evening, Mr. Alessi, who will now begin by giving the Board the legal update. Thank you, Bob.

MR. ALESSI: Thank you, Supervisor Fuller and Town Attorney Mr. Kaplowitz and Members of the Town Board.

TOWN CLERK NEWKIRK: Can he go to the microphone?

SUPERVISOR FULLER: Might be easier there, Bob.

MR. ALESSI: As Supervisor Fuller indicated, this has been part of a process of determining whether or not the Town has a legal basis against certain parties for the results of the water infiltration plant. And, I want to just give a little bit of background on our role because it has been some time since we last defined it. The purpose of retaining Gannett Fleming was to advise LeBoeuf, Lamb as to whether or not there was a basis for bringing a law suit. I want to make clear that the purpose of retaining Gannett Fleming was not to solve the water problem. I can tell you from experience in advising several governmental entities, as well as, several corporate entities that one of the things you do in complex matters such as

this, is that you make sure that there is a basis before you bring a complex action of the type that would be contemplated here. The recommendations that we are about to give to the Town will include the other issues with regard to finding out precisely what it is that needs to be done to enable the Town to get what it was promised. So, I want to clarify that this report by Gannett Fleming was for purposes of our law firm and specifically, that report has gone to nobody but my law firm. And, there is a purpose for that. And, that segues me into my next point.

With regard to any municipality that is evaluating whether it is going to be a plaintiff in litigation as opposed to a defendant and there is a difference and the differences are significant. You have the burden of proof in these types of litigations and you have to ensure that you protect your litigation position. Now, we are mindful from our experience with other governmental entities that you have to balance that need to protect the litigation position of the Town with the residents rights to know what is going on in litigation if that is the path that you would choose. And, we are very mindful of that. We are very experienced in it. And, we often find that it's not a perfect fit but we harmonize it but the over-arching principal from our perspective and the charge that we have from the Town Board is to protect that position. The price that you will sometimes pay for protecting that position will be more limited information than if there would not be the context of litigation. It is a reality of litigating as a plaintiff as a governmental entity.

The recommendation that we have for you is simple and it is straight forward. It is our conclusion that the engineering consulting firm, J. Kenneth Fraser and Associates, which was retained by the Town to provide the Town with a water infiltration plant that would provide up to at least 6 million gallons per day of water, failed to follow accepted engineering practices and standards in the design of this plant. And, moreover, it is our conclusion, in our opinion, that that failure is the cause of the shortage of water that the Town is experiencing with regard to its infiltration plant. We are not saying that there are not others that may be responsible for what has happened with regard to that plant, but our investigation spoke to the issue of J. Kenneth Fraser and Associates for another simple and straight forward reason. And, that is, that is the entity with which you dealt with. That is the entity who said that you would get that amount of water and that is the entity that we, therefore, focused on. And, again, it very well may be that there are others who have failed to meet accepted practices and standards but for purposes of this presentation here this evening, it's unnecessary in our view to look at others at this point in time. If Fraser and Associates feels that there are others that are responsible, it is our position that is there burden to take whatever action they see as appropriate. So, that is our recommendation... so that is our conclusion. Our recommendation is also necessarily follows and that is, we recommend that you initiate litigation to get what the Town was promised. This is not complex in terms of a legal analysis. You were promised something, you didn't get it. You are entitled to it and you have been damaged because of it and we recommend that you initiate litigation. We recommend that you do it promptly and we recommend that you do it aggressively. And, we also recommend that we do it professionally. We are dealing with professional organizations here and we are mindful of that. But, that does not in anyway affect the vigor with which we recommend that it be pursued to get the Town what it's promised.

One final item and that is what I eluded to earlier and that is a Town and a municipality is a plaintiff in litigation. It is important to make sure that, as best you can with due respect for providing information to the public, that you litigate this case if you choose to litigate it, in the similar manner to which a corporation would litigate it and that specifically means that there are going to be court rules and that there is certain information that will be provided and there is certain information we are going to recommend not be provided. The court rules in State court -- and that's where we would recommend that you pursue this claim -- do not require a municipality to disclose any reports to the other side. Does not require you to have the deposition of your experts. There are important strategy considerations with regard to those rules. We

recommend that those rules be followed. And, what I am recommending to you is not atypical, it is not unusual and it is not unique. This is what any good litigation would do. You would protect your litigation position and in terms of hiring Gannett and having them report directly to us, that similarly is something that is traditional, recommended and very important. And, that is the reason why we did it that way.

I know that the Town Board may have questions, that is reasonable. I know that members of the public may have questions, that is also reasonable. I must foreshadow any further discussion with one recommendation and that is that there is that conflict inherent in any time a municipality is deciding whether to be a litigant and if they do decide to be a litigant with trying to answer all questions. I do not want to compromise the Town's position and specifically I don't want to provide potential and future defendants with information that they would not get in court and, therefore, take unfair advantage. We are comfortable and confident with regard to our recommendation but as I am sure most of you know, there is a certain way to litigate a case to maximize your ability to win. So, there may be instances where I give an answer or give a limited answer with regard to questions and this goes for the entire process should you decide to litigate this matter. There are some things we are going to be able to disclose and some things we will recommend not disclosing in the end. It will, obviously, be the Town Board's decision.

That's the comments that I wanted to make here tonight and update you on it. You have our recommendation, you have our conclusions and I will leave it at that.

SUPERVISOR FULLER: Thank you, Bob.

COUNCILMAN BURNS: I have a question.

SUPERVISOR FULLER: Sure.

MR. ALESSI: Would you like me to stay here.

SUPERVISOR FULLER: Can you pick him up from over there?

TOWN CLERK NEWKIRK: I don't think the audience can all hear without the mike, so it is better to use it.

SUPERVISOR FULLER: Okay.

COUNCILMAN DAVIS: Bob, you said that the recommendations or the reports that you had received have been seen by no one but you, your firm.

MR. ALESSI: Correct.

COUNCILMAN DAVIS: I assume that from what you are recommending regarding the type of litigation that we pursue as plaintiff, that we, as a Town Board, would not get to see that report either.

MR. ALESSI: That would be my recommendation. It was not a report designed to solve problems with regard to the plant, it was a report designed to determine from a legal perspective and help us assist from a legal perspective, whether J. Kenneth Fraser and Associates, services fell below accepted engineering practices.

COUNCILMAN DAVIS: Would there be any point at which that report would be available?

MR. ALESSI: That specific report, our recommendation and firm recommendation would be that it's not available at any point in time. However, there are ways and we have dealt with this many times with governmental entities to be able to have information that is useful to both the Board and to the public but the report, itself, and the way it was drafted and the legal terminology and the way we work with this firm, we would not recommend it nor do I think any competent attorney would ever recommend that that specific document be disclosed.

COUNCILMAN DAVIS: But, that is not unusual in this particular process.

MR. ALESSI: Not only is it not unusual, I would consider it highly unusual for anybody to be disclosing a report of that nature in the context that we are talking about here. Now, I grant you that there may be some exceptions, where you are talking about perhaps \$1,000 or \$2,000 in litigation or a different context but we are dealing with something that's of a much different species than that.

COUNCILMAN DAVIS: Thank you, you answered my question.

MR. ALESSI: You are welcome.

SUPERVISOR FULLER: Bob, there has been a concern voiced in this community, the big report, when is the report coming in and the Town Board Members and myself have called often to say when is the report coming. So, I think it is important that that be addressed that this is not available to anyone. I know you have already explained it to Doris, I need to have it clarified for me as well.

