

TOWN BOARD
JULY 22, 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: Good evening and welcome to a meeting of the Bethlehem Town Board. Would ask you all to join us in the pledge of allegiance.

The first item on tonight's agenda is a public hearing regarding the transfer of Cablevision Systems to Time Warner. I would ask the clerk to read the call of the hearing.

TOWN CLERK NEWKIRK:

NOTICE OF PUBLIC HEARING
TOWN OF BETHLEHEM
ALBANY COUNTY

Public Hearing
transfer of
Cablevision
to Time Warner

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing on July 22, 1998 at 7:30 p.m. at the Town Hall 445 Delaware Avenue, Delmar, New York in regard to Transfer of Cablevision System Assets to Time Warner.

All interested persons 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)

JAIMIE WILLIAMS of the Town of Bethlehem, being duly sworn, says that she is the Office Assistant 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 15 day of July 1998.

/s/ Jaimie Williams

Sworn to before me this 17th day of July 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 July 15, 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
22nd day of July 1998.
/s/ Catherine T. Picarazzi
Notary Public

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The motion was made by Mr. Lenhardt and seconded by Ms. Burns 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,
Ms. Burns.

Noes: None.

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SUPERVISOR FULLER: With us here this evening, before we start the actual questions and comments for the public hearing is Judi Kehoe, who is our Cable Administrator for the Town of Bethlehem. We have Mr. George Smede who is here from Cablevision. We have Mr. Peter Tofkin who is here from Time Warner and we have Mr. John Figliozzi who is here from the Public Service Commission.

At this point in time, I would like to turn it over to Judi Kehoe, who will give us a quick overview of what this public hearing is all about.

MRS. KEHOE: Thank you. The franchise agreement requires that the Board grant their consent for any transfers of ownership interest from Cablevision to any other new owner. The switch that they have asked the Board to consider is a switch of system assets from Richfield, Connecticut -- that's currently owned by Time Warner -- with the Cablevision system that's based here in Rensselaer which encompasses the Town of Bethlehem's assets. This sort of highlights a trend that perhaps you have read quite a bit about lately in the papers called clustering, where it's essentially a consolidation of businesses into a similar geographic area. The public hearing is required to enable public input on this proposed transfer.

The key issue that needs to be resolved or is to assess Time Warner's ability to assume all the financial obligations that come under the terms of the franchise agreement. The approval is essentially an administrative matter in which we would then allow Time Warner to assume Cablevision's obligations under the franchise.

As an overview of the franchise, the franchise itself does not grant us any regulatory control over the rates that are charged, not over the programming selections that are offered. Those matters are governed by the FCC. It does, however, service standards to the Town's subscribers including when cable must be installed in new developments, service standards the timeliness with which subscriber requests have to be responded to and general customer service matters. The franchise agreement also provides a funding stream for public access. They have provided \$85,000 plus annual allotments for maintenance costs that have been paid for the benefit of TV-31 based over in the Library and also for the high school's public access which has been on channel 8 under our system. There is also a 5 percent fee that is charged to all subscribers within the Town or all revenues generated in the Town including advertising and things of that nature and in exchange for the payment of that franchise fee to the Town, Cablevision and then ultimately Time Warner if this is approved, has the right to install their cable within the right-of-ways maintained by the Town of Bethlehem and then to operate their cable system for the benefit of our residents in Town.

Just to put this in perspective to let you know the value of the franchise, the Town subscribers generate approximately 3.5 million dollars per year in revenues that are paid over to Cablevision and that in turn generates franchise fees of approximately \$170,000 to the Town. That 5 percent franchise fee is at the maximum that is allowed by PSC.

The resolution will not be presented for your vote this evening. There is still one pending matter and I guess that's the most important matter to this and that is approval from PSC that they consent to this proposed transfer from Cablevision to Time Warner. There were several issues that were pending as of the informational meeting that we held on June 24th and we do have resolution on that for you tonight.

So, I would just like to take a minute and update you on that as well. The draft resolution that had been submitted to us and to PSC was requesting that the transfer go from Cablevision to Time Warner Entertainment, which is a partnership and then to yet another partnership which is Time Warner Entertainment Advance New House partnership, affectionately known as TWEAN. The explanation that Time Warner has given us on this and that has been affirmed by PSC is that due to legal requirements and tax considerations, in order to affectuate this transaction it is necessary to transfer in that order. The question I had raised was, would it be possible to go directly from Cablevision to TWEAN or is it, in fact, then required to go in that order. And, that has been the response and it does not appear to be an issue for the legal staff at PSC that has reviewed that. In a few moments when John Figliozzi speaks addressing the PSC process, he can perhaps comment on that briefly as well.

The other issue that was of concern to the Town is that periodically we will ask the PSC to perform a desk audit for us which is an independent review of the fees paid to the Town by Cablevision and this is done every 5, 6 years or so. And, we had just begun the process of having that desk audit done on Cablevision for the last several years and due to the language that was in the draft agreements, it wasn't really clear who would be paying any liability, if any, that was discovered as a result of this audit. So, that has been resolved between now and then as well and Time Warner has agreed to accept the language in the resolution and modify the agreements accordingly to specify that if there is any amount discovered through this audit, then that liability would be paid to the Town. Just so you know the last time we had this done, the underpayment for about, I believe, it was a 6 or 7 year payment was about \$3,000. So, I don't anticipate that there is going to be anything significant but I did want to make sure that the means were in place to protect the Town that we would collect that money, if any, was in fact due to us.

At this point, unless the Board has any questions, I would like to turn it over briefly to Peter Tofkin to tell you a little bit more about Time Warner.

SUPERVISOR FULLER: Thank you, Judi.

MR. TOFKIN: Thank you, Judi and once again it's a pleasure to be here before the Board. Last month, as you recall, we put together a little presentation to hopefully give you an introduction into Time Warner Cable -- who we are globally and most important locally. Did have some requests to do that again tonight, unfortunately we weren't able to do that but I am aware that, of course, it was put on live by Channel 31 last time and we did make a tape available. So, if there are demands for that, I am sure that would be made available.

In that presentation, again, sort of went through an introduction of who we are, what we have been able to accomplish in this area. That we are looking forward to taking on the operation in the Town and serving the customers of the Town. And, I will stop there so not to get repetitive and really, you know, reserve tonight for any further questions that have come since the time we last met.

SUPERVISOR FULLER: Thank you. We'll turn it over to John at this point and then we will open it up for questions if any of you have any.

MR. FIGLIOZZI: Good evening. My name is John Figliozzi. I am with the Public Service Commission. I work as a Municipal Consultant with the Commission. Not to prolong this any longer than it has to go on. Our process is very much the same as yours. We look at the same things very much that you look at. This is an FCC, as with many things with cable television, the Federal government provides, to put

it nicely, guidelines that municipal governments and State governments shall follow in reviewing transactions of this type. They primarily are involved with things like, does the company have the financial, technical and professional where with all; the character to do what it says it's going to do; will it comply with the franchise as it's currently written; will it address any outstanding faults that may be discovered through this process or will it require the incumbent operator, the one making the transfer, to fix those before the transfer is made. Those kinds of issues, those kinds of municipal issues. I think Judi put it very well when she said that... you know, probably the thing that most people are most concerned about... you know, if you go to the public is rates and programming. Rates and programming... rates are handled under an entirely different process. Programming is within the purview of the company but one would expect that if this business is going to prosper in the community, that it will address the needs and the wishes of the community with regard to programming to the extent it can within the contracts and within its ability of programmers to make certain programming available in this particular area. But, I would be more than happy... I will be here for the duration of the hearing. Be more than happy to address myself to any questions you might have or the public might have as a result of the public hearing. Thank you.

SUPERVISOR FULLER: Thank you, John. George.

MR. SMEDE: Say anything, then I am in favor.

SUPERVISOR FULLER: Well, you can stand up and say hello to everyone since you are Mr. Cable.

MR. SMEDE: I will just say thank you once again for the opportunity to come before you. We're quite pleased that Time Warner is the selected company that has chosen to purchase our system. We feel that it's going to benefit the municipalities and we know that the clustering is the name of the game now and that good things are going to happen. So, again, I will be available this evening also if there are any questions but pretty much you know about Cablevision and I know it's Time Warner and the process that you are more interested in. So, thank you.

