

TOWN BOARD
JULY 14, 2004

A regular meeting of the Town Board of the Town of Bethlehem was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, NY. The meeting was called to order by the Supervisor at 5:30 p.m.

PRESENT: Theresa Egan, Supervisor
Daniel Plummer, Councilman
George Lenhardt, Councilman
Thomas Marcelle, Councilman
Tim Gordon, Councilman
Kathleen A. Newkirk, Town Clerk
James T. Potter, Esq., Town Attorney

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Supervisor Egan welcomed everyone to a regular meeting of the Bethlehem Town Board and invited them to join in the pledge of allegiance. She noted this was the public comment period for items on the agenda noting any additional comments will be held until the end of the meeting.

Mrs. Marie Capone, resident, asked when the New York State Police item is reached that the Board be very specific because she has no idea what that is. Supervisor Egan said she will be very explicit.

Mr. Robert Jasinski asked about the request for approval for public hearing for speed limit on South Albany Road, South Bethlehem. He asked if the speed limit was being lowered or increased. The Supervisor said the speed limit is lowering from 45 to 35. Mr. Jasinski asked how many complaints have been received on this. Supervisor Egan said there have been quite a few, noting the County has been involved as well for the last year and a half in regard to doing reviews on it. She said it started back early in 2003, the original request was received. She said the County has looked at it and the last recommendation has been to leave it up to the Town. Mr. Jasinski said he travels that road quite a bit with a 4 speed with a 6-speed overdrive. He said he cannot travel less than 40 miles per hour without the truck bucking. He said he is down into 2nd or 3rd gear and that is going like under 40 miles per hour. He said he comes off the bridge on Route 396 and he is starting at 30 and by the time he reaches the bottom, he is doing 40 or 42 miles per hour without using the gas. He said the Police Department does like to sit right there and thank the Lord they give him a 2 mile break. He thinks a 40-miles per hour would be more realistic and the reason he says that is because this is in a rural area and the number of homes along the road.

Mr. Jasinski next asked about the New York State Police purchase of a laser speed enforcement, the Board is going to go into that pretty good. Supervisor Egan said absolutely.

Mr. Jasinski said the final question was in regard to the request from Mr. Bellizzi to build a baseball field at the Elm Avenue Town Park. He asked if any clubs pay rent for the fields. Supervisor Egan said no. Mr. Jasinski said a non-profit in the dictionary is listed as not for profit. He asked who was going to pay for the new field. The Supervisor said tonight is just an introduction but the proposal would be the Mohawk Baseball Club. Mr. Jasinski asked how many fields the Town has for baseball. Supervisor Egan said you would have to separate Tri-Village Little League from what Bethlehem Park has. She said on Line Drive there are 3 baseball fields that is for Babe Ruth or Little League uses those and then there are softball and baseball combined fields at the park. Mr. Jasinski said he would ask this non-profit organization how many coaches it has and how many players at \$190 per week and how many weeks they have. Supervisor Egan asked what the \$190 a week is. Mr. Jasinski said that is what they charge per week for the Bob Brizzelli Baseball Camp. Ms. Egan said this has nothing to do with camp. She said this has to do with... Mr. Jaskinski said the camp takes place at the park.

Supervisor Egan said this was a different proposal. She said the proposal for the baseball field is on field 4 which is adjacent to the administration building and to the back. She said that is the location proposed and this is not related to the park. She said this is basically building a stadium type baseball field with lights and stadium seating. She said this would be available to various teams, including the Town Babe Ruth, Legion and Little League teams.

Mr. Jasinski commented they are non-profit. Supervisor Egan said the Mohawk Baseball Club is non-profit. Mr. Jasinski asked if the Board has received a form from the club. Ms. Egan said they have not gotten that far, again noting this was just an introductory request to the Board. Mr. Jasinski asked if any of the teams have supplied the form he mentioned in the last 5 years. Supervisor Egan said she did not know the answer to this question. Mr. Jasinski suggested this be looked into.