MR. ALESSI: Yes. And, just let me go back a little bit because I... you know, I read the newspapers as well and I understand the expectations that sometimes can result from what is printed in the newspapers. When... and this is all traceable in things that have been in writing for months. When we submitted the recommendation to the Town Board to retain Gannett Fleming, we made it very clear in that recommendation that be retained for purposes of advising us. We also made it clear and this was in a recent issue of the Spotlight that this report was not intended for public consumption or anyone's consumption other than our own. I have seen some of the statements where there was some type of an expectation that this report would be 'the report that would be provided to the public'. I can't... I don't want to make our recommendation meet expectations but what I can tell you is, that there will be a point in the process, certainly, where information that I understand is expected -- what's wrong, what are we going to do to fix it -- that is something that is going to come, that is something that will be provided and that is something that is already underway -- specifically, O'Brien and Gere has been charged and tasked with looking at that issue. It is our expectation that as the process unfolds with O'Brien and Gere that there will be, I believe, and it is the judgement of others but it is my belief there will be sufficient information that will be provided to both the Town Board and the public. But, Gannett Fleming is retained by our law firm to be the expert, if you will, that works with us in the litigation. On a parallel path, we have O'Brien and Gere that is working on the fix it part of the solution. There may be opportunities for those 2 to interact depending upon the precise litigation strategy but I can tell you that I have already seen the documents from O'Brien and Gere, they are public documents, they are out. What O'Brien and Gere's thought processes at this stage are matters of public record and so information is being provided. It is just that there is a litigation team and we feel very strongly about how that litigation team should conduct itself. With regard to O'Brien and Gere in looking at the information that it's looking at, that matter has been a public record, remains a public record, and unless there is a litigation reason to do it, it will remain a public record. So, there is a process in place where the public will know what is happening with regard to the fix it type of problem. But, with regard to who did what wrong and why do we feel that way, that is the litigation issue.

SUPERVISOR FULLER: Well, the number 1 concern, I am sure, with everybody is how do we get 6 million gallons a day that we were promised. So, that is the bottom line.

MR. ALESSI: Well, that is the bottom line and there is no... it is a simple way to state it and I believe that it's an expectation that is quite crystal clear from the documents we have reviewed. The representations couldn't be any clearer, that that's what the Town was promised. And, it is also abundantly clear to every person in this community that we didn't get it and we are not getting it.

ATTORNEY KAPLOWITZ: If I could just make a point for the sake of the audience because I am sure most of you aren't familiar with this. The summons and complaint that you are going to start this law suit with is something that is going to come the next few weeks, presumably. I am not trying to pin you down.

SUPERVISOR FULLER: We have to make a decision.

MR. ALESSI: You know, we're making the recommendation the Town Board and if the Town Board authorizes what we're recommending...

ATTORNEY KAPLOWITZ: Right.

MR. ALESSI: ...we're going to be drafting the necessary documents to implement that as soon as we can.

ATTORNEY KAPLOWITZ: I just want to point out that the information contained in that... the summons complaint has to be filed in the County Clerk's office becomes a public document right away and from that you will know who's being sued. You will know how much they are being sued for. You will know what the general allegations are of wrong doing... whatever you want to call it, negligence/wrong doing. All that will be available. We are only talking about this experts report at this point.

MR. ALESSI: That is correct, Mr. Kaplowitz, and in addition to that we are not going to ask the court to seal the records as some... I have a got a significant litigation going on where the whole records of the entire case have been sealed. That is not something we are going to recommend in this case and I doubt the other side would. Maybe they would but we would not support that. We would not recommend that you support that. So, whatever documents that are produced, their answer, depositions to the extent they occur and deposition transcripts will all be matters of public record. We are just talking about this report at this stage and whatever else this firm produces for us to maximize the Town's litigation position we will keep and recommend that it be kept confidential for us.

SUPERVISOR FULLER: Any other questions? I think for tonight's order of business, Mr. Alessi has made a recommendation to the Town Board. As difficult as it may seem, I feel that we the taxpayers and certainly we the government leaders, were promised 6 million gallons a day and I think it is our responsibility to get what this community was promised and I would ask for a motion to -- you better give me the correct wording --

MR. ALESSI: I sketched it out and again, it is straight forward -- the Town Board authorizes LeBoeuf, Lamb, Greene and MacRae to commence and vigorously pursue a law suit against the appropriate party or parties as regards the water infiltration system.

SUPERVISOR FULLER: May I have a motion to approve?

COUNCILMAN LENHARDT: So moved.

COUNCILMAN DAVIS: Second.

SUPERVISOR FULLER: Any discussion?

COUNCILMAN BURNS: Yes. I am hearing, as Sheila said, this for the first time and I guess being a new Board Member, I am feeling a little -- I understand the recommendation, I understand everything you are saying -- a little uncomfortable hearing this 10 minutes ago and making this decision. And, I just want that known, that I am feeling uncomfortable about this. I would prefer to get more information, to sit down with some people about a certain -- I have questions but I am not sure what exactly or I am not sure what they are right now. So, I just want to put on the record, I am feeling uncomfortable about this, just being brought up tonight right here, sitting here and hearing about it.

MR. ALESSI: From our perspective, and I understand what you are saying Mrs. Burns and that is an issue not for me but for you and for the Board, our understanding with regard to previous comments of the

Town Board -- and I understand that predates you -- where that if the Town Board wanted to see if there was a basis for a law suit and if there was, it was pretty clear to us that there was going to be a law suit to recover it. And, that is the understanding with which we worked. And, I again, understand what you are saying and again that is an issue for you and the Town Board. I will say that there's... and again, I don't want to discuss too much of this... but part of the movement for moving on this promptly and vigorously is that often times defendants try a lot of procedural tactics and one of them is to say that the statute of limitations for your law suit has run out. And, that is something that we are mindful of and we... and, what I mean in lay persons terms is that you have a certain amount of time to sue somebody if you think they have committed error and if that time goes by, you have forever foreclosed yourself from suing. And, I just want to point out to the Board there are certain issues with regard.. that surrounded... certain strategic reasons for moving quickly announcing a recommendation. There is generally a need to move promptly and I leave it to this Board as to what they consider to be prudent and prompt.

SUPERVISOR FULLER: To say to Susan, unfortunately, we have all heard this for the first time tonight. I guess that perhaps you have had the advantage you haven't had to live through this here at the Town Board meetings, meeting after meeting, where a lot of this had been discussed really all last year, quite a bit of it. So, I think the Town Board had really set up back in July when we hired LeBoeuf Lamb that we would go through this process so that we would get the answer -- are we able to... is there a problem here and if there is, we need to get to the bottom of it. The most important thing is, as I said, we were promised 6 million gallons a day, we don't have it and frankly, I think, I don't want to waste any more time on the issue to be very honest. I apologize for the notice tonight but that happened to all of us. But, watching this unfold and working with it and hearing about it repeatedly, we needed to get to the bottom of it. We don't have the water that we were promised. So, it is not that we are jumping to conclusions here, it's the investigation pretty much has been started and there is a recommendation. So...

