

TOWN BOARD
JANUARY 29, 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 Supervisor said the first item is a privilege she gets to do. She presented a Proclamation to a friend of the Town Board and the community, Joe Phillips. She said he is leaving us at the Spotlight and his replacement is Kristen Olby. Mr. Phillips thanked Supervisor Fuller and thanked everyone for their help and cooperation. He said he will be overseeing the Schenectady County editions. He said this is a new opportunity within the Spotlight. He said it has been a real pleasure to work with the officials in the Town of Bethlehem. The Supervisor presented the Proclamation to Mr. Phillips. Supervisor Fuller said when there is a new reporter, there is always a challenge to get to know each other. She said she has enjoyed working with Joe for 4 and a half years. She wished Mr. Phillips well and invited him to stop into some of the Board meetings.

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The first item was a request from Chief of Police, Richard LaChappelle, for approval of retirement of police officer effective January 17, 2003. Supervisor Fuller noted Wayne LaChappelle has been employed by the Town since 1978 and she was sure not only many people know Officer LaChappelle but also knew Grando and Aaron, the police dogs. She said Wayne contracted Lyme disease while training with his canine partner and he will be leaving on disability retirement effective January 17, 2003.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to accept the resignation for retirement purposes of Police Officer, Wayne LaChappelle, effective January 17, 2003. The motion was passed by the following vote:

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

The next item was a request from Chief of Police for approval of transfer of ownership of police work dog, canine Aaron. Supervisor Fuller said while Wayne retires, they will also retire canine Aaron with him. Mr. LaChappelle will provide care and boarding while the Town agrees to pay for the dog food and reasonable veterinary care. The Supervisor noted the proposal is the same as was done for Grando who was retired several years ago.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to approve the transfer of ownership of Police Work Dog, Aaron, to Mr. Wayne LaChappelle. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

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Councilman Lenhardt asked what the current age of Aaron is. Lt. Berben said he was not positive but thought it was about 7 years. Mr. Lenhardt thanked Lt. Berben.

The following item was a request from Lieutenant, Robert Berben, Police Department, for approval to go to bid for a Chevy Tahoe. Could advertise February 5, 2003 and open bids on February 14, 2003.

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

WHEREAS, the Town desires to advertise for bids for the purchase of one (1) Chevy Tahoe, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 5th day of February, 2003 and that bids be received up to 3:00 p.m. on the 14th 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.

Absent: None.

The next item was a request from Richard LaChappelle, Chief of Police, for acceptance of resignation of a Telecommunicator, effective December 19, 2002. Supervisor Fuller noted the Telecommunicator is Leonard Tompkins.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to accept the resignation of Leonard Tompkins, Telecommunicator, effective December 19, 2002. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

The following item was a Presentation establishing a temporary moratorium on “Adult Uses”. Supervisor Fuller noted Mr. Flanigan will give an overview and update of what he has been doing with the temporary moratorium on “Adult Uses”.

Mr. Flanigan thanked Supervisor Fuller and noted he has been around the State quite a bit lately working on the Governor’s Task Force and said he has been working on this for over a year. He said he is trying to get something together that will work in our Town. He said there are many, many problems with communities. He said he has completed a study that he feels is adequate for meeting the intent of the law that we did do a study and feel that there are problems that could come to this Town. He said he raises these to the point of the shopping centers. He said if they should locate in these areas, you find the secondary effects. He noted the Supreme Court says you can look at secondary effects and what could happen.

Mr. Flanigan said he feels he is at a point now where he can write the ordinance. He said he has also been locally to many of the other communities around the Town and most of them have these ordinances and some are new and some have been around. He said a few of them have had problems with these uses. He said he has touched base with Guilderland, Clifton Park and Colonie and Rotterdam and the Town of New Paltz. He said these communities are similar to the Town of Bethlehem and have put these into effect to prevent the secondary effects of these uses.

Mr. Flanigan asked that this be extended for 3 months and said he will have this written and it can go to public hearing and adopt a local law.

Mr. Flanigan said as it stands right now, the uses could go into the commercial districts and that could be the shopping centers. He said with the moratorium they cannot locate there at this time. He said most communities are putting them in the industrial zones and we have large industrial zones in the Town. He said this would be heavy industrial zones. He said this can be done by Special Permit of the Zoning Board of Appeals and site plan review. He said this would permit review of any proposals. He said the reason for this location is that residential is not allowed in the industrial zones other than someone who wants to be a caretaker of the property. He said having gone around and looked at the areas, he noted there is very little residential in these areas. He said there can be restrictions put in the law also, stating as an example, cannot locate within 500 feet of a church or residence, or child care center. He said there are about 9 items that can be included.