Mr. Jasinski said he would like to know the total gross on this non-profit organization and asked if they do anything with underprivileged or low-income kids where they will let them use the field at no cost or is there anything in the agenda or anything that works with the low income, the underprivileged. He said we do have some in the Town. Supervisor Egan said in the introduction discussions with Mr. Bellizzi she said they have not addressed this issue specifically. She said certainly it would be free of charge to any of the Town baseball teams and leagues. She said in addition to that in conjunction with the construction of the field, the team would be college level. She said it would be their home field and part of what they are offering is having those college kids work with the little league and Babe Ruth teams on a training type basis. She said this has been talked about and she will be more than happy to ask Mr. Bellizzi about this issue.

Mr. Jasinski asked if the Supervisor was going to go over some of that presentation. Supervisor Egan noted Mr. Bellizzi has come in to see her and written a letter to the Board.

The Supervisor asked for a motion to come out of public comment and start with the regular meeting. The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to close the public comment period and start the regular meeting. The motion was passed by the following vote:

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

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Supervisor Egan said the first item was to approve the Town Board minutes of June 23, 2004.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the Town Board minutes of June 23, 2004 as submitted. The motion was passed by the following vote:

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

The next item was to present Proclamations to GE Selkirk, and Applebee Funeral Home. Supervisor Egan presented a proclamation to GE for participation in Global Community Day on May 12, 2004 over 120 volunteers of GE Selkirk improved environmental conditions in the Town of Bethlehem and surrounding communities. She thanked GE on behalf of the residents of the Town.

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

The Supervisor next presented a proclamation to Applebee Funeral Home noting she has known Mr. Peter Applebee a long time. The proclamation recognized 100 years of service by Applebee Funeral Home. Supervisor Egan thanked Mr. Applebee for exceptional, dedication and outstanding achievement. She thanked Mr. Applebee for this service to the Bethlehem community. Mr. Applebee thanked Supervisor Egan.

Supervisor Egan noted on the agenda was the Bethlehem Central Girls Varsity Lacrosse Team, however, most of them are at Empire State practice so this proclamation will be held until August.

The next item was a request from First Columbia for amendment to the Building Project Approval for 1200 New Scotland Road, Slingerlands. Supervisor Egan said this is a matter which was before the Board a while ago and there was an approval to construct approximately 45,000 square feet of additional medical/professional space over on New Scotland Road. She noted there is one building constructed now. She said the approved plan had 2 buildings. She said First Columbia has come back to propose 1 building with almost the same footprint. It is going to be about 45,500 square feet, according to the Supervisor. She said a tenant requires a single floor area of 15,000 square feet. Information was attached to the submission. Deputy Planner Saatman said there are no major issues with this request. She said First Columbia is also asking to subdivide the parcel.

The motion was made by Mr. Gordon and seconded by Mr. Plummer to refer the request of First Columbia regarding amendment to the Building Project Approval for 1200 New Scotland Road, Slingerlands.

Councilman Lenhardt commented in looking at the map on this it appears the proposed entrance is moving closer to the creek, farther away from the existing entrance. He said he thinks this is an improvement. He noted in regard to the deliberations that part of the building may be in the flood plain. He said he is sensitive to this event. Chairman Mathusa noted they will check on that. Deputy Planner Saatman said she thinks it is part of the parking area, not the building. Ms. Saatman also noted she did not think the entrance moved, indicating they are attempting to make as few changes as possible from the approved plan.

The motion was passed by the following vote:

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

The next item was a request from Administrator, Parks and Recreation Department, Nan Lanahan, for approval of appointment of seasonal personnel.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the appointment of seasonal personnel at the titles and salaries listed on the submission dated July 14, 2004 by Nan Lanahan, Administrator, Parks and Recreation Department and on file in the Town Clerk's office. The motion was passed by the following vote:

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

The following item was a request from Engineering Services Administrator, Michael Cirillo, Department of Public Works, for allowance of structure on

easement at 90 Jefferson Road, Glenmont. Supervisor Egan said this was outlined in Mr. Cirillo's Memorandum and noted Mr. and Mrs. Holden are seeking permission to install a swimming pool in their rear yard. She said the proposed location would encroach on a Town drainage easement. She noted the Engineering Division has reviewed this and they see no problem to this. The one item noted by them was that a drainage swale be constructed or reestablished within the existing easement that would meet the Engineering Division recommendations.