MR. ALESSI: The other thing I would add is, you look at your alternatives. What are your alternatives to litigation to get what you were promised. I have not been made aware that any engineering firm has come forward and say that we will provide you with what you promised... what we promised you or that we will pay you the amount of money you have expended... that has not happened. And, I am not aware of any other alternative that you have besides those 2 alternatives. I don't mean to over simplify the issue but any time you are advising clients, you look at alternatives to your recommendations. You look at all options you have first, you elevate the option you think is the preferable option and then you look at alternatives and test your assumptions that undergird your preferred recommendation. Absent the engineering firms coming up and saying one of those 2 things or both, to me in terms of a recommendation, the decision is yours, the recommendation was rather easy given the absence of those 2 events.

MR. DAVIES: Sheila, will there be any opportunity for questions from the audience?

SUPERVISOR FULLER: Any other discussion? Couple minutes, Sherwood.

MR. DAVIES: Before you pass this...?

ATTORNEY KAPLOWITZ: The motion takes precedence.

MR. DAVIES: Because I think there should be some consideration.

SUPERVISOR FULLER: Well, I have a motion on the floor and a second.

MR. DAVIES: Well... okay.

COUNCILMAN BURNS: I would just like to follow-up on what I said as far as my being uncomfortable. That was really what I was thinking, what are the alternatives? This is a major, major decision here that is going to cost a lot of money. And, it's been going on for a long

time and we have all maybe wondered if it was going to come down to this and here we are sitting here, I heard about it 10 minutes ago and now I am asked to vote on this, on your recommendation to me. I haven't seen any information whatsoever, obviously, we are not going to be able to see this report. So, I am taking your word for it to put our Town into this position.

MR. ALESSI: I understand what you are saying. With regard to the timing, when we reached our conclusion, we said we had a conclusion and we wanted to address the Town Board and here we are. We didn't wait on it, we didn't say well, maybe if we figure out when the Town Board meeting is and we will wait until there is sufficient time. We don't game it that way and, you know, we reached our conclusion when we did and wanted to deliver it with just speed. So, I hear what you are saying with regard to the matter. I... at the risk of being repetitious, there are not alternatives other than having the engineering firms do what I spoke about. There are none.

COUNCILMAN DAVIS: Bob, would recovery of legal fees not be part of the... a judgement were we to win this case which I assume, I hope, we will.

MR. ALESSI: The answer is that under the American system, you do not recover attorneys fees unless there is a statute that allows you to recover them or that there is a contract that allows you to recover them. And, while we have not reached a final conclusion on that issue, it is generally extraordinary circumstances where you are able to recover legal fees in litigation. However, it happens and number 2 in the resolution of any matter short of a judgement, a trail, and in instances of this nature, your out of pocket costs which include your attorneys fees would be something that I would recommend be part of any settlement discussion. Just because you may not be able to recover them in a judgement -- and I say may, not reached a conclusion on that -- does not mean that that's not appropriate to ask for in this situation. I would further add that given you were promised something and you didn't get it and you have had to expend money -- not only lawyers fees but engineering fees and overhead in your Town -- to me it is entirely appropriate to demand that that be part of making your whole and getting you what you were promised.

COUNCILMAN DAVIS: Thank you.

MRS. BURDIS: Sheila, can we ask Bob a question without disturbing parliamentary procedure?

SUPERVISOR FULLER: We have a motion and a second on the floor. Are there any further comments from the Board? I am going to call for a vote. All those in favor?

SUPERVISOR FULLER: Aye.
 COUNCILMAN LENHARDT: Aye.
 COUNCILMAN DAVIS: Aye.
 COUNCILMAN JOHNSON: Aye.
 COUNCILMAN BURNS: Aye.

SUPERVISOR FULLER: Opposed?

NONE.

SUPERVISOR FULLER: Any abstentions? NONE. Motion carried. I am sorry, Susan, I didn't hear you.

TOWN CLERK NEWKIRK: She did vote, aye.

SUPERVISOR FULLER: All those in favor, 5 votes. Thank you. Questions from the audience.

MR. DAVIES: Mr. Alessi, as I heard you, I think you referred only to... as to attempting to get damages for the loss of well yield. Is this correct?

MR. ALESSI: No, that is not correct.

MR. DAVIES: It isn't.

MR. ALESSI: The resolution is a formalism and we are not in any way suggesting at this point that there be any constraints whatsoever on what we recover -- none.

MR. DAVIES: So that, for example, if the water filtration plant did not receive State approval for the completed work because the ozone there is not operable, you could include that in the damages.

MR. ALESSI: I am not ruling out any aspect, Mr. Davies...

MR. DAVIES: Yes, Davies.

MR. ALESSI: Mr. Davies, I am not ruling out any aspect and I just checked my notes on the resolution is to commence and vigorously pursue a law suit against J. K. Fraser and Associates and any appropriate parties as regards the water infiltration system. That in no way is intended to limit the damages or anything else.

MR. DAVIES: Obviously a suit like this will take time, matter of months or years, is this not correct?

MR. ALESSI: That is correct. As a general matter, they do... you never can predict what's going to happen but as a general matter, that is true.

MR. DAVIES: I heard you refer to the O'Brien and Gere report which I think we had paid for and was finalized. I don't believe there is an existing contract between the Town Board and O'Brien and Gere. Am I correct?

SUPERVISOR FULLER: We hired O'Brien and Gere back in September, yes and they suggested 3 remedies, Sherwood.

MR. DAVIES: Yes.

SUPERVISOR FULLER: That is still in place here.

MR. DAVIES: Pardon?

SUPERVISOR FULLER: That is still here.

MR. DAVIES: Are they still working on it?

SUPERVISOR FULLER: Yes.

MR. DAVIES: Oh, they are still employed by the Town.

SUPERVISOR FULLER: Yes.

MR. DAVIES: So that they... O'Brien and Gere then may offer a resolution or a solution to the problem we are facing.

MR. ALESSI: That is correct. They may and they...

MR. DAVIES: And, then this could be done during the course of the legal action.

MR. ALESSI: Not only could it be done, but it is our recommendation that it be done in parallel with the legal action.

MR. DAVIES: All right. Could you project the possible cost for getting involved in this?

MR. ALESSI: The answer to that question is, I could project costs but the variance would be orders of magnitude. It depends upon how and whether the defendant or defendants vigorously contest this matter. If they hire experts and try to have a battle of the experts, at this time what I generally do is predict costs on an incremental basis because I think that is the most candid thing to do. I think that when you start giving numbers beyond a certain basis, you create an expectation that you just really have no genuine confidence that it is going to be reasonably met. I can tell you that to commence the litigation, and to gear up for this type of litigation, it can range anywhere from \$7500 to \$15,000. And, that

is to file a summons and complaint. That's a number for general types of litigation. This does not fit that category. This is a matter that has complex issues involved in it. Issues which we are comfortable with but none the less there are enough issues that can be created, as well as, the ones that exist to make it go beyond that stage. And, what we would do is we do typically is to once we get the authorization, which we have, is to work with our clients and make recommendations. The final decision should never be a law firm's as to exactly what you are going to do, it should be your client. I taught over at Albany Law School for 5 years and that was one of the things that I tried to... if my students took nothing else home, that was one of the things I tried to impress upon them. But, we will advise the Town Board both as to what we recommend and the costs attended to it.

MR. DAVIES: Okay. The last question, I just want to... is probably repetitious, but you pointed out that you are not going to solve the problem nor is Gannett Fleming solving the problem that we face with regards to adequate water supply.