SUPERVISOR FULLER: Thank you, George. One item that I am sure is on everyone's mind is the contract that we have with Cablevision. That does not expire until the year 2001 and we will as we got forward here be looking for a citizens committee when we start the negotiations and that we start about 3 months prior to...

MRS. KEHOE: About 2 1/2 years to three years prior to the expiration date.

SUPERVISOR FULLER: What did I say?

MRS. KEHOE: Three months.

SUPERVISOR FULLER: Oh, I am sorry.

MRS. KEHOE: That's why I jumped out of my seat, Sheila, that's not enough time.

SUPERVISOR FULLER: Three years. Can't work fast enough, huh?

MRS. KEHOE: worker.

SUPERVISOR FULLER: Okay. Questions from the Town Board.

COUNCILMAN DAVIS: I have some.

SUPERVISOR FULLER: Sure.

COUNCILMAN DAVIS: This came up during the last time you were before us but I have questions from residents and I just wanted to be certain that their concerns were addressed and one was related to the road runner. You had mentioned that it was a priority. Can you explain what you meant by priority? Because I know there are many

people out there who are very interested in that and access to that service.

MR. TOFKIN: Sure. For those that may not know, road runner is our high speed internet access service which actually today being the 22nd of July, it's our one year anniversary of having launched it last year. And, in fact, we are the fastest growing ISP, internet service provider, in this area. I think my response was in the context of our ability as a company to bring the latest technologies to our service areas. And, in bringing road runner to this area, we were only the 5th location in the entire country to bring this technology here. It would be irresponsible for me to give any specific time frames as to when any additional services would be available. I can tell you that, you know, first the transfer has to happen in order for us to be able to serve the municipalities that we would taking on from Cablevision and because of the excitement that we know road runner has generated -- and I have to received inquiries from people that do not currently have it -- that will be a priority. In order for that to happen, we need to be able to assess the technologies that exist in the Cablevision system. See how best we can integrate our technologies into that and again, it is a priority to look at those issues and get that technology here as soon as possible. And, I would hope, realistically, within the coming year.

COUNCILMAN DAVIS: Okay.

MR. TOFKIN: So, I hope that answers.

COUNCILMAN DAVIS: Okay. Another question I have, with your... the underground system that you have or that Cablevision had, we have so many new areas in Town, new residential areas in particular, and with each one you have the... I don't know what you call them... but the...

SUPERVISOR FULLER: The green box.

COUNCILMAN DAVIS: ...the green box which is supposed to be upright, straight and in many cases, unfortunately, isn't or it somehow becomes unstraight. Is there something that the industry can do to make those more attractive in a community? It's an eyesore. It can be a real eyesore and I think that it behooves the industry to do something about that.

MR. TOFKIN: Well, I might have to hand it over to George to speak to the pedestal issue as it relates to the communities here because I can't... I'm not that familiar with their state. I can tell you that, you know, our installations, our putting in of our system are all done in accordance with local, State and Federal regulations that apply to the installation of cable technologies, as are Cablevision's. As to specific regulations to pedestals, I'm not in tune to those specific regulations. I don't know if John... I mean, certainly, if there was an aesthetic complaint from a customer, I think that would be considered a service call in which we would go out there and make whatever corrective measures there are. I am sort of familiar in this area that there are some older pedestals that do remain in place because new cable was put in. And, to the extent any of those would have to be removed, though they are kept in place in case that cable is needed or to the extent they would need to be straightened out, I would think that would be a sort of issue as a matter of course that, you know, we would take on as needed.

MR. FIGLIIOZZI: There are no regulations specifically as to the aesthetics of those pedestals. There are safety issues and things along that line. I mean, they can't have... you know, the cable has to be buried, those sorts of things but as Peter said, I think that if it was brought to the attention of the company that these were in some state of disrepair, or were not erected as they should be, you know upright and that sort of thing, that that would be taken care of in due course.

COUNCILMAN DAVIS: Thank you.

COUNCILMAN BURNS: George, I guess... This is a question for you, George.

Judi said that we're not voting tonight because of the PSC process, was there a problem or is it just the administrative process in the way that it is moving along?

MR. FIGLLOZZI: No, there is no problem with that process, it just takes some time to look at the materials that the companies were required to file with us. In fact, I believe there is 120 day requirement under Federal law. There has to be a ruling within 120 days or the transfer is deemed to have been approved. And, I believe the 120 days ends on September 28th, I think was the date that I was told.

MR. SMEDE: I think it is the 9th.

MR. FIGLLOZZI: You think it is the 9th?

MR. SMEDE: It's the day you have it scheduled.

MR. FIGLLOZZI: Well, I know we have it scheduled for the... I mean it is scheduled... it's preliminarily scheduled for the Commission meeting on September 9th because that is the latest Commission meeting date until the end of the month. But, it is 120 days from the date it's filed. So, if they filed all of their papers on the same day, I checked with our accounting division before I left and I was told that it was September the 28th. But, we will resolve that out.

As for the process, the process doesn't necessarily require that you wait until we rule. I mean, we are not the lead in this... you might feel more comfortable if you get a ruling and you have additional days afterwards and that's fine. But, you do have to act within the 120 day period or have the company agree to an extension. We don't anticipate having any problem falling within the 120 day period. So far, I have been told everything looks routine on this.

COUNCILMAN BURNS: Thank you.

COUNCILMAN JOHNSON: Judi, I understand there may be some rates and programming information coming to us in the near future.

MRS. KEHOE: We, of course, have all the current information on Cablevision rates for the system. I do have some information from Peter Tofkin and Time Warner on their rates and packages. There are similarities, there are differences. It is set up in the same general type of a format where you have a basic service package that includes around a dozen channels. The over air stations -- you know, the CBS, WTEN, etc. and then public access channels and things of that nature. Then you have an expanded package beyond that which is the family package, again the rates are similar but there are differences in the mix of programs that are offered. So, yes, I do have that information available. People are welcome to request a copy of that and take a look at it. Just want to emphasize that we cannot control the programming or the rates. It would be just an informational copy that we would have for people.

COUNCILMAN JOHNSON: Thank you.

SUPERVISOR FULLER: Judi, while you are at the mike, why don't you address the issue of the 120 days? The Town Board had the cable people here on June 24th where we had several questions and we wanted to get the public hearing and public comment in ahead of time so that's why it is scheduled here tonight. Now, the Board does not, technically, have to act on this until when?

MRS. KEHOE: Til... we could act in September at one of those 2 meetings. We have to act before the end of that 120 day period... which is...

SUPERVISOR FULLER: When is the 120 day period up?

MRS. KEHOE: Well, we think it's September 28th, the end of September.

MR. FIGLIOZZI: If they filed on the same day they filed with the Commission, I was told, the Commission is September the 28th.

MRS. KEHOE: But, the Commission would be considering it September 9th, was it?

MR. FIGLIOZZI: September 9th it is tentatively scheduled for...

MRS. KEHOE: So, it's on their agenda for their vote. And, I would recommend to the Board that you wait until... even though I have gone through and done a review on it, I have asked questions, I'm still waiting to get some supplemental schedules, nothing that I anticipate to be material but that I want to have in place before we do the resolution and ask the Board to approve that but they have a certain expertise in this as well and I would feel more comfortable recommending that the Board wait until after their review has been completed. I would hate for us to approve it and then to have the PSC determine that there is something that is not quite right and necessitate revised Board action perhaps. So, there is no hurry for us to do anything prior to say that first meeting in September. So, it's really a matter of what the Board is comfortable with but we may want to wait until the first meeting in September then.

SUPERVISOR FULLER: Thank you.

ATTORNEY KAPLOWITZ: Does anyone know whether the agreement provides for the assumption of liabilities, as well as, assets -- in other words, left over bills that haven't been paid, let's assume there aren't any but let's assume there are -- does that become the responsibility of Time Warner, those kinds of things?

MR. FIGLIOZZI: Yes.

ATTORNEY KAPLOWITZ: Thank you.

MRS. KEHOE: Yes, the cut off date is as of the transaction date. So, it is all liabilities assumed after that date.

MR. SMEDE: You can say it is pretty cut and dry like a bank closing I guess.