The motion was made by Mr. Marcelle and seconded by Mr. Plummer to approve the allowance of a structure on the drainage easement as requested by Michael Cirillo, Engineering Services Administrator, on condition that the drainage swale be reestablished within the existing easement. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

The next item was a request from Highway Superintendent, Gregg Sagendorph, for approval to set a public hearing to amend the Code of the Town of Bethlehem, Vehicle and Traffic, speed limits on South Albany Road, South Bethlehem. Could set public hearing for August 11, 2004 at 6:00 p.m. Supervisor Egan said Mr. Jasinski thought the 45 miles per hour was sufficient and a rural area. The County has turned the decision over to the Town. Mr. Sagendorph said the County deferred to the Town and due to the vicinity of the ConRail yards adjacent to that section of road with the shift differential and the employee traffic in a residential neighborhood, this needs to be addressed. He feels the speed limit should be reduced. Supervisor Egan noted it is for a small section of the road, pointing out one of the requests gave the Board various comparables in regard to other roads in residential areas that were down to 30 or 35 and the request is to reduce the current 45 down to 35. Councilman Plummer added that it appears as though it is an area where there are some kids with disabilities. He noted there is a safety aspect to this as well. He said in comparisons to the other county roads, this makes this in concert with them indicating they were Jericho, Elm Avenue and South Albany from Rupert to 396 and reference the lower of the limits at those particular areas.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve setting a public hearing on August 11, 2004 at 6:00 p.m. to consider amendment to the Code of the Town of Bethlehem, Vehicle and Traffic, Speed Limits to reduce the speed limit from 45 miles per hour to 35 miles per hour on South Albany Road, South Bethlehem as requested by Highway Superintendent, Gregg Sagendorph. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

The next item was to adopt a resolution for approval of payment of Democratic Election Inspectors and Poll Clerks for the 2004 Elections.

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

RESOLVED, that pursuant to Article 3 of the Election Law, the following persons be and they hereby are appointed Election Inspectors and Poll Clerks (on list on file with Town Clerk's office) as recommended by the Democratic Committee for the term beginning July 14, 2004 through July 14, 2005 as per attached lists.

The resolution was adopted by the following vote:

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

Noes: None.

Absent: None.

The next item was a request from Town Clerk, Kathleen A. Newkirk, for adoption of resolution of Polling Locations for 2004 Elections. Note was made that District 9 will return to the Library since renovations are completed and District 23 will now vote at the Adams Station Office Building.

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

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, 2004 through April 30, 2005:

<u>District</u>	<u>Polling Location</u>
1	North Bethlehem Fire House 589 Russell Road, No. Bethlehem
2	The Terrace at Beverwyck 41 Beverwyck Lane, No. Bethlehem
3	Slingerlands Fire Dept. 1520 New Scotland Rd., Slingerlands
4	First United Methodist Church 428 Kenwood Ave., Delmar
5	Elsmere Grade School 247 Delaware Ave., Elsmere
6	Bethlehem Town Hall 445 Delaware Ave., Delmar
7	Slingerlands Fire Dept. 1520 New Scotland Rd., Slingerlands
8	Bethlehem Town Hall 445 Delaware Ave., Delmar
9	Bethlehem Library 451 Delaware Ave., Delmar
10	First United Methodist Church 428 Kenwood Avenue, Delmar
11	Educational Services, BCHS 90 Adams Pl., Delmar
12	Elsmere Fire Department 15 West Poplar Dr., Elsmere
13	Selkirk Fire Dept. #2 Glenmont Rd., Glenmont
14	Parks & Recreation Building 261 Elm Ave., Delmar
15	Bethlehem Town Hall 445 Delaware Ave., Delmar
16	Bethlehem Lutheran Church 85 Elm Ave., Delmar
17	Delmar Fire Dept. 145 Adams Pl., Delmar
18	Hamagrael School 1 McGuffy Lane, Delmar
19	Bethlehem Central Middle School 332 Kenwood Ave., Delmar
20	Elsmere Grade School 247 Delaware Ave., Delmar