MR. ALESSI: What I said, Mr. Davies, is that our task and purpose is not to solve the problem. However, we are not naive to the reality of the situation that confronts the Town and in terms of getting this Town value for our representation, and getting value for the fees that will be incurred by the experts that we retain, we certainly are going to look at that but we don't want to represent that that's the purpose of the litigation because it is not. But, I can tell you it's something we are going to look at and it is not a hope, it is not an expectation, but we are going to look at that and if we can say that in addition to proving other parties culpable, that we can say we think based upon that experience a solution presents itself, we are going to recommend the pursuit of that solution to the Town. Ideally, we would do both but I don't want to create an unreasonable expectation. Our task is to get the Town what it was promised.

MR. DAVIES: But, you are also suggesting to the Board that they hire or rehire O'Brien and Gere to look at a solution to the problem. Did I understand you correctly?

MR. ALESSI: You understood me correctly on that, Mr. Davies.

MR. DAVIES: Good and they should do that as of tonight too, if possible.

MR. ALESSI: Well, what... my understanding is that O'Brien and Gere has been -- and I am not perfectly clear on this -- but my understanding is that O'Brien and Gere is on board and is looking at these issues.

MR. DAVIES: Is that correct, Sheila?

SUPERVISOR FULLER: Yes.

MR. DAVIES: Oh, they are.

SUPERVISOR FULLER: They were hired in July.

MR. DAVIES: And, will they be giving another report on this?

MR. ALESSI: The answer... I can tell you that one of the things we have recommended to the Town is that we have some degree of coordination, as you can imagine, that is sensible. As between what we are doing in litigation and what O'Brien and Gere is doing in terms of solving the problem. So there will be a degree of coordination and it is our recommendation that there be an operating presumption that O'Brien and Gere provide to the public that which it's doing unless providing that particular information would jeopardize the Town's position as a litigant and therefore, it would be a matter of timing as opposed to whether or not it is disclosed. And, I can tell you that, you know, once this litigation is over with that we will reevaluate the need to keep that information confidential. It is always desirable any time you are working with a governmental entity after litigation is over with to make a full disclosure of what has gone on. And, what is looked at is whether or

not that would harm, sometimes appeals, whether that would harm an appeal or whether the strategy that we have invoked will be something if disclosed it would help a future defendant and we wouldn't want to do that but the presumption we are going to recommend to the Town Board is that O'Brien and Gere's work be disclosed unless it jeopardizes the Town's litigation position.

MR. DAVIES: Thank you.

MR. ALESSI: You are welcome, thank you for the questions.

SUPERVISOR FULLER: Linda.

MRS. BURTIS: Hi, Bob.

MR. ALESSI: Hi, Linda.

MRS. BURTIS: Nice to see you.

MR. ALESSI: Nice to see you.

MRS. BURTIS: Let's see a couple of things. This is stunning information first of all. I will say for the residents. I mean, Clearwater for Bethlehem, we have been involved for years, I think about 5 years now in opposition to building to drinking water from it and the Town backed off the drinking water only by putting a valve on and not the real separation of the systems but, you know, we are not drinking the water. We appreciate that but it... we asked that they not do that and at the same time, engineers from our group -- Sherwood and Bill Kelleher -- fought the ... problems in the system. Now, we are hearing it after we... we are in debt up to our eyebrows, 2 million dollars that the engineers have made some professional mistakes. I mean, I don't want to kind of say I told you so but... to hold back and say my goodness why wasn't there better communication between the residents of the Town and the Town Board when all this was happening and maybe we wouldn't be here tonight. And, in a way, engineers now prove that what Clearwater for Bethlehem predicted that this system was going to fail and this is what you are telling us, that it failed. So, I just wanted to start with sort of saying... I think... we didn't have to be here tonight and it is sad. And, we are talking about a lot of money, we are talking about 2 tracks of money -- we are talking about money to the law firm and to the law suit from the Town and we are talking about money to O'Brien and Gere to find out how to solve the broken system the clogged well. So, I mean I don't think we are going to get a free ride from this at all. I mean, Sheila, you mentioned in the Spotlight one of your resolutions for this year was to fix the system at no cost to the taxpayers. I think this would be great with everybody. We are talking about a lot of money and not a free lunch at all.

SUPERVISOR FULLER: I am always straight, Linda, and I always... and that is exactly what I am looking for. The taxpayers should not have to bear the burden of the system that just failed.

MRS. BURTIS: And, is that for real... is that realistic. We are going to have to pay. We have already paid out to hire a law firm. We are paying O'Brien and Gere. We are paying the people that you hired. So, it's... it would be good for all of us if it worked that way but it doesn't seem realistic that it is going to work that way. I have 3 questions. Do you know how much malpractice insurance J. Kenneth Fraser has?

MR. ALESSI: I do not. It is part of the discovery practice in litigation. You get... the answer today is I do not.

MRS. BURTIS: I have been told that it would be so expensive for engineering firm to carry large malpractice insurance that they might have as little as 2 or 3 million dollars. Is that a reasonable? We have that 13 million dollar system and they be a company that only carries a little bit of malpractice insurance. So, what happens in that case?

MR. ALESSI: I will not speculate on how much malpractice insurance, if any, that Fraser has. I will say that it happens in other litigations that a party like Fraser that is sued, sues another party to bring them in and that is something that happens rather quickly in litigation and that is the time you assess whether or not all the parties that are in the litigation have sufficient funds to address the harm that you are claiming. Linda, just with regard to the comment you made about the system failing. We have not concluded that the system has failed. The system is not producing what it was promised. There is no doubt and I don't want to split hairs or be semantical. But, until we know the mix and whether or not it can be fixed, we are not at the point yet where 'the system has failed'. And, I say that in an important legal distinction. I understand it is a fair comment in a lay person's sense to say the system failed. After all, it is not producing that which it should produce. But, with...

MRS. BURTIS: And, it is only 2 years old.

MR. ALESSI: Right, but, what parts of it -- has the whole thing failed, has the whole system failed, the components failed -- that is something to be determined.

MRS. BURTIS: Or perhaps it is partially failing now and it is going to totally fail... only if it is not working after 24 months, give it another 2 years and maybe it will failed in a legal term or something.

MR. ALESSI: Yes, I...

MRS. BURTIS: That is one scenario that is reasonable to suggest. Based upon what you are saying... you are saying that the engineer blew it. You are saying that the engineers did not follow professional procedures in order to build our 13 million dollar water system.

MR. ALESSI: Let me be specific about the term engineers. I said J. Kenneth Fraser and Associates.

MRS. BURTIS: Those particular engineers that the Town...

MR. ALESSI: Right.

MRS. BURTIS: ...hired to build the system, blew it.

MR. ALESSI: I would prefer to use the terminology that I used and I respect your right to use your terminology.

MRS. BURTIS: Okay. Well, let's see, 2 more questions. Given what you are saying... given that the engineers have... J. Kenneth Fraser have professionally not followed their own engineering practices, we did an interesting thing in this Town in March... in March we had to dredge the river because the system was clogged so badly... so, we said that it was God's fault. We said that because there was a storm, 2 weeks after we started the system 2 years ago operating, that that moving of the silt at the river bottom caused this to clog so that's why we weren't getting the amount of water, 6 million gallons a day. Now, you are saying that that is not the reason, that the reason is because J. Kenneth Fraser and his firm did not follow standard engineering practices. So, what happens legally to us. We went through a federal agency and asked for \$75,000 because we said God created this problem. And, that's now ... no, it's not God's fault, it is J. Kenneth Fraser's fault. So, legally, what happens... where are we? It sounds like we should give them \$75,000 back to the federal government.