MR. FIGLIOZZI: They have to agree to abide with the contract as it is currently written or come to you for an amendment to the contract. As far as any kind of outstanding money issues, those presumably should be dealt with between the companies as part of the transfer. And, part of the review that we do is to make sure that that does take place... that the numbers there are real world numbers.

SUPERVISOR FULLER: Thank you.

COUNCILMAN BURNS: I'm just follow-up on what you said, Judi, that people can come to you and get information but does Time Warner have any plan, a pr plan to alert people that this is happening and that they... this is a transfer and this is what we are offering? Is there some sort of plan that is going to take affect?

MR. TOFKIN: Aside from the public hearing as to the transfer, you mean to... I guess I am not clear on the question.

COUNCILMAN BURNS: General information to people that now you are Time Warner.

MR. TOFKIN: Well, initially, the change over is pretty seamless from both an operational side... you know, things have to happen in their normal course. Name changes, those are things that would happen over time. So, it is difficult... difficult to say in terms of integrating programming, you know, what immediate changes would happen but I don't foresee immediate changes.

COUNCILMAN BURNS: I am just concerned that if somebody saw a bill come in the mail that says Time Warner, they will say...

MR. TOFKIN: No.

COUNCILMAN BURNS: ...I don't have Time Warner and they throw it away or something.

MR. TOPKIN: No, we do everything we can to avoid customer confusion. There is no sense for any issue, that being one, to have our offices inundated with unnecessary phone traffic. We want to be able to deal with the issue that customers have. Absolutely, there would be a strategy to welcome new customers to Time Warner cable when that was appropriate in due course. So, those things would happen.

SUPERVISOR FULLER: Thank you, Peter. Are there any questions from the audience? If you would please come to the mike for the public hearing.

MR. DAVIES: I have 4 or 5 questions. And, this may be directed to Bernie, I believe. Will the Bethlehem franchise agreement be a continuation of the agreement with Time Warner?

ATTORNEY KAPLOWITZ: Absolutely.

MR. DAVIES: It will?

ATTORNEY KAPLOWITZ: That's what they must do is comply with the same agreement.

MR. DAVIES: All right. Then along that line, in the agreement... the franchise agreement, I believe, there is a stipulation that if there are any changes in price or increase in price or programming that the Town can ask for a meeting with the representative of cable tv.

ATTORNEY KAPLOWITZ: Yes.

MRS. KEHOE: That's correct.

MR. DAVIES: So, that in reference to Judi's comment that there may be some changes in the package for different channels and maybe different costs, then it would seem appropriate that there would be... it would be appropriate to invite Time Warner to discuss this with the public if they have interest to. And, I am sure they understand that.

The next question, is the best estimate for the transfer of this from Cablevision to Time Warner? Is there any...

MR. SMEDE: Closing date?

MR. DAVIES: Closing date within a few months?

MR. SMEDE: September... fall.

MR. DAVIES: September this year?

MR. SMEDE: Yes.

MR. DAVIES: All right. Would you... does Time Warner anticipate that we will have the same programming and the same channel numbers as we are now provided by Cablevision?

MR. TOPKIN: There would be, you know, post... immediate post the transfer, I don't envision any immediate changes in the line up or offerings. It would be at that point that we would be in a position to look to see how we could integrate the Town's lineups and programming into what we currently have. That's one thing that the sooner closing happens we will be able to look at. If your question is, would we be dropping anything and will you have any less channels, no, I do not foresee that happening.

MR. DAVIES: No, my question is a little more specific... I looked at the Time Warner cable set-up for the City of Albany and there are a number of channels that have different numbers than we in the Town of Bethlehem and it raised a little problem. I'm sure with many set owners, if you follow the numbers... the channel numbers from Albany in the Town of Bethlehem.

MR. TOFKIN: Well, that's an excellent point and we've actually gone through a couple of sort of channel integrations in the last couple of years and so we do have experience in this area. In taking on the Troy New Channels system, we integrated that line up into our Albany head end and then also we integrated, one year later, the Saratoga Cablevision Industries system into our Albany head end and that was actually in addition of 38 channels when you did that. That resulted in a significant number of not only additional channels but channel changes. I think consistent with the issue of preparing customers on all information, we would put in place a process through mailings, on screen notices, whatever we thought needed to be put in place to have customers adjust to any changes in the line-up. I think it is likely that some of those things may happen but again I can't speak to the magnitude of how many channel numbers may or may not change. But, in the event those things do happen, we have an obligation to inform our customers well in advance of such changes.

MR. DAVIES: We real a lot about this computer chip in the year 2000, do you think that Time Warner will have a problem with the cable network and the computer chip problem?

MR. TOFKIN: Again, a good question, and we've actually dedicated, as I am sure other cable operators around the nation have, we have dedicated staff specific to the year 2000 transition. So, we do have people working on that. I am not aware of any problems relative to our ability to accommodate that change.

MR. DAVIES: And, the last question, do you anticipate any immediate rate increases?

MR. TOFKIN: Again, the issue of rates, any rate changes will be communicated to customers as they need to be in accordance with Public Service Commission regulations and FCC regulations. In this area, at least since I have been here, any rate adjustments have been made usually annually at the first of the year. If... how that schedule would impact Cablevision's I couldn't... I couldn't speak to that at this time.

MR. DAVIES: Thank you.

MR. TOFKIN: Thank you.

SUPERVISOR FULLER: Any other questions?

MR. LA FORTE: Marie said oh, God as I went past her but thanks for the opportunity to speak. Seems like a great opportunity and as long as we have a representative from the PSC and both cable companies to either vent or at least clarify something that has been perplexing me for several years. We all purchased cable ready tvs, advertised to be able to receive channels up to some 90 channels. We also bought vcrs that were cable ready. We paid extra money for them because if you didn't... if you... all you needed was a cable box, as is provided now, then your television set and your vcr... you'd only get channel 3 or 4 at a considerable savings to the consumer.

When Cablevision was installed in its earlier days, at least several years ago, you could subscribe to a premium channel by some manipulation of interconnections, you were able to receive those. However, when the cable service went to a cable box, you required the cable ... to be installed even though you had cable ready tv. If you wanted to avail yourself of the full service. In addition to that, the... there are certain brands of television sets that once having lost power, require resetting of volume and sometimes color and other attributes of the programming and to utilize the box that we are provided with, whereby you are to plug your television set into that box so that you could only use... or you would only use 1 remote control to turn it on and off and adjust the volume. And, if you'd like to subscribe to a channel... a premium channel, you call the office and if you... you will need to buy another box if you have 1 -- 1 television set in... so you require 2 boxes. And, they will readily program your cable box remotely from the central station so that you can received the premium channel but they will only program the one box because they will charge you additional cost for the other cable box that is in your home unlike the telephone company

that charges you once for the main line in, you have to pay for a number of other connections within your house if you have more than 1 television. So, I guess my question is, to the PSC representative, that is somewhat of a defacto rate increase that we experienced and to the cable people, does Turner anticipate a different method of connecting to those service... those premium channels and can we restore the utility of our full cable ready appliances. Thank you very much for your attention.

MR. TOFKIN: Number of issues have been raised and I will do my best to try and touch on some of them but I am sure I will leave something out, so George and John can give me a hand.

The cable ready televisions is an interesting issue and somewhat of a misnomer and it's really a retail consideration. A cable ready tv can be cable ready so to speak because I am not aware that there is any Federally mandated platform of what a cable tv really means. That could be... if somebody... if you went into a store and bought a cable ready tv, you may be buying one that is already only cable ready tv... cable ready up to a certain number of channels. We as the cable operator have no way of knowing that, so from time-to-time we would get a... a question similar to what the gentleman raised is, how come if I have a cable ready television, I'm not getting all of your channels. Well, unfortunately, that cable ready tv was not cable ready for... for example, all of the channels that Time Warner cable has. So, I do believe there are issues out there, probably on Washington, to put the onus on the retailer to fully disclose what exactly they are selling the customer as a cable ready television set. We understand that cable ready tvs give the option to the customer not to have additional equipment in the home and that certainly is a choice that... you know, we are familiar with and we certainly support.

As to tiers of service, convert boxes are often needed to get additional tiers of service and one reason for that is to ensure security of our services and our signals. Until there becomes a point where those security systems may be built into an actual cable ready tv, that will be one reason for us to make available a converter box for a customer to get an advanced tier service.