21	Glenmont Grade School 328 Route 9W, Glenmont
22	Selkirk Fire Dept. #2 301 Glenmont Rd., Glenmont
23	Adams Station Apartments 1 Juniper Drive, Delmar
24	Delmar Fire District Annex Feura Bush Rd., Delmar
<u>District</u>	<u>Polling Location</u>
25	Glenmont Grade School 328 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 River Rd., Selkirk
29	Selkirk Fire Dept. #3 3 Bridge St., South Bethlehem
30	Selkirk Fire Dept. #1 Maple Ave., Selkirk

The resolution was adopted by the following vote:

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

Noes: None.

Absent: None.

The next item was a request from Antonio J. Califano to use Eduardo Parkway as a private driveway. Supervisor Egan said the written request was provided to all of the Board Members. She said she has had an opportunity to speak to Highway Superintendent Gregg Sagendorph and to Mr. Ritz in the Engineering Department, as well as, Town Planner Jeff Lipnicky with respect to the request. She pointed out that the Town standard on this in general for a private street would require 3 or more homes or commercial businesses within the vicinity. She said since the Town is not owning or maintaining it, as well as, some other extenuating circumstances, specifically regard to pending subdivision approval at the end of the private drive/street and other things that fit in, it is within the Board's discretion for this to be granted.

Councilman Lenhardt said he knows this is in conjunction with a pending subdivision, assuming this driveway will be a portion of a street. Mr. Califano said the driveway goes down the middle of the proposed street. He said they are trying to avoid becoming 536 Russell Road and then hopefully in a couple years having to change the address. Supervisor Egan again noted this is a private street and privately maintained. Mr. Califano said this was correct, totally private. Supervisor Egan said to address Mr. Lenhardt's question, in the event the subdivision is approved, then it will be approved to required widths and be deeded back to the Town. Councilman Lenhardt said that was the way he understood it.

The motion was made by Mr. Gordon and seconded by Mr. Marcelle to approve the use of Eduardo Court for the driveway as requested by Antonio J. Califano. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

The following item was a request from NYS Police, Sgt/SC Eugene J. Hallenbeck, Jr., to purchase a laser speed enforcement unit to be utilized by a member of the State Police. Supervisor Egan said this is in regard to purchasing an Ultralyte LRB Laser which combines precise speed measurement with multi-functional capabilities and has the same software technology as its predecessor, which has worldwide court precedence and approvals. She said it is approximately \$2,999 expense and used strictly by the NYS Police and not the Town police. She said it was a request sent to her by one of the Troopers and have requested other municipalities but she did not know how successful they have been elsewhere. The Supervisor noted she did pass this by Chief Corsi and noted he was not necessarily supportive of this for the \$3,000. The Chief thought this amount of money could be used on the Town Police, according to Supervisor Egan.

Councilman Marcelle asked if the Troopers were told that the Board would be considering this tonight. Supervisor Egan said they were. Mr. Marcelle noted the Trooper knew to show up if they wanted to present information. Supervisor Egan said the Troopers did not specifically ask if they needed to be here. She noted she had her secretary call and let them know it was on the agenda. The Supervisor said this request was sent to her back in April and she apologized for this being so long in coming to the Board. Councilman Marcelle asked if the Troopers had a theory on why the Town should be paying for this item. Supervisor Egan said the thought process was that it would make them more efficient in patrolling for speeders which would help the safety of the community. She said they also thought it was a better piece of equipment, more up-to-date, would allow them to probably be more proficient in catching speeders. Again, the Supervisor said the State Troopers do have some jurisdiction here in town.