MR. ALESSI: Let me address that point. It is a good point. With regard to we said it is an act of God. Let me say that in a litigation I do not understand that to be the only cause, if it is a cause. I understand at the time that that was the statement made and upon further investigation and more intense investigation, it may prove out that that is a cause or the cause. I have serious doubts that as... that that is the cause or the only cause. It is perhaps a cause and since it was a cause of a problem, at a minimum and perhaps

at most, it was very reasonable and appropriate to pursue an application based upon that being a cause of a problem. With regard to whether or not that is the cause, and without going into what information we have, from a legal perspective, I do not see a basis for a conclusion that that's the cause of the problem.

MRS. BURTIS: So, probably when we asked for that \$75,000 and blamed God that was probably not correct on our part to do that since we are now finding that the engineers blew it.

MR. ALESSI: Well, I would differ in this regard. What we did was, we said that that was a cause of the problem and I can tell you from experience, that any time there is a disaster like that any prudent municipality is going to put in an application and seek aide. If... because they just can't study these things and come up with an answer and then say, okay, now let's put in our application because either the money is gone or the agency says what did you wait for so long. The prudent thing to do is to put in the application. With regard to whether or not this agency in the end when we establish that it was the fault of an engineering firm or engineering firms, that agency wants to go after them, that may be their judgement. I am not interested in what that agency does. I am interested in getting what we were promised from who did the promising.

MRS. BURTIS: Okay. Thanks. I am interested in getting... in open government and in having it be as honest as we can every step of the way and I really feel I probably speak for Clearwater for Bethlehem when I say we feel frustrated to be here tonight hearing that we are going to spend a ton of money that is taxpayers money to fix a problem that our group warned the Town about. So... and, to me there should have been a better dialogue and a little bit more honesty, perhaps at that big public hearing that July night when Fraser engineers were here answering these particular technical engineering questions from people from Clearwater for Bethlehem, about 5 of them. So, that I think... I think that there were opportunities that the Town had to take another ... and they didn't do that. So, when the dredging came along there were opportunities to say, wait a minute, let's not ... right now. Let's stop playing God, let's step back with the red flag and let's see what the next step should be. So, that's... that's what really was behind the point that I am trying to make right now.

MR. ALESSI: In regard to that, if I may. I have read over the minutes, I was not present when Fraser came to that meeting. But, I can tell you I am involved in several large projects where there has been a problem. I have been asked to come in and deal with it after the fact when the system or whatever has not delivered what was promised. I have matters ranging from a municipality of government that spent 52 million dollars. It is not using the resource at all. And, it goes all the way down to \$50,000. I can tell you that while these problems are expensive and they are at times complex, they are no different than what you experience as a homeowner. And, that is, you hire someone who represents themselves to be an expert. Who represents themselves that they are going to get this to you and it is no different than someone saying if you are not on public water that I can build you a house and when you turn on your kitchen water, you will have enough water to operate as your expectations. And, you can have the wife or the husband be an engineer and can read everything they say and then you turn on your water and it doesn't happen. The reason why municipalities hire out for these projects and it's typical, is that these people represent themselves as being the experts. You are entitled to rely upon them. When there are evidences of problems, you communicate with them and if they come back and tell you we are going to be okay, we are going to be okay, unless you have a reason... a compelling reason that's intense and I understand there is a position out there that there were some red flags -- but, I have reviewed the file and those red flags were questioned, questioned by you and other members in the Town and there were representations made not in these words but in so many words -- don't worry about it, you are going to get what you are going to get. And, that happens across the State. And, you know, Town Boards are Town Boards and County governments are County governments. These are the people they hire to rely upon and when they don't produce what they are supposed to, unfortunately, it happens every day in the

corporate world and it happens frequently, perhaps more frequently than we would like, in the public sector when buildings are built and there is litigation over the construction because something goes wrong. Nobody likes to get used to these things, however, they are a fact of life that are out there and I too wish that earlier on in the process that the firms that this Town hired would have identified the problems. But, they didn't and we are here today and my task is to try to get for the Town that which they were promised.

MRS. BURTIS: Okay. You get to my third question with what you were just talking about. The scenario you painted was that we as non-experts hired experts to build a 13 million dollar water system down on the banks of the Hudson River. But, what you left out and this is what I ... to legally is that there were citizens that warned the Town that this was going to happen. And, this is on the record. This is in that public hearing testimony and the Town Board meeting besides. So, legally, what we are doing now is blaming J. Kenneth Fraser and perhaps that's a very wise way to go and we should ... but, what we... Clearwater for Bethlehem presented a petition to the Department of Environmental Conservation and in that petition we said why wasn't the Dunn report sent to the Department of Environmental Conservation and the Department of Health. That is a very key report to us because that report predicted the situation that we are in tonight. It predicted that that well is not going to produce 6 million gallons a day. So, in other words, where is the culpability of the Town. If I were J. Kenneth Fraser I would say I am not going to go down alone on this, you are going to come down with me.

MR. ALESSI: Let me speak to that issue and I want to make sure that I am clear and I want to be firm about it. We have a situation where we have a lot of money at stake. I am mindful of what has occurred. I am mindful of some of the statements you have just made. I may have a different interpretation but I am certainly mindful of the fact that there were questions as we went along. What I am hopeful will happen in this Town, is that we will pull together. We will pull together to go after the party that is responsible for this and we will do it together.

MRS. BURTIS: So, will you meet with Sherwood and Bill who talked about the... forecast the failure of this system as you are gathering information and listen to what these gentlemen have to say about roads we could have gone down in the future and roads, perhaps, that we should have gone down in the past.

MR. ALESSI: The Town...

MRS. BURTIS: As a way of pulling together.

MR. ALESSI: What I am speaking about in terms of pulling together is that I hope that what we don't have when we are trying to convince a court or a jury pool that is sitting out there right now listening to everything we are doing, that we don't start fighting amongst ourselves so that when a jury sits in that jury box the first thing they think about is -- gee, you know in that Town of Bethlehem, that really wealthy suburb, you know what those crazy folks were doing, they were fighting amongst themselves and now that Town wants to come in and tell... and say to us, that we should make this engineering firm pay for 100 percent. I respect the fact that there were comments. I respect the fact that there were positions that you have taken. I am not saying that that is unimportant or irrelevant but for purposes of the litigation I hope it is irrelevant and I hope we find a proper balance to keep our eye on the ball which is the goal -- is to get the Town what it was promised from the people who were being promises. I leave for the other arena the issues that you spoke about but I would encourage everybody in the Town, subject to their first amendment right to talk and to comment, to give thought to what they say and how they say it because it is important that that jury pool that is sitting out there not think that there is a reason other than the simple straight forward reason, to me it is legally irrelevant that there was a warning or other issues. Because, you know who else heard those warnings, the people who we hired and they rejected that and those are people that promised us the water and those are people that heard it and persevered through

and told us to keep going that they were right. Those are the people that we've got to go after together.

MRS. BURTIS: What I wish... I am with you Bob and I think that for a Town to be working as a team rather than to be divided is a much more ideal situation. So, again, I offer Clearwater for Bethlehem, there are gentleman in our group who have lived, eat... how do you say that thing -- lived, ate and breathed it or whatever... air, water and ... but... would pick the brains of these gentleman, I think you would make your law suit stronger and to me that would be team work. That would be the Town coming to people who have volunteered hundreds of dollars and years of their lives to this subject, know this in their sleep and can tell you places where the engineers went down the wrong avenues... or why didn't they follow-up on this. I mean, I am saying, that I would like it to be a 2 way street of team work.