So, I think those are some practical considerations that unfortunately aren't made aware to... to certain people or to the general public and as best as we can when those issues come up, we try to explain that.

I have forgotten some of the other issues.

MR. SMEDE: Talking vcr.

MR. TOFKIN: And, the vcrrs will be a similar situation.'

MR. FIGLILOZZI: Yea, actually Peter hit most of the high notes on this. Equipment compatibility is an issue that came up in the 1992 Cable Act, the rewrite of the 1984 Cable Act in Washington. There is a panel of tech... of engineers that have been meeting on a regular basis on the issue of equipment compatibility. I think it is fair to say, they are not making as much progress as Congress would have liked. The issue of cable ready sets. Cable ready set, there is no definition of what is a cable ready set, no legal definition. There is nothing in the industry that indicates what a cable ready set is. It is simply a marketing tool by television manufacturers in an attempt to sell a more complex tuning system a for television set.

To the extent that channels are in the clear, that they are not encrypted by the cable television company, there is an increase in the number of channels that can be viewed on a cable ready set versus the old traditional 2 to 13 and the UHF on the old sets that we used to have. But, there is no such thing as a fully cable ready set. The foreseeable future, anything that I read with respect to technologies says in at least the foreseeable future, we will have converter boxes on our sets. In fact, with the introduction of digital television, we may have 2 converter boxes on our set. There is no way to enforce the changes in technology... there is no way at least the FCC feels, there is no way to mandate specific technology

for specific purposes. So, the gentleman, my biggest problem I suppose when I am watching tv is to balance the beer, the ham sandwich and the 2 converters... the 2 hand held converters in such a way that I don't drop the beer, spill anything and get the channel that I want to watch. It can be a very frustrating experience but for the foreseeable future, that's the way it is going to be. And, I believe those were the main questions he asked. If there were other questions we can address those.

SUPERVISOR FULLER: Thank you, John. Any other questions from the audience? At this time you have the opportunity to speak in favor or in opposition. If you would, please come to the mike and give us your name and your position on the transfer of Cablevision to Time Warner.

Is there anyone here tonight that is interested in any of this?

AUDIENCE: Do it, just go for it.

SUPERVISOR FULLER: Well, with no one commenting, I will have a motion... ask for 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 8:14 p.m. The motion was passed by the following vote:

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

Kathleen A. Newkirk
Town Clerk

Supervisor Fuller convened the regular meeting following the close of the public hearing.

The Supervisor said as this meeting began, the recommendation was not for a vote of the Town Board this evening but to wait until after the review of the Public Service Commission. She thanked everyone for attending.

The next item on the agenda was consideration of adoption of Local Law 8 of 1998 concerning rezoning of premises 467 Delaware Avenue, Delmar. Supervisor Fuller said this is a request to change the zoning district from residence "A" to Planned Commercial District. Supervisor Fuller asked if anyone in attendance had not followed the process noting she could take a few minutes and go through the status of this item but she did not want to hold anyone up tonight if it was not necessary. No one requested this be done.

Adopt Local Law
8 of 1998 rezoning
premises 467
Delaware Avenue

Supervisor Fuller said this evening was decision making for the Town and she asked each Board Member to either ask their questions or make any comments they might have. She noted each Member would have the opportunity to speak regarding this item.

COUNCILMAN LENHARDT: I will begin. Can everyone hear me? Some of you are probably familiar with my past voting record regarding rezoning issues. I found it interesting when I compared the names of the people that are opposed to the CMI rezoning to the names of people who were opposed to rezoning residential to planned commercial district in Slingerlands a few years back. There seemed to be a distinct lack of concern at that time from the citizens who are now opposed to the CMI rezoning.

This decision I have before me tonight is the most troubling I have been faced with during my whole time in serving the Town government. First of all, I must confront the hypocrisy of denying a commercial zoning variance directly across the street from a piece of property that now I must consider to rezone planned commercial district and it is the term commercial that disturbs me most. I feel this is an example of the failure of our zoning codes to keep up with societal changes and I urge the Supervisor to quickly move to bring our codes up to the 21st century standards. And, if this proposal was for something other than senior housing, I assure you that I would not be considering it.

I feel the proposal meets the qualifications for a senior citizen residence district in all aspects except density. However, I feel that adequate conditions have been incorporated in the PCD classification to ensure that nothing but senior housing can be developed on this property. The building will be designed with the residential character, rather than institutional and I feel it is a residential project in spite of the code classification.

I agree with the wording in the draft local law. This rezoning provides the opportunity to expand current housing options for senior citizens of the Town who may require assistance in their daily lives. Therefore, I find that it is in the interest of public health, safety and welfare of the Town to amend the current zoning district designation so that further planning and construction of such housing may proceed.

I want to send a message to the applicant not to compromise the buffering as depicted in the conceptual plan which averaged anywhere between 51 and 100 feet on the west, and approximately 160 feet on the north or I can assure you that I will be voting in the negative when it comes time for site plan approval. If you can improve on the buffering so much the better and I also request that you do as much as possible to alleviate any drainage problems for adjacent land owners.

During the public hearing, a gentleman expressed concern for the value of his property. Property values, as we all know, fluctuate according to the surrounding properties. If a neighbor does not take pride in his property then it would affect one's own property value. It is to the benefit of CMI to maintain their property in order to

attract residents. I have lived on a Town street directly across from the campus like apartment complex for 23 years. The apartments have a minimum age requirement. The majority of the residents have been elderly. In fact, one of them lived to the age of 102. All of these people have been the best neighbors anyone could hope for.

And, finally, after construction is completed, I hope that the owners of CMI will encourage and the gentleman on Stratton Place will continue to allow his children to play on this property. The interaction of the elderly and the young can be very therapeutic and enriching for both generations. By inviting these octogenarians to continue to live in the heart of our community, Bethlehem will grow stronger and richer.

SUPERVISOR FULLER: Thank you, George.

COUNCILMAN JOHNSON: Up next. Like Mr. Lenhardt, I did not take this lightly at all. This is material that I have studied and I have studied it very carefully. I am going to vote yes for the project for the following reasons.

I believe our Planning Board has made excellent progress in improving the project and I am sure that they will continue to direct and monitor the project. Drainage has been addressed to the Town Engineer's approval, as had parking requirements by the Zoning Board of Appeals. The concern for compatible architecture has been demonstrated with tree and landscape protection. Legal protection for future of use has been put in place by the counsel. Conditions of both Delmar and Elsmere Fire Districts support the project, however, I would request the Planning Board to closely monitor Mr. Insoft's comments that he would work closely with ambulance service. The project... This project will definitely fill the need for some, if not all, of our senior citizens.

One of my goals when elected was to support new business in our Town. CMI will pay taxes but not put a drain on school resources which I think we all can use. My final comment is this, I do care for the neighborhood. I was born in Mr. Marriott's house and have lived near this area for most of my adult life. I feel this project will have less impact than a possible 15 to 20 house development with all the accompanying activities and associated drains on the Town resources. Thank you.

SUPERVISOR FULLER: Thank you.

COUNCILMAN BURNS: As my colleagues, I also have deliberated along time on this and put a lot of thought into it. So, I am going to read my comments.

I welcome CMI Senior Housing and Health Care Inc. to our community. Through their presentations and through my own research, CMI has earned an "A". I also welcome assistive living services for seniors into our community. The need for these services, as well as, a full continuum of senior service care is important and vital.

After careful review of all documents, lengthy research and my much deliberation, the challenge before us tonight is to reasonably conclude whether it is appropriate to rezone this parcel of land, 467 Delaware Avenue. Section 261 of the Town Law contains the general grant of power to Town Board's to regulate zoning matters. This grant of power is 'for the purpose of promoting the health, morals or general welfare of the community'. Section 263, requires that zoning regulations 'be made in accordance with the comprehensive plan and with reasonable consideration among other things as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout said municipality'.

It is appropriate, therefore, to determine whether changing the zoning would adhere to the Town's comprehensive plan and promote the common or general welfare of the Town. I would argue that the Town's senior citizens overlay zone is already adhering to the Town's comprehensive plan and I would argue that promoting the general welfare of the Town would be making available housing options to over

50 percent of our seniors not 20 percent as has been mentioned. By changing the zoning, we will meet the spot zoning test and this would represent an impermissible instance of spot zoning.