Supervisor Fuller asked if there were any questions. Councilman Lenhardt asked if there was a legal definition of adult use, asking if these other towns share the same definition. Mr. Flanigan said they do share the same definition.

Councilman Davis asked if the communities that have passed an ordinance have found these work. Mr. Flanigan said they have and noted he did not run into anyone who had a problem with it as long as they had the ordinance in place. He said once you have it, you are better off and then the people know they cannot come. He said most of the locations they want these uses to be located are near an interchange to a major highway.

Councilman Plummer asked if it was clear that cannot be an outright moratorium or ban on these uses. Town Attorney Alessi said it is a good question and the answer, as best as one can have a definitive answer when you get to the law, that the Supreme Court has made it fairly clear that a municipality cannot have an outright ban. He said the short of it is, believe it or not, there is a first amendment right at issue – Freedom of Expression – and the U.S. Supreme Court, for better or worse, has viewed the expression in the adult context as a protected right but it can be regulated. He said they say it is probably impossible to say that you have to completely ban something in order to protect your interest. He said they try to balance someone’s right of expression with the right to protect the remainder of the community. He said he has seen no case where a community has completely banned adult uses and it has ever succeeded and most communities do not even try to do it anymore. He said he has not seen one in the last 8 or 10 years that has tried to completely ban. He said his legal judgment is that while you can try to do anything by ordinance, it would be readily struck down. He noted, therefore, you have to provide for the expression in your municipality, it is a matter of the location as to where it is. Mr. Flanigan commented as long as you leave a place for them to come and do not restrict them out it seems to meet the Supreme Court.

The motion was made by Mrs. Davis and seconded by Mr. Marcelle to approve the extension of 3 months establishing the temporary moratorium on Adult Uses”. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

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Town Attorney Alessi added that it is important for the public to know that as it stands right now, absent the moratorium, someone could put this use in any place under the existing Code. He said the Town Board is not trying to facilitate or welcome these things in, it is trying to protect a situation which would exist once this moratorium would expire that these places could go anywhere in the absence of the current moratorium.

The next item was a recommendation from Jeffrey Lipnicky, Town Planner, for approval to hire Tectonic Engineering to assist the Planning Board in its SEQR/DEIS review pertaining to Waste Management proposal. Supervisor Fuller asked Mr. Lipnicky to give some information pertaining to this item.

Mr. Lipnicky referred to the previous presentation to request authorization to go out to find a consultant to assist in the review of the Waste Management project. He said the Planning Board has issued a positive declaration under SEQR which requires a Draft Environmental Impact Statement to be prepared. The purpose in hiring the consultant, according to Mr. Lipnicky, would be to assist in the review of the Draft Environmental Impact Statement which would include assisting in preparing the scoping document; in reviewing the DEIS; assist in preparing a Final Environmental Impact Statement which would address comments from the public; and to also assist in preparing findings statement as required under SEQR. Mr. Lipnicky noted there were a number of individuals involved in the process of finding a consultant. He said Planning Department and Engineering Division staff were included. Consulting firms names were submitted and the list was narrowed to a list of approximately 10 or 11 firms which requests for qualifications were sent. He said in response, 5 firms sent packages which were reviewed and the firms were ranked and the top 3 firms were interviewed.

Mr. Lipnicky said after the interviews were conducted, they discussed the firms and determined that Tectonic did the best job in terms of both qualifications packages and in terms of the interview itself. He said they are now recommending the Town Board approve hiring Tectonic Engineering in association with Greenplan, Inc. who would be a sub-consultant on this project.

Supervisor Fuller asked Mr. Lipnicky who would be paying for this consultant. Mr. Lipnicky said this would be set up under the Planning Board fee schedule and also under the SEQR Act. He said they would charge the cost of consultant work back to the developer. He said there will be an escrow account set up and the consultant would be paid from this account.

Councilman Davis noted in the letter it is estimated to cost approximately \$65,000 and if necessary it could be higher. Mr. Lipnicky said this was correct. He said one thing he wanted to caution is that it is very difficult to make an estimate at this point in time. He said the figure is really a guesstimate of what it might cost. There are factors to be determined as the information is compiled and reviewed.

Councilman Marcelle asked in regard to his letter, it mentions that the consultants were ranked on the qualification package. Mr. Lipnicky said that was correct. Mr. Marcelle asked what that included but more specifically if it included any consideration of the various rates that the firms would charge. Mr. Lipnicky said he personally did not have that as a primary factor in terms of rating the consultants. He said in terms of the other persons who rated them, he did not know. He said one thing he said that was interesting was that 2 of the estimates that came back were the exact number.