MR. ALESSI: I think your suggestion is a fair one. It is a decision for the Town Board to make and I will only ask that if it is their decision that that is appropriate and to what ever degree that you don't later say, Bob, how come your fees are so high because that will be an extra cost that will go along but it is for the Town Board to evaluate...

MRS. BURTIS: Well you see, our cost is free. Maybe if you wanted to do something with your time to do that... but, the cost... you see we have other things to do in our lives too.

MR. ALESSI: I understand and I respect the value of your time. I am just indicating that there may be a cost attended to that and it is the Town Board's determination. I am aware that there are people out there who have spoken in depth about this other than who we hired.

MRS. CAPONE: Bob, do you feel

COUNCILMAN DAVIS: And, it is all on the record.

SUPERVISOR FULLER: Linda, we have everything is part of the record. Everything is right here. Everything can be turned right over. It is all here. So, there isn't anything new to be offered from Mr. Davies or Mr. Kelleher because they both...

MRS. BURTIS: Well, for instance, you don't have the report. You don't have the August 1995 report when our Town Engineering hired hydrogeologists who examined potential clogging in the system. That is... am I correct in that? We foiled it and Bruce has said that he doesn't even have it and he would go back to the firm, Rust I guess it is now and ask for it and everybody says we don't have it. So, we don't have everything and that is a very crucial... I mean, we might be the people who would say rather than the Town, that is a smoking gun. That is a report that said it predicted there were problems and nobody knows where the report is.

MR. ALESSI: We hired Fraser. Fraser hired other people.

MRS. BURTIS: No, our Town... we paid to do this hydrogeological ... we had the invoice and it is August of 1995. The Town Engineer can tell you about it and we got it through Freedom of Information and we have spoken with you, Sheila, and to other people on the Board and to Bruce asking for the report that goes with that \$650 invoice and Bruce says we don't know where it is, I'll contact the engineers and the latest is, nobody knows where this report is. This may be a smoking gun report.

MR. ALESSI: We have not... it hasn't been lost upon us about that report but as you can imagine and there has been efforts made to try to obtain that. However, you can imagine with that firm thinking they are staring right down the barrel of a law suit, you can imagine how forthcoming they are going to be with regard to reports that we don't already have.

MRS. BURTIS: But, I don't understand why the Town doesn't have that report. We paid \$650 to have evaluations done because we were worried that exactly the problem that we are having right now is costing a million dollars. We said \$650... but we... but I don't

understand why the Town ... didn't have... didn't insist on that report or do we have it and did we lose it?

MR. ALESSI: Those are the types of particulars, not to stilt the discussion, that I would prefer not to engage in in this type of a forum.

MRS. BURTIS: I'll just responding to Sheila who said we have all the information. I am saying we don't have all the information.

MR. ALESSI: I think Supervisor Fuller was referring to the Clearwater...

SUPERVISOR FULLER: The Clearwater information and the engineers.

MR. ALESSI: ...information provided to the Town.

SUPERVISOR FULLER: We do have that all on record here, Linda, and I thought that was what you were asking for. I am sorry, Mr. Kelleher, who has had his hand up for quite a while.

MR. KELLEHER: I would like to make a statement now. I endorse what Bob said. We have to work together on this. I don't want to meet with him or the attorney. I have already wrote 4, 5 letters to the engineering firm giving them the benefit of... you know... what I saw what was wrong. And, they have all the information and one of the very first things I asked them for was that report to look into that report. And, many other things that... you know, there is a tremendous amount of records that are available and it could have been very easily overlooked by the engineering firm. You know, especially when you say... I will give you one example. They ran a pump test for almost 3 weeks in December of 1993 and took glycol measurements. Now, somebody could have very easily said that there is nothing here on well yield but in one paragraph he did put down the draw down in the well and the amount of water they were pumping which is very important. So, I brought that to the attention. I brought the attention of a lot of things and some things I couldn't get information from... you know, even by foil requests I couldn't get information and I asked them to look into it. So, frankly, I don't want to talk to them any more. You know, I understand what you are saying, Bob and I support you 100 percent on it. Now, in terms of FEMA, I wrote to FEMA when this happened and demanded an investigation. I was unaware of a report that was made in January of 1997 before the dredging that predicted that dredging would have to be made and they gave all the information that was necessary. I didn't get that report until after the O'Brien and Gere report. But, in any case, FEMA made their investigation and found out there was no cause and it was a legitimate application. And, so, let's put it to rest. Hey, it would only cost us additional money, forget about it. FEMA pays a lot more money for a lot more things than that and it wasn't the Town's fault, it was the engineer's fault... engineer's fault and they made the advice to the Town and they were following the Town's... the Town was following the advice of the engineers.

SUPERVISOR FULLER: The gentleman in the back of the room, has had his hand up for a while, Mr. Eck.

MR. ALESSI: Thank you, Mr. Kelleher.

MR. ECK: I just want to say, I am a taxpayer in the Town of Bethlehem. I am raising 4 kids. The Town saw fit to not make us drink the water, that was the only concern I had when they first came up with this thing. They did see to that, we are not drinking that water. We don't have a system that is working. I see Clearwater as having their own agenda and I definitely see it tonight, I mean you are talking... more of an attack than a support. We should listen to the young gentleman. He makes a lot of sense. You say that you want to work together, then work together. Have open government but also don't broadside it. Come at it together, work together, put it to sleep. Let's go get our money, get the well to work the way that we paid to have it work.

Applause.

MRS. BURTIS: If it wasn't for Clearwater, you would be drinking that water.

SUPERVISOR FULLER: Mr. Hanson.

MR. ECK: The past is the past, let's do it now towards the future together. Stop with the past, it is over, it is done. It does not benefit to anyone to continue dwelling on it. Move forward.

MRS. BURTIS: It's just that we are a watchdog group, everybody understand, it is not...

MR. ECK: I understand that and I appreciate it but let's move forward.

MRS. BURTIS: The watchdog group can ask questions that wouldn't be asked by the Town Board.

SUPERVISOR FULLER: Linda, if I may interrupt, Mr. Hanson is waiting to ask a question. We need to give everyone an opportunity to speak.

MR. HANSON: Mr. Alessi, I am a writer with the Spotlight. Just a couple pieces of detail about your proposal and again, these may not be available. What exactly would J.K. Fraser be charged with in this litigation? Do you have a ballpark figure of the dollar amount that you would be pursuing? And, when would be the soonest that the law suit would be filed?

MR. ALESSI: With regard to the first question, it is a civil law suit, so I would use a little different...

MR. HANSON: Charge would not be an appropriate word.

MR. ALESSI: Right, parlance and that would be that the liability we would ascribe to them would be their failure to follow accepted engineering practices with regard to their services. Now, when I say that, I don't say that with limitation. There very well may be and likely will be more claims than that. But, again, I do not want to foreshadow what we are going to do. There is litigation advantages and strategies. With regard to your second question which I understand to be how much will we be seeking, generally you want to make sure that you don't make a limitation on what you are seeking. I will say that we want at a minimum what we were promised and there are a lot of different ways to get that. In terms of pleading, you speak in general terms. You do not become specific for strategic reasons. With regard to your third question, which is how soon do we believe we could commence the litigation, we want to do this appropriately and I think that it should be commenced within the month and it is my hope and expectation that it will be done sooner than that. There are certain things, many of these things you control in commencing litigation. Some things you do not control. And, for some of those things we don't control, I want to make sure that there is not an expectation that that's a certainty. But, based upon experience and our intentions, I think that's a very reasonable time period.