Additionally, I believe there is a very strong presumption of validity to keeping the Delaware Avenue parcel at its present zone status, residence "A" district. To change the zoning would negate the intention of the zoning for the affected land. The creation of assisted living although desirable in a properly zoned area may not be promoted on the backs of private land owners by depriving them of the protected use of their property.

To my colleagues on the Town Board, I have again listened to the people of the Town and for the reasons put forth, I am opposed to the adoption of Local Law 8 of 1998 concerning rezoning of premises 467 Delaware Avenue and I will vote no. Thank you.

SUPERVISOR FULLER: Thank you, Susan. Doris.

COUNCILMAN DAVIS: Rezoning is always a serious matter and I have given this issue very serious consideration. I spent hours, as have other Board Members, attending meetings on the issue, reading documents, letters -- all of the letters that we received -- speaking with individuals who favor and oppose the CMI project. I appreciate the comments of all of those who have made those comments.

The project, as you know, has been scrutinized by the Planning Board, as well as, the Zoning Board. The Planning Board has recommended rezoning of the parcel of land on which this comprehensive and well planned project has been proposed. I've spoken with many, many residents in the past month, residents of all ages -- young, middle age, and senior citizens including, of course, a significant number of seniors. Some are my neighbors, who I frankly, had not considered ready for an assisted living environment. I've been surprised at the number of people who specifically have mentioned that a positive factor in this proposal is its proximity to places that they frequent and its being in the center of Town. This, I believe, provides some comfort in considering a move out of a home that they have lived in for many years.

The applicant has provided the Planning Board with extensive demographic data on which a Delmar market analysis was done. This information and statistics regarding potential residents of assisted living residence is on the record. Our Town's land use planning reference resource adopted by the Town Board last year recommends a non-residential use of this parcel of land. This assisted living residence seems consistent with the broad concept of the recommended use that LUMAC proposed. Conditions of rezoning will be imposed so that future land use will be limited to an assisted living residence for senior citizens. I consider the notice of conditions to a changing... a change in zoning to be a very important protection for the residents of the Town.

At our public hearing 2 weeks ago, individuals referred to spot zoning in much of the opposition to the project. I have consulted numerous attorneys and have been advised and assured by all of them that rezoning for this proposed use would not be considered spot zoning. Bethlehem, as I think we all know, has an aging population and I believe that this project would be a benefit to all of us for the future, for the community as a whole.

I do have some considerations that I think need... I would like to propose to CMI and to the Planning Board and when this goes back to the Planning Board, I would hope if it's possible that they consider additional screening wherever practical, wherever possible. That with the plan that has been shown to us, the screening not be done in the early stages so that we have mature trees, 10 year growth or even better than that so that the screening is... when it is put in, that it actually looks what it appears to do in the renderings that we have seen. I think that is important. We have done it before and I believe that we can do it again and, also if possible that stronger language for the potential use of the site be incorporated. I don't think that we can do more than possible.

For all of these reasons, I believe, I vote yes.

SUPERVISOR FULLER: Thank you, Doris. I like my colleagues on the Town Board also have spent many hours, days and as all of you know in the audience, especially that this project came to the Town of Bethlehem a year ago before the Town Board who then sent it on to the Planning Board. The Planning Board put in many, many hours -- many, many meetings -- and many, many questions from not only people in the community but from, I am sure, all of us. I know I was asking different questions all the way through this process.

I share the concerns of the residents in the neighborhood but I have to tell you that my neighborhood also changed. I live over by the Hamagrael Elementary School. My whole neighborhood was all wooded and there is Wisconsin and there is Parkwyn and there is several new homes and my 5 children lost their play area. These decisions are not easy for any Board Member and I have to tell you, we are only here to do the best job that we can and that's all that I can offer you. I have said from day one that our senior citizens are the people that have built this Town. They are the ones who have allowed us to be here, to enjoy the luxuries of a very nice Town. I moved here from the City of Albany in 1967, so I am not a newcomer to the Town of Bethlehem. I have seen a lot of changes, changes for better, changes for worse. It's all in everyone's interpretation.

I can't think of a better project for this site than the one that CMI has proposed. I think they have come back and addressed all concerns that have been presented as they went through this planning process. They have been more than willing to be open to listen to each of us... to listen to each of you as residents when you came in and raised your questions.

Two weeks ago, we held a public hearing here from 7:30 until around 11 o'clock. We have received petitions for and against which were presented that evening. There was a public comment period that ended July 11th. Some letters arrived in my office Monday and Tuesday of this week. I had those copied and sent to each and every Board Member so all the communication from each and everyone of you and those that are not present this evening, we have had the benefit of your concerns about this project.

I will be voting yes. I think it is a good project. And, I hope that some day each of you will understand where we are coming from with this decision. I have to tell you that I am not fortunate enough to have parents alive but I do know a lot of people that I don't want to see leave the Town of Bethlehem to go to North Bethlehem because we didn't want them here in the center of Town. I think it is time our seniors are here where they built the Town, be allowed to stay here. Thank you.

The motion was made by Mr. Johnson and seconded by Mrs. Davis to approve the adoption of Local Law No. 8 of 1998 concerning the rezoning of 467 Delaware Avenue, Delmar, New York from Residence "A" to Planned Commercial District. The motion was passed by the following vote:

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

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

Parks and
Recreation
seasonal
personnel

The motion was made by Ms. Burns and seconded by Mr. Johnson to approve the appointment of seasonal personnel as recommended by Mr. Austin, Administrator of Parks & Recreation Department, as follows:

Lifeguard at a rate of \$6.70 per hour.

Sarah E. Szczech
105 Longmeadow Drive
Delmar, NY 12054

Erin R. Bailey
19 Hancock Drive
Glenmont, NY 12077

Katie L. Richardson
133 Darroch Road
Delmar, NY 12054.

The motion was passed by the following vote:

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

Noes: None.

The following item was a request from Gregg Sagendorph, Highway Superintendent, for consideration of participation in the fall Household Hazardous Waste collection at City of Albany, Rapp Road landfill site. Supervisor Fuller asked Mr. Sagendorph to give a brief run through on this item.

Request from
Highway Super-
intendent to
participate in
fall household
hazardous waste
in Albany

Mr. Sagendorph noted how successful the May 2nd collection at the Highway garage was. He noted it was several hours in which residents were greeted and surveys taken. He said the people of Bethlehem really appreciate that day. He said since that time, the Recycling Coordinator has received over 2 dozen calls wondering when the next collection day will be held. He said the Town has only had 1 each year for the past 4 years, noting the City of Albany holds 2 days -- 1 in the spring and 1 in the fall. He said those days are open to any municipalities that are within the ANSWERS group, noting the Town of Bethlehem is a member. He said the Town of Guilderland and a number of the hill towns utilize the City of Albany days.

Mr. Sagendorph said the Recycling Coordinator has received over 2 dozen calls and she does not like to have to tell the people to hold onto this hazardous waste for 9 months until next spring when we have our next day. He said the cost per car at our collection day was roughly \$55 per car. He said the City of Albany collection day this spring, cost was \$57 per car. He said this is very comparable. He said the City would just charge the Town the per car cost that they incur for any Town of Bethlehem residents that go in and utilize the day, September 19th.

According to Mr. Sagendorph, Recycling Coordinator Sharon Fisher is requesting that this be done by registration. He said advertising will be done and the residents will have to call the Recycling Coordinator in the morning because she can give residents alternative methods of disposal other than this collection day. He said that way it can be screened for those that actually need to utilize this day and who can take care of things in a less costly manner yet environmentally safe.

Mr. Sagendorph said we spent approximately \$32,000 with the spring collection day. He said they had budgeted \$35,000. He said 50 percent of most of the costs are reimbursed by State DEC. He said he expects a check in the next few months of approximately \$15,000. He said there are some costs they do not cover but they are very minor. He said the same thing holds with the fall collection at Albany. He said if the per car cost came to \$60, DEC would again reimburse us 50 percent of the majority of that cost, in other words between \$25 and \$30 would be reimbursed to the Town. If the Town Board felt they wanted to set a monetary limit on this, Mr. Sagendorph said by doing it with registration the Town would be able to do that. Mr. Sagendorph said if we had \$3,000 we wanted to spend at \$60 per car, 50 people could go. He further noted if the Board wanted to take into account the 50 percent rebate from DEC, 100 people could utilize it.

