

TOWN BOARD
JUNE 9, 1999

A regular meeting of the Town Board of the Town of Bethlehem was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, NY. The meeting was called to order by the Supervisor at 7:30 p.m.

PRESENT: Sheila Fuller, Supervisor
Doris M. Davis, Councilman
Robert C. Johnson, Councilman
Susan Burns, Councilman
Kathleen A. Newkirk, Town Clerk
Bernard Kaplowitz, Esq., Town Attorney

ABSENT: George Lenhardt, Councilman
- - -

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

Supervisor
Fuller addressed
for approval
support for
Albany County
Emergency
Services
Volunteers
\$1000
donation

Supervisor Fuller addressed the item for approval of support regarding Albany County Emergency Services Volunteers. Supervisor Fuller said she was sure most people in the community are aware of the signs -- turquoise, white and black -- which are the recruitment and retention drive for all fire departments and emergency services for Albany County. She said back a few months ago the Albany County Legislature passed a bill giving \$10,000 for the purpose of retention and recruitment and they will match money from local municipalities. Councilmen Davis and Johnson had mentioned this to her and she said they asked for the Town of Bethlehem to participate.

Supervisor Fuller said she is, therefore, asking the Board for approval of a \$1,000 donation to the Albany County Emergency Services Volunteers to help with the retention and recruitment. She said volunteers are getting to be very difficult to find. She noted it is taking a lot of time and to show our appreciation, they want to help. She said it is a very small donation in the amount of time that these volunteers serve communities. She further noted many communities have gone to a fully paid fire department and emergency services, indicating it is extremely costly. She said we are fortunate to still have volunteers willing to give so much. She said this is a small token of their appreciation and hope that this will continue to bring more volunteers into the program.

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the donation of \$1,000 to the Albany County Emergency Services Volunteers project. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mrs. Davis, Mr. Johnson, Ms. Burns.
Noes: None.
Absent: Mr. Lenhardt.
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Councilman Davis and Johnson thanked the volunteers in attendance. Supervisor Fuller said she knows that the volunteers have to be back at the fire house and she did not want to hold them up. She thanked everyone for coming and for all they do for the community.

Public Hearing
regarding
zone change
1240 New Scotland
Road

The first item on the agenda was to set a public hearing regarding a proposed zone change for 1240 New Scotland Road, Slingerlands. Advertise June 12, 1999 in Times Union, Spotlight on June 16, 1999 and set public hearing for June 23, 1999 at 7:30 p.m.

Supervisor Fuller said this was basically from First Columbia to build a 40,000 square foot 2 story medical building for St. Peter's Hospital. She said this was to set the public hearing. She noted the advertisement will be in the Times Union on June 12 and the Spotlight on June 16. She said there will be a full presentation at the public hearing.

The motion was made by Ms. Burns and seconded by Mr. Johnson to approve setting a public hearing for June 23, 1999 at 7:30 p.m. to consider a proposed local law regarding a zone change for 1240 New Scotland Road, Slingerlands to permit construction of a 2 story medical building for St. Peter's Hospital. The motion was passed by the following vote:

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

The next item was to consider an amendment to Building Project Approval No. 29, Terramere, to accept the Wetland Mitigation Plan. Supervisor Fuller noted Mr. Neibart would be addressing this item.

Consider
 an amendment
 to building
 project approval
 to accept Wetland
 Mitigation Plan

Mr. David Neibart, representative of Terramere, said they are asking the Town Board to approve an amendment to the Building Project Approval to incorporate a wetland mitigation plan for the project that was authorized by the Army Corps of Engineers and the NYS Department of Environmental Conservation. He said the mitigation plan is comprised of 2 components. One is the creation of the conservation buffer, 3.85 acres along the bank of the Normanskill Creek and the second component is the creation of a quarter acre wetland site within that buffer. He said it requires no modification to the Building Project Approval.