MR. HANSON: Thank you.

SUPERVISOR FULLER: Are there any other questions?

MR. KEELER: Interesting part of your recommendation is... and I am not criticizing, okay, I agree with working together and all that and I fully agree with that. You are basing it on a report nobody can see, okay, now should the Town Board ask another law firm to look at that report and see if they agree with you because it is the old problem of -- you are taking advice from an expert, you have to count on the expert and so, should there be a review of that expert just to be certain before we take this step that it is a good decision.

MR. ALESSI: The answer is, is... your thought has logic but it doesn't resonate in this arena for the following reason. We have received information from an engineering firm that is very regarded that has said to us that there were errors made by J. Kenneth Fraser and Associates. You will have to show me a law firm in the country

that will tell you, based upon that recommendation, you should not pursue a law suit. Therefore, I do not see the value in the Town hiring another law firm because what law firm is going to say no, let them go. What is the alternative? So, I think it is rather clear and that is why in these types of litigations, the important driver is to have an engineering firm that knows the engineering standards work with you on those issues. It is no different than if you are in a car accident and somebody slams into you when you are stopped at a light. Now, you can go to a law firm and you can say, do you recommend that I sue. And, the law firm will say, tell me what happened and you will say, they slammed into the back of me in the car. Now, is it logical to ask... and they say we recommend that you sue to recover your damages or to get made whole. Is it logical to go to another firm to get a second opinion? Yes, it is logical. Is it prudent or practical? My judgement, no because it is obvious. And, I think that based upon the recommendation we have gotten and keep in mind to me, the driver is what an engineering firm says, not so much what a law firm says but a law firm is a necessary component to it. Based upon what we heard, it wouldn't be my recommendation for the Town to spend the money with regard to that matter, but that's not my decision, that's the Town Board's decision.

SUPERVISOR FULLER: Are there any other questions?

MR. DAVIES: One last question.

SUPERVISOR FULLER: One second, I want to make sure we have heard from everybody. Sorry.

MS. BENJAMIN: My name is Liz Benjamin. I am a reporter for the Times Union and I understand that you can't disclose anything in this report from Gannett Fleming. Is there anything... does the ... specific in that report that opens that to elude to what specifically is wrong with the system?

MR. ALESSI: Excuse me. The answer is that that the... I cannot comment with regard to the contents of the report because any comments that I make could be interpreted by potential defendants as being a waiver of the confidentiality and therefore, they would be entitled to the whole report. So, your question is a fair one, but in this context I do not want to risk that happening. I would just repeat that the report makes it clear that there were errors that were made and it was not the purpose of the report to say what is needed to make the system work or any particulars with regard to what is wrong. It is pretty obvious in a general sense what is wrong. We are not getting what we were promised. And, from a litigation perspective, the question is did the engineering firm cause that to happen. The engineering firm who consulted with us on that issue is very confident and very firm about the conclusion that the engineering firm was the cause of the problem and that there is a problem.

MS. BENJAMIN: So, during litigation would there have to be more intense investigation done by Gannett Fleming to determine physically what is going on?

MR. ALESSI: I will not say whether there needs to be more investigation by Gannett Fleming but it would be my expectation that more will be done.

SUPERVISOR FULLER: Anyone else?

MR. DAVIES: One last question, so that I understand and I tried to follow the discussion. You are not going to solve the problem nor is the engineering firm that is advising you going to solve this problem, essentially, is what we are saying?

MR. ALESSI: I am not saying we are not. I am saying that is not our task nor our charge but if we get the opportunity as we go through in terms of the litigation and a solution presents itself or we have the opportunity to accomplish our goal and in doing so we can address the other issue, we will. But, that is not our goal or charge. I am not saying we are not going to try or it won't happen but it is not the primary driver.

MR. DAVIES: I am supportive of everything you have said and what you are planning to do.

MR. ALESSI: Thank you.

MR. DAVIES: Now, I would like to address the Board for very few comments. I was here at the last meeting and I projected, as you know, a water shortage this coming summer of maybe 4/10s of a million gallons a day up to 1.5 million gallons a day. That is if we cannot increase the maximum amount of water that Albany will sell us, we need it in writing. I am sure they will sell it if they've got it. If they don't, we may be squeezed. So, we really can face a problem with water, fire flow, etc., etc. If we get squeezed this would impact on industry, new buildings, etc. I would like to ask the Board, have you a contract or current arrangement with O'Brien and Gere to review this problem and come up with solutions as to how this whole thing can be solved.

SUPERVISOR FULLER: It is a difficult question for...

MR. DAVIES: Pardon.

SUPERVISOR FULLER: It is a difficult question for me to answer you at this time, Sherwood. And, I know you don't like that answer I just gave you but it is the only answer I can give at this time. I am aware of the shortage of water that you are predicting for the summer. We are aware that our wells are not drawing as much water as they were. I do know that we need to purchase additional water from the City of Albany. I do feel that the additional purchase of water from the City of Albany is related to the difficulties we are having with the wells not producing the 6 million gallons of water.

MR. DAVIES: But, what I am thinking of is that if we go the route of developing our own water supply, 6 million gallons a day, you can get it very easily by tapping the Hudson River. But, do you want to do that? Would this be the recommendation of O'Brien and Gere? Would you be involved in an environmental impact statement? There is a whole host of questions here that an engineering firm should be giving you, the Board, our elected officials, answers and I don't think we can put this off. I think it is as urgent as the law suit Mr. Alessi is speaking of.

COUNCILMAN BURNS: Sherwood, I believe at the last meeting Bruce said he was going to have a plan to us in a couple of weeks on the...

GENTLEMAN: Speak up, please.

COUNCILMAN BURNS: At the last meeting, Mr. Secor said he was going to have a plan, responding to your questions and your statement last time, 2 weeks ago, in a couple weeks, according to my notes. So, that was what was promised to us.

SUPERVISOR FULLER: No, that was the plan...

MR. SECOR: That was a different issue. The issue that Mr. Davies raised last time he was here, was an emergency plan that was required by the State Health Department and we are preparing that but that's an overall emergency plan for anything from broken pipe lines to, you know, major catastrophes of an airplane falling into the reservoir and that is a different plan than is being discussed tonight. This type of shortage is within that plan but not in the contractual sense that he is discussing.

SUPERVISOR FULLER: Questions from anyone else. Thank you.

MR. KELLEHER: I would like to make a statement if I could.

SUPERVISOR FULLER: Do you promise it will be quick? We still have a couple things to do here tonight.

MR. KELLEHER: Yes. I will be real quick. The Board already knows my feeling on this. There is no way you can fix this water supply. My recommendation is go after the 13.9 million dollars, Bob, and

don't listen to some engineering firm who says it can be done because it can't. Now, that is my recommendation. Thank you.

MR. ALESSI: Thank you.

SUPERVISOR FULLER: Thank you. Any other comments from the Board before we move on with our agenda? Thank you, Mr. Alessi.

MR. ALESSI: Thank you Members of the Board and thank you members of the public.

Approve
Town Board
minutes 12/10/98

The next item was to approve Town Board minutes of December 10, 1998.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the Town Board minutes of December 10, 1998 as submitted. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Johnson,
Mrs. Burns.
Noes: None.