Councilman Marcelle asked if the State Troopers issue a lot of tickets in Bethlehem. Supervisor Egan said they do quite a few. She said State Police mornings are Wednesday mornings, 2 mornings a month. She said for a period of time it had really dropped off prior to her sitting as Town Justice but certainly they have been back and forth when she sat on the bench from 4 to 15 State Police on a trial morning. Councilman Marcelle asked if this was on the Thruway or on our Town roadways. Supervisor Egan said they can use it anywhere, noting they patrol Town streets, as well as, the Thruway. She said her guess would be that this would be mostly used on the Thruway.

Councilman Marcelle said he most likely will not support this due to the fact the impact on Town residents is less considering this will be used predominantly on the Thruway. Councilman Lenhardt agreed and felt taxpayer money should not be spent on equipment for a State entity. Councilman Gordon said he is not necessarily opposed to the State Troopers using it on the Thruway, however, he would be curious with regard to the fact that on the Thruway they pass through Bethlehem, Guilderland, Albany and are they going to request separate radar devices for each jurisdiction and be inclined to use this around the Town line and whether they would be particularly careful not to use one town's in another. Supervisor Egan said it was her understanding that this unit would be used in the Town of Bethlehem. Mr. Gordon said he would like to learn a little more from the State Police.

Councilman Plummer asked the Supervisor if she knew to what degree the Town Board has reciprocal responsibilities with the State Police in regard to our Police Department. He asked if there are any other activities coordinated. Supervisor Egan said not in the sharing of resources. She said this is kind of a first time request. Councilman Plummer said his view is that our tax dollars should be spent on our Police Department. He said he would not support this item either.

The motion was made by Mr. Marcelle and seconded by Ms. Egan to purchase the Ultralyte LRB Laser unit to be used by the Members of the State Police of Albany as requested by Sgt/SC Eugene J. Hallenbeck, Jr. The motion was passed by the following vote:

Ayes: None.

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

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Supervisor Egan noted she would do a letter to Sgt. Hallenbeck.

The next item was a request from a resident for Town meeting regarding deer ticks/Lyme disease. Supervisor Egan noted there was nothing in the packets regarding this issue. She said deer tick and Lyme disease has become an issue and noted it made the front page of the Spotlight last week. She said she had 2 calls from residents in regard to what the Town is doing to educate the residents in regard to Lyme disease and West Nile virus. She said the Town has coordinated with Albany County Health Department working with their education department and have obtained, signed kind of alert education signs they are working on with Nan Lanahan as to where in Town to place these signs. She said this request was from a resident to specifically set up a Town meeting and ask for people to come in and do educational processes. Supervisor Egan asked Mr. Sagendorph to correct her if she was wrong but the Town has been pro-active in regard to the West Nile virus situation by having a certified pesticide applicator at the Highway Department that actually treats some of the Town's standing water areas.

Supervisor Egan said she told the resident she would bring it to the Board to get input as to the thoughts of the Town Board Members. She said she has a card from a Health Department employee and some literature that was brought in.

Councilman Marcelle said he is not opposed to it but he is not sure it will be well attended. He suggested if there is a contact person at the Albany County Department of Health that this information be made available on the Town website. Councilman Gordon also suggested information be included in the Bethlehem Report. He also noted if a mailing was being done, include information on this also. Supervisor Egan noted she would try to remember and asked that they remind her.

The following item was a request from Bob Bellizzi, Mohawk Baseball Club to build a baseball field at the Elm Avenue Town Park. Supervisor Egan said Mr. Bellizzi was notified that this information was being presented to the Board as introductory noting he has a more detailed proposal which was presented to Town Attorney Potter for review, as well as, a copy to Parks and Recreation Department Administrator, Nan Lanahan. She said he does have some history and noted he has been a lifelong resident of Bethlehem and is the coach for the College of St. Rose. She said he has done the same type of thing in Amsterdam indicating this is being quite successful. She said she wanted to bring to everyone's attention and unless someone is really opposed to this, she would like to send it through the channels and get some internal response. The Supervisor said she has asked the Town Attorney to look at it from a legal perspective. She said there are various issues, private use of public land, the maintenance of it, what happens if it fails, etc.