Town Attorney Alessi asked Mr. Lipnicky in terms of how this works, even though the applicant is paying for it, as he understands the applicant had no role whatsoever in the choice of the consultant and that there is an arms length, if you will, relationship with the applicant. He said namely that the Town controls in terms of the consultant and it's work etc., is solely by the Town and the applicant had no role in selecting and no role in how

the scope of work is adjusted for the consultant. Mr. Lipnicky said that was correct. He said the applicant had absolutely no input into the search for a consultant and essentially will be back to the Town Board both with the escrow agreement and a consultant's agreement with Tectonic. He said the decisions of the Town are final with respect to what gets studied and payment to Tectonic. He said the applicant's role here is to fund the study.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the hiring of Tectonic Engineering to assist the Planning Board in its SEQR/DEIS review pertaining to the Waste Management proposal on River Road, Route 144, Selkirk as requested by Mr. Lipnicky, Town Planner. The motion was passed by the following vote:

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

Noes: Mr. Marcelle.

Absent: None.

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Councilman Marcelle explained and said the reason he takes the opportunity to vote no is not to second guess the committee's work here. He said he does this knowing full well it was going to pass but it gives him an opportunity to share his concern a little bit. He said as we go through a transition in this Town trying to bring the right type of commercial development here, he thinks when this package is reviewed, there should be a consideration with regard to price as not to erect barriers to businesses to want to develop in this Town. Supervisor Fuller noted this was a consultant to review a business that is looking to come to Town. Mr. Marcelle agreed.

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Supervisor Fuller thanked Mr. Hasbrouck and Mr. Lipnicky and all those that helped with the review and selection.

The next item was to adopt a resolution pertaining to Polling Locations for Conduct of Elections for the year 2003.

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

RESOLVED, that in accordance with Election Law, Article 4, Subdivision 4-104, the Town Board of the Town of Bethlehem, hereby designates the following named locations as polling places for any election to be held in the Town of Bethlehem effective May 1, 2003 through April 30, 2004:

District	Polling Location
1	North Bethlehem Fire House 589 Russell Road, No. Bethlehem

- 24 Selkirk Fire Dept. #2
Glenmont Rd., Glenmont
- 25 Glenmont Grade School
Route 9W, Glenmont
- 26 Bethlehem Vol. Ambulance Service
1121 Route 9W, Selkirk
- 27 Parks & Recreation Building
261 Elm Ave., Delmar
- 28 Bethlehem Historical Museum
1003 Route 144, Selkirk
- 29 Selkirk Fire Dept. #3
Bridge St., So. Bethlehem
- 30 Selkirk Fire Dept. #1
Maple Ave., Selkirk

The resolution was adopted by the following vote:

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

Noes: None.

Absent: None.

The next item was to adopt a resolution setting fee schedule for election officials for the year 2003.

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

RESOLVED, that in accordance with Election Law, Section 3-420, and Town Law Section 27, Subdivision 2, the following shall be the fees for the election officials for 2003:

Inspector (presidential year when 2 days are required)	Primary \$100.00 Registration Day \$30.00 Registration Day \$60.00 Election Day \$130.00 Instructions \$10.00
Chairman	Return of Supplies to Town Clerk's Office \$8.00 Mileage for above returns and instructions per mile \$.30
Poll Clerks	Election Day \$125.00

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Janitors	Primary Day and Election Day - \$25.00
Custodians	Per Machine \$20.00
Technicians	Per Day \$32.00
Party Representatives	\$10.00 per hour

The resolution was adopted by the following vote:

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

Noes: None.

Absent: None.

The next item was a request from Administrator, Nan Lanahan, Parks and Recreation Department, for approval of Capital Reserve expenditure. Supervisor Fuller said Mrs. Lanahan is asking for Board approval authorizing the use of \$375,000 from the Recreation Capital Reserve Account, subject to a permissive referendum. She said the funds will be used to renovate the pool deck, underground piping and replace equipment including diving boards and lifeguard chairs at the Elm Avenue park. She said also included will be the engineering services from a local firm. She said funds have been set aside for this project for several years with a target date of 2003.

Supervisor Fuller asked Mrs. Lanahan how old the pool is now. Mrs. Lanahan noted it is 30 years.

Councilman Davis said she does not see that there is any choice if the Department of Health is recommending this project be done this year. She said this seems to be something we are compelled to do. Mrs. Lanahan noted it will be done after the summer. She said it is heaving in a lot of areas and kids are tripping. She said it is vital to get this done.