Supervisor Fuller said the Town Board had received all the information ahead of time and thanked Mr. Neibart. She asked if the Town Board had any questions.

Councilman Davis asked about some of the work that has to be done to implement the mitigation, asking how long the hay bales and other things would be in place. Mr. Neibart said during the construction the hay bales have to be in place. He said the authorization has a number of conditions that are imposed for proper sediment control, monitoring, and maintenance of this area. Therefore, he said the guidelines have to be followed strictly. He said he does not know specifically how long the bales need to be there. Councilman Davis noted weather and all the factors are a part of it. Mr. Neibart said this was correct.

Councilman Johnson asked if the orange fences by the Bryant property are protecting wetlands also. Mr. Neibart said those fences have been put up with offsets so that anyone on the site will know that wetlands are near those fences. Councilman Johnson thanked Mr. Neibart.

Supervisor Fuller asked if there were any other questions or comments. There were none and, therefore, she asked for a motion to approve this item.

The motion was made by Mrs. Davis and seconded by Mr. Johnson to accept the Wetland Mitigation Plan for Planned District No. 29, Terramere, located on New Scotland Road, Slingerlands. The motion was passed by the following vote:

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

The next item was to consider an amendment to Building Project Approval No. 29, Terramere, for proposed garage locations. Supervisor Fuller noted the Board also had in front of them the information, noting it is basically a change in the location of the garages. She said it is taking the side loading garage to be compatible with front loading models.

Consider amendment
 to building project
 approval No. 29
 proposed garage
 locations

Mr. Ken Goldman of Terramere said what they have proposed as an amendment are really various minor changes to the design program which, in his opinion, do not affect the concept of Terramere; the unit; the layout of the roads; and/or any major components of the project. He said he could run through them very quickly.

Mr. Goldman said basically they are asking to review the architectural vocabulary. He said they are asking for certain specific changes to the architectural vocabulary which are adjustments resulting from review with their architects which may have become outdated over time and also their feelings in the interest of the consumer and maintenance issues. These minor adjustments to the architectural vocabulary, Mr. Goldman said, will have positive results for the project. He said another change highlighted on sheet 34A -- which is the amendment sheet to the plans -- is to replace some of the decorative concrete banding from concrete paving stones to stamped concrete. He said this is really a technical decision based on their feeling that the maintenance of the concrete and the durability of the concrete will be superior to the original proposed material.

Mr. Goldman said another item is to remove a wrought iron fence that was part of the base plan that crossed the front of each home. He said the wrought iron is a high maintenance issue item and they also feel, given the expense of the item, it would be better to put that money into the layout of the house which home buyers would probably find to be a better value for them. He said finally they are changing the wood fence detail to a cedar fence that is common in Bethlehem. The design is there and he said it meets all of Bethlehem's fence ordinance and other regulations and is consistent, they believe, with the design and intent of Terramere. He said these are the adjustments to the plans.

The other item that they are asking to be considered, Mr. Goldman said, which is major is the idea that has come through development of the architectural program to present a unit at Terramere that has a side loading garage. He noted the design was approved and falls directly under the Terramere building envelope and would not require any action by the Town Board or Planning Board. He said it has a front loading garage and in reviewing both the potential for layout of the architectural interior layout for the units, as well as, other items, they concluded that it would be advantageous to take the garage and line it up on the front of the property to maximize the useable layout of the home. He displayed drawings regarding the elevations and location of the garages. He said it would be obvious that the garage door would not be prominent and the idea that the area becomes somewhat of a court within a court.

Mr. Goldman said Terramere has a commons design with a court yard and this would create a private space within the lot itself. He said the end result is a very rectangular shape that allows a lot more flexibility with windows and exposure to the outside. Mr. Goldman noted they are both good plans and they are not sure what is going to be popular when the project is taken public. He said, as far as, they are concerned, it fits within the concept of Terramere as it was proposed. Further, he said it has very little or no impact on the design criteria on the zoning package or the building envelope that was approved by the Board when the approval was received.