Councilman Lenhardt said two items were mentioned that he wrote on the letter and they were non-resident issues and maintenance issues. He said he has not decided one way or the other regarding whether he is in favor or opposed. He said he would like to provide for the Board sake some history on the Elm Avenue Park and also for the viewing audience. He said this occurred while he was in high school. He said prior to the Town Park on Elm Avenue, Henry Hudson Park was built and the Town at that time requested and was provided grant money from the Federal Government or the State Government and as a result the Henry Hudson Park had to remain open to all the residents wherever since they accepted public funds. He said as he understood it, when they built the Town Park, they did it strictly within the Town of Bethlehem and used strictly the Town of Bethlehem's money, therefore, they could control access to the park and it was built, as he

understood it, to be used by residents of the Town of Bethlehem. Mr. Lenhardt said entering into situations like this, we are now compromising that to some degree. He said he certainly is hoping to hear more pros and cons.

Supervisor Egan said they have keynoted some key problems to the situation but she was more if everyone is still interested in it, they will pursue it. She said it may be something we legally cannot do but she thinks it should be investigated and get more information on it. She noted Councilman Lenhardt's are great points and Town Attorney Potter is writing as comments are made.

Councilman Plummer said he thinks conceptually it is a great idea. He said he would like to see the details and the background report to look at the financials. He said if it is a matter of him being in a position where financially he can build this on public land and pay for itself, again, conceptually he thinks it sounds great and a good asset to the community. He said he would also like to ask Mr. Bellizzi about other needs here noting the Pop Warner Football program has had a need for a field for a number of years and it has conflicted with the high school and the middle school field and they have come forward in the past to see if there was an opportunity to be able to do something at the Town park. In the past, he said, the answer was no. He said maybe there would be some way where Mr. Bellizzi would be receptive to allowing that to occur in the fall when baseball is over. He said there might be some other uses that the community could benefit from in addition to just baseball.

Supervisor Egan said they will go ahead and keep floating things around and get all the Board Members the specific proposal that Mr. Bellizzi has brought in including any additional information that is requested.

Supervisor Egan explained that in the Board packets an item for renewal of a dumping permit was lost on the agenda. She asked since the Board Members had the information if they are willing to move on the request to approve a renewal of a dumping permit for Margaret Barkman, 789 Route 9W, Glenmont. The Supervisor explained the permit was issued back in 2002 with a 1-year time limit but no fill had been in place on the site. Mrs. Barkman now has fill available, according to Supervisor Egan, and is requesting a renewal of the previously granted permit.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the renewal of a dumping permit for 789 Route 9W, Glenmont, New York as requested by Mrs. Margaret Barkman and recommended by Building Inspector, Mark Platel. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

The following item was a request from the developer of Hamden Woods subdivision in regard to their application for a waiver of the moratorium. Supervisor Egan noted that the moratorium language that was adopted in March of 2004, allowed for an application for a waiver. She said to date there have been 2 applications, Hamden Woods which Mr. Lynch is present to address and VanDyke Spinney. She said internally they have met with representatives and developer of VanDyke Spinney, as well as, the current owner of the property and her particular attorney. She said it is her understanding at this time although they have not formally withdrawn the application they are comfortable right where it is and they are not requesting the Board to make a final decision on the application.

Mr. Lynch, representative of Steve Clark the developer, proceeded to give their views on the waiver process. The Planning Board has made a recommendation to the Town Board encouraging the waiver not be granted, the

Supervisor noted. She said after discussion, Mr. Lynch requested he come before the Board. Mr. Lynch said he was very happy with the meeting with the Supervisor, however, he was not happy with the results of the meeting. He said he was presenting information about a generic legal issue for the Board to consider. He said when the Planning Board minutes are reviewed regarding the waiver not being granted, he said it is fundamentally clear that the Board Members felt they were restricted by the elements of a use variance.

Mr. Lynch asked the Board to reconsider the standard that will be applied to any waiver application. He said he recognizes now they appear to be the only one. He also asked that the Board consider his attachments provided with his letter under basic zoning law.