Mr. Sagendorph said the draw back is that it is held at Rapp Road. He said he does not think there will be the inundation that the Town highway garage got. He said they do have lines, noting some are lengthy. Charges are incurred by those who go through the door, according to Mr. Sagendorph. He said if someone shows up who is not registered but from the Town, he feels it would be hard to turn them away.

Mr. Sagendorph said they would appreciate the Board considering the approval of having this second collection day. He said it would be minor compared to the spring day.

Councilman Davis asked if people call and pre-register, would the Recycling Coordinator advise them that there may be a wait for them. Mr. Sagendorph said they will supply the resident with all information and will not discourage the resident because they are doing the right thing but will also give them the positive, as well as, the negatives. He said they want to send a map, a registration ticket and advise them of the procedures. Councilman Davis also asked if Mr. Sagendorph has to guarantee the City of Albany a specific minimum. Mr. Sagendorph said there is no guarantee, minimum or maximum.

Councilman Lenhardt asked if the registration ticket is what the resident hands in when they go to the landfill. Mr. Sagendorph said that was correct. He said if they are from Bethlehem and do not have the ticket, the City of Albany will just mark it down and charge the Town.

Supervisor Fuller asked if the City will identify who the vehicle belongs to. Mr. Sagendorph said he is not sure. He said the Highway Department may send a representative up to monitor. Supervisor Fuller said we probably need to know so there is no cost to the Town of Bethlehem. Mr. Sagendorph said they would like to monitor. He said he does not know if they send a list of names and addresses but that is something they can ask. Councilman Lenhardt asked if in the past residents of the Town have gone into the Rapp Road collection. Mr. Sagendorph said not that he was aware of and if it has been very isolated and up to this point they would have been turned away.

Councilman Johnson said he would think that the cost for this would be almost a wash. He said the Recycling Coordinator will be able to give some advice to some people on what to do with it and some people are not going to get into taking it up. Mr. Sagendorph said some people that came this year were there last year and sometimes people come back twice in one day. He said it is hard to know, however, it is a good program.

Supervisor Fuller said the one thing she had noticed is that people come through the line, many of them commenting they may be new residents but have been left with a house full of old paint cans. Mr. Sagendorph said it is two-fold, some residents that are moving want to do the right thing and others under the guise of this is the paint for the different rooms leave the paint and other things are found behind the cans of paint.

Supervisor Fuller asked if there were any other questions. Councilman Burns asked if Albany had a collection in the spring also. Mr. Sagendorph said they did. Councilman Burns said she was wondering if Albany might come to the Town in the spring and ask us to open it up to their residents. Mr. Sagendorph said Albany holds 2 days a year and noted they initiated the household hazardous waste collection. He said it would be September 19, the hours being 9 to 3 pm.

The motion was made by Mr. Lenhardt and seconded by Ms. Burns to approve participation in the fall Household Hazardous Waste Collection Day at the City of Albany for Town of Bethlehem residents. The motion was passed by the following vote:

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

Highway Superintendent request for approval change order regarding fuel tank
The next item was a request from Highway Superintendent, Gregg Sagendorph, for approval of a change order regarding the fuel tank installation at the Highway Garage.

Mr. Sagendorph provided information to the Board regarding petroleum bulk storage. He noted there are Federal regulations and State regulations. He said the change order refers to the waste oil tank. He said all the tanks were fitness tested, even though the waste oil tank was not required to be tested. He said the Federal law puts into effect that by December 22nd, any tank over 110 gallons with certain specifications, needs to be removed. He said if the waste oil at the garage was used to heat the garage, the tank would be exempt. He said the heating oil tank at the garage is exempt from the Federal regulations, 10,000 gallons, however, it has to be fitness tested according to State regulations.

Mr. Sagendorph referred back to the waste oil tank request, by Federal law the tank has to come out of the ground and a double wall tank, with leak detection and overflow protection be put in. He said the company is on site now and have taken out the diesel fuel tank and the 2 unleaded tanks and submitted the cost of \$5500 to do the tank test on the heating oil tank which is mandated by the State and replace the waste oil tank. Supervisor Fuller thanked Mr. Sagendorph and asked if there were any questions.

Councilman Lenhardt asked how bad the contamination in the ground was. Supervisor Fuller said they do not know how bad or what the cost of that will be. Mr. Sagendorph said contamination was found. He said the tanks were tested last in the early 1990s. He said they have to be tested every 5 years. He said because they knew the tanks had to be replaced by December of 1998, they have not had them tested. They are at the 5 year limit, according to Mr. Sagendorph. He said it is \$400 but it is a reduced rate because they are on site. He said it is approximately \$500 per tank per test. He said they chose not to have them tested.

Mr. Sagendorph further explained, when they dug around the tanks and removed them, there was no contamination. However, the piping to the pump island and the pump island, once excavated, had contamination under the piping and the pump island. He said as a ballpark figure, they have excavated approximately 800 yards of material at this time. He said in the original contract which was approved by the Town Board, the company on site charges \$8 per yard to excavate the contaminated material. He said \$8 x 800 yards is \$6,400. Mr. Sagendorph said to lessen the blow of what was just said, the low bidder for \$84,000 for this complete project bid \$8 a yard. The next lowest bidder, Mr. Sagendorph said, bid \$15 per yard and the highest bidder bid \$50 a yard. He said at 800 yards that is \$40,000. Mr. Sagendorph said bidding worked out well for the Town. He said they don't know the limits of the contamination. He said they feel they have the soil that has been contaminated and it is out and on plastic in a bermed area. He said DEC has been on site twice. He said the company is familiar with what they are doing and they are going by DEC procedures. He said he has received by certified mail notice from DEC putting the Town on notice that they classify this as a spill and will have to put in monitoring wells, and do a ground water study. He said considering the samples of the soil and the whole concrete pad had to be taken out around the pump island, the \$8 per yard for the excavated material and that is just an estimate on how much has been excavated, the Town is looking at approximately \$20,000 additional cost. He said he has been in touch with the Comptroller and noted the permissive referendum was for \$110,000 and asked for permission to spend \$110,000, noting the bid came in at \$84,000 and if this \$20,000 is tacked on to remediate the spill, it is still within the limits of the \$110,000.

Supervisor Fuller noted there was a similar problem at the rear of the Town Hall building. Mr. Sagendorph agreed and noted they still have the soil on site at the highway garage. Supervisor Fuller asked if there are still monitoring wells. Mr. Sagendorph said we did but noted the only way to remediate the soil is to rototill it or to turn it. He said they turn it with a bulldozer. He said they have taken a soil sample of that material -- it has been there since 1995 -- and hope this will pass now. He said they will be able to use that material on a road project or for landfill cover. He said if they can use that, this material will be put into that area. He said DEC approved that site in 1995 and there shouldn't be any reason

why this would not be approved for this. He said he will just have to expand the area.

Councilman Lenhardt asked if there was insurance for this kind of project or is there such a product out there. Comptroller Kehoe said she would have to check if there is coverage. Attorney Kaplowitz said it may only turn out to be liability insurance or damage due to someone else. He said 10 years ago, landfills became such a nightmare across the country that insurance companies started cancelling the insurance. He said our company said they would keep us but not cover the landfill. He said this was happening all across the state. He said most towns are on their own.

Supervisor Fuller noted we did not have it with the problem at the back of the building. Attorney Kaplowitz said he was pretty sure nothing has changed. Mr. Sagendorph said he spoke with our insurance agent and it is almost impossible to get someone to write the coverage for underground or even above ground petroleum bulk storage.

Councilman Burns asked about the ground water study, asking if it was to determine if the ground water is contaminated also. Mr. Sagendorph said it is to determine the extent of contamination if there is any. He said it will also let them know what remediation needs to be done. He said if they have excavated the contaminated soil and put it on plastic, the ground water may be clear or once it is tested, the parts per billion may be low enough that it is not going to contaminate any of the surrounding area. If there is products found to be in the ground water, a retrieval system may have to be installed. Mr. Sagendorph mentioned the Getty station at 4 corners that had a problem and the Stewart's shop by the Memorial park. He said they are hoping that this isn't as bad as those 2 sites, noting it is unclear.