Mr. Goldman said one adjustment that is definitely a change that they are asking to be considered is a change in the set back for the driveway in the side loading unit which is asking to extend this or reduce the side set back for a driveway from 8 feet which is shown here to 3 feet. This would only happen on the side entry units, Mr. Goldman explained, noting the purpose is simply to make maneuvering into this unit easier because it requires a turn. He said, in their opinion, it is not essential but they think it would widen out the space.

Mr. Goldman noted this was all there was to the request and offered to answer any questions. Councilman Johnson said he was not sure about the set back but the question was answered. He said it looks like a nice idea.

Supervisor Fuller questioned how soon construction would begin. Mr. Goldman said they hope to start in September or October with their first unit. The Supervisor noted it will be a busy area.

Councilman Davis noted when she was appointed to the Planning Board in 1991, she thought Terramere was the first project that she saw. She said it is now 1999 but she remembered at the time it was a very attractive proposal. She said she was impressed by it then and she has been all along. She said she has always liked the clustering and felt the court yard and all of that was different from some of the things that had been seen before in Town. She said she hoped it would move quickly. Mr. Goldman said they are proud of it and looking forward to getting started. He said the road is under construction and they think it is different in a lot of ways. He said they have tried to add a unique component to the housing market in Bethlehem and do justice to the community. He noted Slingerlands is a beautiful area.

Supervisor Fuller noted it will be a beautiful addition. Mr. Goldman said they are looking forward to bringing it into the market. He said they hope the public agrees with the assessment. Councilman Davis agreed. Supervisor Fuller thanked Mr. Goldman.

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve an amendment to Building Project Approval No. 29, Terramere, Slingerlands, Town of Bethlehem. The motion was passed by the following vote:

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

The next item was a request for approval to permit construction of an addition in Planned Residence District No. 9, Eastmont from Mr. Jason Minick, residence located at 75 Meadow Brook Drive. Mr. Lynn Sipperly, L. Sipperly & Associates, distributed handouts to the Board showing the property in question. A lengthy discussion ensued regarding the proposed addition and the situation related to the request. Mr. Minick had submitted information, including pictures, related to this proposal. The information, according to Mr. Sipperly, also included copies from Building Project Approval Number 16. He explained that this addition would be to Mr. Minick's personal residence. He said the proposed addition would be 13 feet, 10 inches by 15 feet 10 inches and it would be at the right rear corner of the home. The reason for the request was due to the property being in a Planned Residence District, Eastmont, according to Mr. Sipperly. He said they made application to the Building Department and rightfully they reviewed the documents and found a section where their interpretation was that to do an addition to a building would require Town Board action. It would be an amendment to Building Project Approval Number 16.

Request for approval to permit construction Planned Residence District No. 9 Jason Minick

Mr. Sipperly explained there are a few unique characteristics to number 75 which is the lot that the Minick's reside at. He said it is a very large, spacious lot. It has no neighbor on the right hand side, just a large green area and part of it is not developable because of the terrain. He said several hundred feet away from that is the recreational facility for Meadowbrook apartments and there is a lot of vegetative screening in between. He also noted the addition is not inconsistent and the photo indicates the location of the proposed addition. He said it would only extend out approximately 7 and 1/2 feet. He said currently there is a patio or deck and it would be removed to make a room and the room would extend out. He said back when this house was constructed there was considerable engineering performed to assure that the lot was structurally sound. He said it was reviewed by both the Building Department and the Town Engineering Department and confirmation that the building lot was safe for construction. Mr. Sipperly said the proposed addition was within the area of the lot considered safe for development.

Mr. Sipperly said the lot is unique also because there is quite a bit of distance between the side of the house and the building envelope line which was part of the building project approval. He said they are not asking for any relaxation or encroachment into the building envelope set back lines that were approved.