Question was raised regarding the Planning Board review and whether it would be appropriate to send this matter back to them for further review. Mr. Lynch felt it would be appropriate because of the Town Board looking for a recommendation from the Planning Board. He felt the variance standard used tied the Board's hands. Further discussion was held regarding the standard and wording used in the local law.

Discussion was held regarding this particular development and future changes in regulations and economic considerations for the developer. Connected to this was the construction of the roadway and the time invested in this project. Mention was made that this development has been 5 years in the design and layout and it is within the Board's discretion to allow an exception.

Mr. Lynch noted that they would have no objection to this application being sent back to the Planning Board for further review and recommendation to the Town Board. He also noted they would like the opportunity to go before the Planning Board if this is done to make a further presentation. He thanked the Board.

Councilman Marcelle asked Planning Board Chairman, Parker Mathusa, if he got an opinion from the Planning Board Counsel with respect to the appropriate standard for granting a waiver. Mr. Mathusa said he did. Mr. Marcelle asked what that opinion was. Mr. Mathusa said the standard was the use variance and they followed it precisely. He also noted they were very sensitive to the points made by counsel concerning the road and the length of time and the number of times they have been asked to make changes. He said they felt responsible to follow the language of the moratorium and the standards they had to apply. He said this was application was very close but did not meet what he called the cut-off point for recommending the granting of the waiver.

Supervisor Egan said there was reference to dollars and cents and she knew there was a question in regard to how much money was spent on the project. She said her feeling in regard to the moratorium, the amount of dollars is not necessarily controlling in this because there is question as to what makes this a different argument from any other developer who is subject to the moratorium. She said specifically there is a little difference with respect to the construction of the road section, however, this project is not the only one that proposes construction of a particular part of a roadway.

Supervisor Egan indicated she felt there is a need for more time to consider this in respect to whether the use variance is too stringent. She said she thinks weighing the factors is going to create a problem. She noted both the Town Attorney and the Planning Board Counsel in consultation with the Secretary of State's office felt very firm that this is a standard that can be fairly administered across the board.

Councilman Marcelle commented that he did not disagree with a lot of the information but he worries about the stringent standard is that the hardship exception becomes an illusory thing and it does not allow the Board to exercise

discretion. He said personally without studying this thoroughly enough to come to any close opinion as to if this is something compelling enough to grant a hardship exception. He said he just wants to make sure that it is available in the appropriate circumstances and to the extent it becomes an illusionary thing that you bring on yourself. He said then you are request is a self-defeating in the application and he does not want to be in the position of disagreement. He said he has a concern, not for this project in particular, but that in the appropriate circumstances when there are really compelling issues about people investing their lives and fortunes and if they do not get an exception there will be tremendous hardship. He said that is his concern. Town Attorney Potter addressed the fact that Mr. Lynch mentioned self-created hardship would encompass every project because everybody is a builder. He said, in fact, it would not. He thinks that could be interpreted to provide that if someone went out and bought property after the moratorium law was created, that would be self-created hardship. He said they knew the moratorium law was in effect if they then went out and bought the property. He said the second issue is whether this is an impossible standard to meet if you could never show unnecessary hardship. Mr. Potter said if a permit were issued and the permit was expiring, for example, and the law had changed so that that permit could not be extended, that would clearly be a hardship situation. He said there would be the approval to build 32 units with an approval from the Town, no ability absent approval before that permit before it expired.

Mr. Potter said as he understands it, this subdivision is in a different situation. He said they have had a delineation of the wetland by the Army Corps of Engineers, noting they have not had a permit issued. He said the delineation does have an expiration time period, however, according to the Army Corps upon a simple request those are customarily extended. He said if the applicant could prove that that delineation could never be extended, and that they could never get the benefit of the wetland determination or permit that had been issued, had one been issued, then he thought they would have a very compelling case of hardship. He said they have not presented that information to this Board and he does not believe it has been presented to the Planning Board. He said as to the 2 legal challenges, he said self-created hardship does not apply to everyone and this is a standard that under appropriate circumstances could be met in a compelling situation.