Grando-
K-9 dog
was put
to sleep

Supervisor Fuller said there was an item not on the agenda. This item was a sad occurrence in the community, Grando -- the original K-9 dog that has been here for 10 years, which many years ago the Bethlehem Chamber of Commerce started the fund raising efforts to purchase a police dog -- was put to sleep on January 16, of 1998. She said K-9 Officer Wayne LaChappelle brought a statement yesterday and asked for it to be included in the Town Board minutes (see following minutes). Supervisor Fuller said she was sure everyone in the community will miss Grando and the new police dog's name is Aaron. She noted many people refer to the new dog as Grando.

Supervisor Fuller asked if any of the Town Board Members had anything else to offer. There were none.

Supervisor Fuller asked if anyone wished to address the Board.

Mr. Golden
Omnipoint
Communications
wanted to
discuss
negotiations
site location
on top of water
tank the board
asked him to
present this
at next board
meeting

Mr. Steven Golden, Property Manager with Omnipoint Communications Albany District located in Latham, addressed the Board to discuss the negotiations that have been ongoing with the Town in order to site a location on top of the water tank. Supervisor Fuller interrupted Mr. Golden to note that this is a topic of negotiations and she was not sure it was appropriate to be discussed at the public meeting. Attorney Kaplowitz asked if there have been negotiations going on. Supervisor Fuller said they have been. Mr. Golden said he wanted to inform the Supervisor and the Board that they have been at an impasse since December and the company needs to move forward. Attorney Kaplowitz said it was not appropriate to discuss this when the Town's negotiator was not in attendance. He suggested both come in to present this to the Board. Supervisor Fuller asked that Mr. Golden call and set this up for the next meeting. Mr. Golden thanked the Board. Supervisor Fuller thanked Mr. Golden.

A resident noted he would like to know in advance if there are going to be towers put up in the Town as opposed to other alternatives. He said he would like to hear that. Supervisor Fuller said this is a discussion pertaining to the water tower located adjacent to the Middle School. She said they are negotiating to go on that tower and what the negotiations are over is how much money the Town is looking for from Omni for them to use the water tower. She said it is not an additional tower, it is our water tower. Attorney Kaplowitz noted the Code of the Town of Bethlehem regarding Telecommunications Towers places a premium, of sorts, on using already existing structures or if one is built, sometimes you can put 2 or 3 on the same tower. He said before they can go alone, they have to come to the Town and prove that they can't go anywhere else

-- that these other options are not available to them. He said there are a couple in Town already, noting there will be more.

The resident said he would rather see it on the water tower where it will not even be noticed than see a 150 foot tower in the air. Supervisor Fuller said the Board is in agreement.

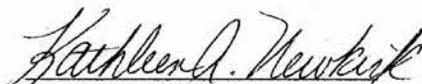
Supervisor Fuller asked if there was anyone else wishing to address the Board. There were none. She asked for a motion to close the meeting.

Adjourn meeting

The motion was made by Mr. Johnson and seconded by Mrs. Burns to adjourn the regular Town Board meeting at 9:00 p.m. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Johnson,
Mrs. Burns.

Noes: None.


Town Clerk

K-9 GRANDO

BETHLEHEM POLICE DEPARTMENT

NOVEMBER 11, 1988 - JANUARY 16, 1998

It is with great sadness that I am announcing the death of Bethlehem Police Department's first police K-9. K-9 Grando was put to rest on the 16th day of January, 1998. Over the last several months, K-9 Grando's health continued to fall him. I would look into his eyes each day and see the brightness fading, yet his spirit and heart carried him through. It would have surely been an injustice to let my partner of so many years suffer, so on January 16 K-9 Grando took his last ride in 753 to the New Baltimore Animal Hospital. He died in my arms while I told him to go find the bad guy. He always liked that command.

I would like to touch on the wonderful history behind my partner. You see, K-9 Grando was truly the first community police officer. In the summer months of 1988 the Bethlehem Chamber of Commerce conducted a fund raiser to start our K-9 unit. \$5,000 was raised in just a few short weeks by Town residents, who knew how important a trained police K-9 would be to our department. With this money, the search went out and a reputable trainer was located in Yates County. Sheriff Jan S. Scoffield purchased Grando from a breeder in western Germany.

Grando and I were teamed up together on November 11, 1988. I will never forget that night when Jan Scoffield opened up the back of his truck and let this magnificent dog out, handing me the leash. He was a real looker, his personality great, and his willingness to work unequaled. So started a long and exciting journey that carried us through woods, backyards, highways, rain, wind and snow.

For me to actually describe all the great things Grando has accomplished for us would take me all day. I will give you some of my most memorable experiences with him. These are treasured moments, moments of intense fear yet calmed by the courage of Grando. My first call with Grando was to assist the Sheriffs department with a man going beserk with a machete at a restaurant in New Scotland. Upon my arrival, K-9 Grando was deployed and able to assist and subdue this suspect. Another call was to assist the Albany Police Department with a burglary in progress call in the center of Albany. K-9 Grando started a building search and located a man hiding behind a false wall in the boiler room of a three story building. This was done after the police had already searched it. The State Police Troop T called us out to search a brand new 1990 BMW, valued at over \$53,000. K-9 Grando alerted to the engine compartment, jumping onto the engine an locating several ounces of crack cocaine and marijuana wrapped up in plastic, newspaper and bounce fabric softner (suspect tried to mask the odor of the drugs). Through federal asset forfeiture laws, the Bethlehem Police department was given \$13,000. Another find of money and drugs netted \$73,533. Overall, Grando was responsible for the seizure and street value of narcotics of over a half a million dollars.

One of our officers was involved in a high speed chase of three felons. The car was abandoned in the Town of Coeymans. K-9 Grando tracked three suspects through dense brush, finally alerting on a suspect hiding in a bush. This suspect attacked me and a backup officer with a hunting knife. H-9 Grando saved our lives by jumping out in front of me and taking this suspect down to the ground. During the struggle the suspect beat Grando about the head and even bit him in his ear. Grando never let go. The suspect was pulled from the bush by the dog, allowing us to handcuff him. Another time I was called out to look for a suicidal teen who fled

his house with a shotgun. Grando picked up the track, eventually finding the distraught teen in a heavily wooded area along a major Delmar road.

Men with guns were caught, Alzheimer patients found, lost children returned to their distraught parents, thousands of dollars of illegal narcotics were taken off the street by Grando. Public demonstrations were conducted in front of tens of thousands of people not just in Bethlehem, but around the country at various seminars. Grando and I returned to Germany as guests of the Federal Polizei in 1995. The only invited American police K-9 team to attend their service dog trial (Grando placed 9th out of 33 teams).

Even today, when I drive down the street in the police truck, children still call out Grando's name. I have been stopped in various malls by now college students, who recognized me because Grando and I had done a demo at a school for them. Nursing homes as well as the Center for the Disabled were favorite places for Grando.

Grando was not a pet. Grando was a Bethlehem Police Officer who served this community with all his heart. He loved the people in it as well as being loved himself. I can honestly tell you that if it were not for Grando, I certainly would have been seriously injured or killed. Other officers as well, owe their safety to that big black and tan German Shepherd, Grando.

On behalf of myself and Police K-9 Grando, we thank you for allowing us to serve with you and for you.

Sincerely,



Officer Wayne D. La Chappelle