Councilman Burns asked if it would affect the neighbors next to this. Mr. Sagendorph said the nearest neighbor is a good 1,000 feet away. He said there is a big ravine behind the garage, behind the salt storage facility and they feel the ground water runs in that direction and that would be running away from all the homes and all the wells.

Councilman Burns asked how soon they would be doing the study and when will the information be available. Mr. Sagendorph said they have been on site. He said Adirondack Tank which has the contract to excavate the old tanks, and install the new tanks has a sub-contractor. He noted the soils have been taken for samples as a routine. The sub-contractor has to do the tank closure plan for DEC, according to Mr. Sagendorph, whether any contamination has been found or not. He said he is working for Adirondack Tank and they are proceeding with it. He said they are able to put in the monitoring wells. He said DEC wants to see a map and see where the wells are put and how big of an excavation was dug. He said DEC wants to see a preliminary plan before they say yes or no for putting in the wells.

Councilman Johnson asked if there was anything in this that is a decision whether it is to be done or not. He said he thought this had to be done. Supervisor Fuller said there really is no choice. Mr. Sagendorph said he has a copy of the DEC certified letter that he will leave for the Board Members that mandates us to respond by August 7 and do this.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the change order regarding the fuel tank installations at the Highway Garage, Elm Avenue East, Selkirk. The motion was passed by the following vote:

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

The next item was a request from Karen Pellettier, Director, Senior Citizen Services, for approval of transfer of Insurance Recovery monies for repair of damaged vehicle, senior van number 803.

Request from
Senior Serviv
approval of
transfer of
Insurance

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the transfer of \$1,289.12 from Insurance Recovery for repair of damages to senior van vehicle number 803. The motion was passed by the following vote:

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

The next item was to acknowledge receipt of the Annual Report from the Town of Bethlehem Historical Association. Supervisor Fuller said this is done on a yearly basis. She said our Town Historian, Joe Allgaier, has done it for the Board's approval. She said the Historical Association consists of 228 members and have a budget of \$4,705 for the year 1998-99. She thanked the Town Historian for his report and the Historical Association for all of the fun activities.

Annual report
Bethlehem
Historical
Association

The following item was a request from Kathleen A. Newkirk, Town Clerk, for installation of air circulation equipment for the basement area of the Town Hall building. Supervisor Fuller noted this was in the inactive records storage room and the reasons have been noted in the Town Clerk's memorandum. She said what is first and foremost is 4 employees have been left complaining of headaches and nausea. She noted Town Clerk Newkirk feels strongly that there is a need for this equipment. This will help solve the problem and retain the records in excellent condition for future generations. She said the heat is a problem also. She noted the cost would be \$755 dollars plus the installation of electrical service. It was noted that if this is not covered by shared services, the records management/town clerk budget lines could help fund this need.

Request from
Town Clerk
for Air
Circulation
equipment for
basement

Councilman Lenhardt asked if this problem started with the telephone equipment installation. Town Clerk Newkirk said this was correct noting the room had been monitored when the inactive storage area was created. At that time, there was no problem. Following the installation of the new computerized telephone system and the related equipment placed in the small area adjacent to the inactive records area, this problem arose. The Town Clerk suggested a vent system be installed at the time but a decision was made that it was not necessary. Since that time, the temperature and humidity has risen and there are problems. Recently, the Town Clerk explained personnel were transferring active records to the inactive records storage area and the employees working in the basement area experienced problems. Two employees were sent outdoors upon returning upstairs due to light headedness and not feeling well.

Councilman Davis asked along with the peeling labels, if the Town Clerk noted any deterioration of records at this time. Town Clerk Newkirk said she has not investigated each box. Councilman Davis said if they are not inspected, even if approved, how do we know that records are not continuing to deteriorate. Town Clerk Newkirk said from observation at this time, no records that are exposed have been destroyed or have any threatening conditions that are exposed at this time.

Councilman Lenhardt said he did not think the environment was very good for the telephone equipment either. Town Clerk Newkirk said it is not, noting she heard the phone system had shut down at least once due to the heat.

Councilman Burns asked if this was a stop gap measure and apparently in the past ventilation was requested as an alternative, asking further what that would mean and if there were other alternatives. Town Clerk Newkirk explained with the original installation of the telephone system, knowing it was going to create heat, suggestion was made to install an outside vent to exhaust the

air out of the area. No vent was installed according to Town Clerk Newkirk. She further noted the heat has built to a point where there is a need for this air conditioning/circulation unit. She also noted records management is done year round. Councilman Burns further asked if a vent would be better or more useful in the long run or if this was a stop gap measure. Town Clerk Newkirk said this is a permanent fix for accomplishment of a correction to the situation.

Supervisor Fuller asked if there were any other questions or comments. There were none.

The motion was made Mr. Lenhardt and seconded by Mr. Johnson to approve the installation of air circulation equipment for the basement area, inactive records storage center, of the Town Hall building. The motion was passed by the following vote:

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

Acknowledge
receipt Conditional
Approval
Final Plat for Hauerwas
Subdivision
Conditional
approval
final plat
481 Dawson Road

The next item was to acknowledge receipt of Conditional Approval of Final Plat for the Hauerwas Subdivision from the Planning Board for information purposes.

The following item was to acknowledge receipt of Conditional Approval of Final Plat for a lot line revision for Harry Gochee, 481 Dawson Road, and Kenaware Avenue, Delmar from the Planning Board for information purposes.

Supervisor Fuller asked if anyone wished to address the Board.

Mr. Davies
to speak
on dredging
Hudson River

MR. DAVIES: Sherwood Davies. I'll be brief. I am going to speak in regards to the proposed dredging of the Hudson River. A month and a half ago, Bethlehem requested the DEC and the Corps of Engineers to approve the dredging adjacent to the infiltration gallery in hopes that we can increase the well yield. I understand the regulatory agencies are reviewing that request and will solicit public comments, I think, up til about August 15.

SUPERVISOR FULLER: August 14th.

MR. DAVIES: August 14, all right.

SUPERVISOR FULLER: The Army Corps is right here on the bulletin board and has been for a few days.

MR. DAVIES: All right.

SUPERVISOR FULLER: DEC's has been faxed in here this afternoon. We do not have the hard copy yet but we need to put that in the Times Union.

MR. DAVIES: I see, okay. I understand that there may be question of 10 year maintenance that would involve dredging over a .10 year period. Now, I would like to suggest to the Board, these are some issues that I am sure the Corps of Engineers will not be addressing and probably DEC will not be addressing. But, it should be of interest to Bethlehem tax payers and the Board. And, for that reason I would like to suggest that the Board ask O'Brien and Gere to at least prepare a report or a letter and give it to the Board prior to the next meeting covering the following.

SUPERVISOR FULLER: Sherwood, if you would submit your list of concerns to me in writing, so that I don't have to sit here and... please.

MR. DAVIES: I will, I will be glad to. What is the cost of dredging versus the benefits that might accrue from dredging specifically would it be cheaper to buy Albany water than maybe benefit from a few thousand gallons a day from dredging...

SUPERVISOR FULLER: Sherwood, if I can interrupt for one second -- if you remember the meetings with O'Brien and Gere, the dredging recommendation is part of this plan that we are to find out how much water there is there, to clean up the silt around the river... you are speaking about this 10 year plan. I believe the Army Corps's permit is for 10 years. The Town did not request a 10 year dredging permit.

MR. DAVIES: I see. So, it is just a one shot deal...

SUPERVISOR FULLER: So, there's...

MR. DAVIES: ...the Town's requesting and not a 10 year.

SUPERVISOR FULLER: Yes, not at this point, no.

MR. DAVIES: I see.

SUPERVISOR FULLER: But, the Army Corps permit did come in specifying 10 year.

MR. DAVIES: All right, thank you.

The second point I would like to make is, what are the other causes of the declining well yield? And, I think O'Brien and Gere could very well address that which has been the subject of some discussion.

SUPERVISOR FULLER: They will be coming back and give the report to the Board. We don't have any report as yet.

MR. DAVIES: Pardon, they will be coming back?

SUPERVISOR FULLER: Yes. This is what Rust and Frasier are paying for this work to be done. They will be coming back to the Town Board.

MR. DAVIES: And, they will be speaking?

SUPERVISOR FULLER: Sure.