Mr. Potter said finally with respect to the issue of it does hamstring the Board's discretion, he agreed it did and there is no question that if the unnecessary hardship standard is applied, as written here or interpreted, it will significantly limit the number of projects, however, the Board does have to have some limitation on its discretion otherwise if it was to give to some but not to others, then the Board would be subject to challenges for being arbitrary and capricious.

Supervisor Egan said so the Board would know the alternatives, it is certainly within the Board's discretion as the moratorium law is written to basically do whatever everyone wants to do. She said it is within the purview to have a public hearing. She said she did not know if this was a public hearing case but it seemed to here to be more of a legal issue as opposed to a public input, public hearing type thing. Town Attorney Potter said if the proposal would be to amend the law and interpreted that it is an unnecessary hardship standard, then in order to change that you would be making a material change to a law. He said under those circumstances, he thought you would have to hold a public hearing to revisit the law. Supervisor Egan said if it is just an interpretation thing, the Board can do whatever it deems necessary. Councilman Plummer said he is fine with the standard the way it is. Councilman Marcelle said he would like to take some time to look at this further. Supervisor Egan said that was fine, noting the Planning Board minutes are on the website so they can reviewed.

The motion was made by Mr. Marcelle and seconded by Mr. Plummer to table the application for waiver for Hamden Woods until further review of the standards and law requirements. The motion was passed by the following vote:

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

Noes: None.
Absent: None.

Supervisor Egan next updated the Board in regard to Beacon Harbor, noting there is a request for qualifications going out to get a consulting engineer to represent the Town as we go through the SEQR process.

The Supervisor said the solar grant for the Highway Department was submitted noting she received a copy of the application. She said there was an issue that came up with regard to some trenching of some information and Mr. Sagendorph was kind enough to speak to the individuals who were putting the grant application together. She said if they cannot figure out how to do an in-kind, they would somehow relocate the funding. She said it is her understanding at this time that the application has gone in and as soon as something is heard she will notify everyone.

Supervisor Egan said the grant applications for LWRP and the estuary grants were submitted before the end of June. She said copies of those will be available on the website.

The Supervisor next spoke in regard to the rail-to-trails situation, noting she was told barricades are needed because people are attempting to drive where the rails have been removed. She said apparently people are using them, however, she has not heard anything more about the County grant application to purchase the land. She said she has not heard that CP Rail and the County have reached a final agreement on the purchase price but everyone is working on it.

Supervisor Egan noted good news was that 2 grants were received from the State Education Department, Local Government Records Management Improvement Fund. She said one (1) was received by the Town Clerk for microfilming of the Town's records and the second was for GIS. Both grants were a little less than applied for but the understanding was that everyone was shorted.

The Supervisor said finally with regard to notices the EPA dewatering site, the EPA is holding another public forum, July 29, 2004, 6:30 p.m. to 9:p.m. at the auditorium at Town Hall. She said some residents were concerned that the last one was not publicized well enough and that is why there was such a low turnout. She said the advertisement has been in the local newspapers and on the website. She said it has been talked up at every BPAC meeting and they will see what the turnout is at this meeting.

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Supervisor Egan asked if there were any other comments.

Resident Marie Capone asked about the Lyme disease and noted there was a program at the Town Hall last year called Wellness which was very poorly attended. She asked if they thought it was a good occasion to drop the whole thing on the lap of Ward Stone. Supervisor Egan said she did not like dropping anything in anybody's lap.

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The Supervisor asked for a motion to adjourn to Executive Session to discuss possible litigation issues and a personnel issue. The motion was made by Mr. Marcelle and seconded by Mr. Plummer to adjourn to Executive Session to discuss possible litigation issues and a personnel issue. The motion was passed by the following vote:

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

The motion was made by Mr. Lenhardt and seconded by Ms. Egan to adjourn the regular Town Board meeting at 6:55 p.m. The motion was carried by the following vote:

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

Town Clerk

EXECUTIVE SESSION

There was no formal action taken at the Executive Session.