The following resolution was presented for adoption:

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem in the County of Albany, State of New York has on the 29th day of January 2003, duly adopted, subject to a permissive referendum, a resolution as follows:

WHEREAS, the Town Board of the Town of Bethlehem has determined that it is necessary to renovate the pool deck and underground piping and replace equipment including diving boards and lifeguard chairs at Elm Avenue Park, and

WHEREAS, it is estimated that the costs of said work will be approximately \$375,000 and

WHEREAS, in recognition of these needs, funds for such construction are in the Recreation Capital Reserve Account; and,

NOW, THEREFORE, BE IT RESOLVED, that it is in the public interest and safety to renovate the pool deck and replace equipment; and,

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

BE IT FURTHER RESOLVED, that the Town Board authorizes the expenditure of the reserve monies to fund this project up to a maximum amount of \$375,000 and,
BE IT FURTHER RESOLVED, that the Town Comptroller is authorized to expend from the Recreation Capital Reserve Account the funds necessary up to \$375,000 in said reserve fund; and
This resolution shall be subject to a permissive referendum, as permitted bylaw.

This motion to adopt the resolution was made by Mr. Plummer, was seconded by Mrs. Davis and duly adopted by the following vote:

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

The next item was a request from Highway Superintendent, Gregg Sagendorph, to go to bid for leaf vacuum machine and wood and brush chipper. Advertise February 5, 2003 and open bids on February 18, 2003 at 3:00 and 3:15 p.m.

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

WHEREAS, the Town desires to advertise for bids for the purchase of one (1) diesel powered leaf vacuum machine and a diesel powered wood and brush chipper, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 5th day of February, 2003 and that bids be received up to 3:00 and 3:15 p.m. on the 18th 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.
Absent: None.

The final item was to acknowledge receipt of Amendment to Conditional Approval of Final Plat for the McCormack's Hollow Subdivision, North Street, Delmar, from the Planning Board for information purposes.

Supervisor Fuller said there were 2 items to be added to the agenda. The first was a request from Comptroller, Judith Kehoe, to set a public hearing regarding the renewal of the Time Warner Cable Agreement.

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

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve setting a public hearing regarding the renewal of the Time Warner Cable Agreement for February 26, 2003 at 7:30 p.m. as requested by Comptroller, Judith Kehoe. The motion was passed by the following vote:

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

The second item, according to the Supervisor, was an appointment to the Planning Board. Supervisor Fuller said as everyone knows, there has been a resignation from the Planning Board and interviews have been done. She said she is recommending to the Board the appointment of Katherine McCarthy a resident of the Town and mother of 2 boys. She said Mrs. McCarthy is very busy in the community and has been from the time she moved here.

The motion was made by Mrs. Davis and seconded by Mr. Marcelle to approve the appointment of Katherine Leary McCarthy, Delmar, New York to the position of Member, Planning Board. The motion was passed by the following vote:

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

Supervisor Fuller said she is looking forward to Mrs. McCarthy's involvement here in the Town and she will be contacting Mr. Hasbrouck to find out what is involved as she gets started.

Supervisor Fuller next noted receipt of a calendar comprised of pictures from the Dog Park. Councilman Davis said she received a copy of the letter but not the calendar. Other Board Members noted they only received the letter with Mr. Lenhardt noting he did not receive anything. The Supervisor said they got a number of letters of thanks from various people who use the dog park and they did send a calendar. She said it is available for everyone to peruse at their leisure. Mrs. Davis noted the letter was very nice. Supervisor Fuller agreed that the letter was very nice but she was not sure they had received the calendar.

Councilman Lenhardt made a motion that the Board acknowledge Marcia Nelson's 24 years of service to the Town Planning Board with a resolution or proclamation. The motion was seconded by Mr. Marcelle and passed by the following vote:

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

Noes: None.

Absent: None.

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Supervisor Fuller noted she will get a resolution off to Mrs. Nelson.

Resident Marie Capone asked if something could be done about the snow bank between Delaware Avenue and the entrance to the library on Borthwick Avenue. She said it has never been touched and is very high. Supervisor Fuller asked Mr. Sagendorph to look into this matter. Mrs. Capone thanked the Supervisor and Mr. Sagendorph.

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

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve adjourning to Executive Session to discuss a personnel matter. The motion was passed by the following vote:

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

Absent: None.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle 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.

Absent: None.

Town Clerk

EXECUTIVE SESSION

There was no formal action taken at the Executive Session.