MR. DAVIES: Specifically to this item?

SUPERVISOR FULLER: Yes.

MR. DAVIES: As to what other items may be causing the declining well yield.

SUPERVISOR FULLER: They need to explain to us what is the problem.

ATTORNEY KAPLOWITZ: If I recollect correctly, that is one of the things they were charged with doing is come back and tell us what's causing the problem. If you can tell us that, then tell us what we can do about it, if anything.

MR. DAVIES: Hopefully, would that be before August 15th?

ATTORNEY KAPLOWITZ: I don't have any way of knowing that.

MR. DAVIES: I think it is important to the Board.

SUPERVISOR FULLER: Why are we? Oh, before the...

MR. DAVIES: Yes, because should we invest...

SUPERVISOR FULLER: ...public comment?

MR. DAVIES: ...let's say \$50,000 for dredging of the Hudson when the primary cause of the well yield is another reason. And, I think the Board should know this.

COUNCILMAN LENHARDT: Can I just say something? I just quickly, and I think I read it in the Spotlight, quickly glanced at the Spotlight before I came here tonight and there was a... a section in there that indicated the test well completion date was August 20th if I am not mistaken.

SUPERVISOR FULLER: I didn't read the Spotlight.

COUNCILMAN LENHARDT: If that were true, then that logistically it can't be before the 15th.

MR. DAVIES: This is... as I understand it, this is for the development of the proposed test production well...

COUNCILMAN LENHARDT: Right.

MR. DAVIES: ...which was to be started July 2nd and completed by August 20th.

COUNCILMAN LENHARDT: Okay.

MR. DAVIES: I am speaking of the infiltration gallery.

COUNCILMAN LENHARDT: However, you are asking about O'Brien and Gere coming back with a report.

MR. DAVIES: Right.

COUNCILMAN LENHARDT: I don't think their report could possibly be here prior to the completion of the test well.

MR. DAVIES: I am confusing you now because I am not speaking of the test well. I am speaking of the infiltration gallery -- just infiltration gallery. In other words, there is a decline in the yield in the infiltration gallery. It's due to the siltation of the river or other causes.

COUNCILMAN LENHARDT: Right.

SUPERVISOR FULLER: This is exactly what we are looking at though.

ATTORNEY KAPLOWITZ: That's why we are doing the testing.

COUNCILMAN LENHARDT: That's why they're...

ATTORNEY KAPLOWITZ: That test is going to help them determine what's happening -- is it silt? Is it infiltration or what is it? I thought, Sherwood, I am not trying to convince you because I am not sure. But, my understanding was, that question they are going to try to answer with the test well. I am far from being an engineer.

COUNCILMAN LENHARDT: That's part of the equation, the test well.

MR. DAVIES: But, I would hope that they could project to you based upon the information that was done at the last study for dredging and they had a lot of information and a good engineer could sit down and give you some pretty good guidance as to the success or failure of silting and the increase in well yield. And, that's what... that's all I am speaking to.

COUNCILMAN LENHARDT: I understand what you are... I am just saying, I don't think O'Brien and Gere would be back here until they have the results of the test well and maybe at that time they could address the dredging issue. It's just your August 15th date.

MR. DAVIES: Well, let me speak to the third point but I still feel that this is an important point. The third point is that the dredged material... there is being planned a new test production well on Schermerhorn Island in an attempt to get an added source of supply for the community.

SUPERVISOR FULLER: I think this is the...

MR. DAVIES: The dredge...

SUPERVISOR FULLER: I think this is the debate that we had here back in June when production well was...

MR. DAVIES: No, no, I don't want to get into that. I just...

SUPERVISOR FULLER: Well, I think that is what you got into that evening and I think you are right back getting into it again.

ATTORNEY KAPLOWITZ: Take the word production well out of your statement and then we don't have a problem.

MR. DAVIES: All right, supply well. All right, test well, whatever you want to call it.

The Town intends to utilize ground water on Schermerhorn Island as a source of water, hopefully, am I correct?

COUNCILMAN LENHARDT: The purpose of the test well was to determine whether or not the aquifer can supply the recommend quantity or the quantity we were told that it could supply.

MR. DAVIES: Assume it does. Let me...

COUNCILMAN LENHARDT: Okay, let's assume that.

MR. DAVIES: My point... I am getting back... I want to get back to the dredging. The dredged material is to be disposed of on Schermerhorn Island and this will be the area that is now being used as a source of supply, the infiltration gallery and any proposed well. I would just call to the attention of this Board, that there was a well protection plan submitted to the State Health Department and DEC in September of 1995. It was never acted upon by the State and there is a question why but it refers to the disposal of contaminants and I would say to you that we should very carefully look at any contaminants or pollutants that might be in that dredged material that may result in a violation of this proposed plan that has been submitted to the State for protection of the Schermerhorn Island ground water aquifer.

COUNCILMAN BURNS: Sherwood, I, just to be clear... I think there are 2 scenarios that you are laying out here and I am not sure which... the testing... the test well is supposed to be completed August 20th.

MR. DAVIES: That's my understanding.

COUNCILMAN BURNS: Now, are the engineers waiting to do the testing to see if dredging will be allowed because then they will wait and first dredge and then test or are they going to go ahead testing first regardless of the dredging and that's the second scenario. I think what you are saying and the period of time we have to question and the public comment period ends August 14th. So, there is a little bit of... the time frame is a little over-lapping or under-lapping. I am questioning those things also. I don't know.

MR. DAVIES: The test well.

SUPERVISOR FULLER: I think what you have to be... I think we have to be most concerned about is what's called litigation and, Sherwood, I know you don't want to hear it but I do have to remind you that we have gone through these meetings with Bob Alessi and we went through similar discussion about the dredging and if you remember we could not... we were denied the opportunity to dredge because we were into the fish spawning season and it was put off until the August time. And, this has been something that's been discussed and you have been here and been a participant in it from May, June, nothing has changed. I will check on the date for you as far as the notice from Army Corps and DEC. But, we are still proceeding with exactly what we said from day one. We have to get in to mitigate any losses we may have. We need to do what we can to get what this community has been promised and this is all part of it. And, I think that you know it, as well as, I know it as we have sat here meeting after meeting with this.

MR. DAVIES: I have no problem with that. All I am saying is that I think the Board should have in their hip pocket, some idea as to what it is going to cost to dredge and will there be benefits and will this be...

SUPERVISOR FULLER: And, who is going to pay for the dredging?

MR. DAVIES: I didn't want to raise that question at all.

SUPERVISOR FULLER: But, I think you know the answer of who is paying for the dredging -- any expense connected with this.

MR. DAVIES: It is my understanding that we're going to ask the Federal government to pay for the dredging.

ATTORNEY KAPLOWITZ: Let's not get into it.

SUPERVISOR FULLER: Any more than we have.

ATTORNEY KAPLOWITZ: Because we don't know the answers really.

MR. DAVIES: Well, that's all I wanted to raise with the Board.

SUPERVISOR FULLER: Thank you.

Supervisor Fuller asked if anyone else wished to address the Board this evening. Mr. John LaForte thanked the Board for the opportunity to speak. Mr. LaForte indicated he has spoke with Supervisor Fuller regarding the second meeting in August. Supervisor Fuller said that date is August 12th. Mr. LaForte just wanted to confirm that that was the correct date for his item to be on the Board agenda.

Mr. LaForte asked what the format will be, inquiring if they will be able to make a presentation. Supervisor Fuller said the opportunity will be given but she has not looked at the August meeting agendas as of this date. Mr. LaForte thanked the Supervisor. The Supervisor said she would be in touch regarding the date.

Mr. LaForte
asked to confirm
correct date for
his agenda item

Councilman Davis asked what the discussion was between the Supervisor and Mr. LaForte. Supervisor Fuller said this is a request for a change in zoning. Mr. LaForte sent a letter to the Supervisor requesting that a consideration be given for a zone change on the corner of Elm Avenue and Delaware Avenue. Supervisor Fuller indicated each Board Member had received a copy of this. The Board Members acknowledged they had received the information.

Supervisor Fuller asked if there was anyone else wishing to address the Board. There were none.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to adjourn the regular Town Board meeting at 9:15 p.m. The motion was passed by the following vote:

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

Noes: None.

Kathleen A. Newkirk
Town Clerk