Mr. Sipperly noted the addition would be to accommodate a den/computer/library room. He said that is what is lacking. He said a little more space in the house would be very useful and helpful. He noted Mr. and Mrs. Minick were in attendance if there were any questions.

Supervisor Fuller thanked Mr. Sipperly and asked if there were any questions. Councilman Davis said according to the map provided, it looks as though it is approximately 10 feet from the edge of the addition to the building envelope line, asking if this was correct. Mr. Sipperly said that was correct. Councilman Davis noted apparently there will never be another structure adjacent to them. Mr. Sipperly said that was also correct. He said this is the last lot in the Eastmont development. Councilman Davis said normally you would worry if it was that close to the next structure.

Supervisor Fuller acknowledged Mr. John Flanigan, Building Inspector. Mr. Flanigan said when the Building Project Approval was approved in 1985, there were probably 6 models that were approved for that area. He said there are 114 units in the area, 57 two family houses all built according to the models. He noted this is one of the models. He said when Mr. Minick built the house 2 years ago, he chose to build this model, indicating there were bigger models. He said his point is that this is one person who is asking for an individual consideration for 1 lot and what about the other people in that development who have been turned down over the years by just coming and saying you have to go for a building project approval change. He said no one else has come up to do this to this time. He said if this change is allowed, he would have to come back and the Town Board would have to refer this to the Planning Board for a major building project approval change and give all the people the same opportunity that he is asking for -- to put an addition on their homes.

Mr. Flanigan said several years ago this was reviewed and an amendment allowed sheds and fencing in there, noting this allowed everyone to do this. He said this is one person who just built a home and he is asking for a special consideration for one building. He said he does not feel it is appropriate. He thinks if Mr. Minick has it, everyone should have a right to put an addition on. He said this now is the same way it is in Chadwick Square and some of the other PRDs. He said in those approvals, you cannot change the exterior of the buildings without a major building project approval change. He said there have been some changes on things that have not been built in certain areas but this project is completely developed for many years. He requested the Town Board deny this request for an individual.

Supervisor Fuller asked if this had anything to do with the fact that the land cannot be developed next to them. Mr. Flanigan said it has nothing to do with this. He said it was the last lot. He said Mr. Minick was the original developer of this project under Fort Orange back in the beginning and he is the one who presented the models. He said Mr. Minick then sold them to Pace Construction who actually built it and this one lot was left. Mr. Flanigan said this was the worst lot in the whole area because Pace Construction had a foundation in there once and had to give it up because of engineering problems.

Mr. Flanigan said finally after several years when Mr. Minick took it back, he went in and got the engineering straightened out so he could build a house on this lot. He said the lady next door is having major problems in number 77 which is attached to this building. He said they are structural problems, water and all kinds of problems. He further noted that has nothing to do with this, his point is that if Mr. Minick wants to go on with this, he has to go back and get the change so the whole project has the same rights that he is asking for on an individual basis. Supervisor Fuller noted you have the right on an individual basis due to the fact not all of the buildings are built with this much land to the right of the house. Mr. Flanigan indicated there are a lot of them that are large enough including corner lots and some with jogs in the architecture.

Councilman Burns asked if the sheds and fencing were done through the Board. Mr. Flanigan said they were with a public hearing being held.

Councilman Johnson questioned Mr. Flanigan's statement that other residents had been turned down. Mr. Flanigan indicated they have come in and asked and they were told exactly what was told to Mr. Minick and Mr. Sipperly.

Councilman Burns asked if the individuals have a right to come before the Board and ask for this. Mr. Flanigan said they do have the right to come but they are only asking for the individual situations. He asked about the other 113 other units indicating they should have the same right as he has. Councilman Burns said they could come and ask for their own individual use. Mr. Flanigan said he does not think the Town Board wants to get into that. He said that could be a weekly situation. He further said what you do with a PRD is someone comes in with a plan change for everyone.

Supervisor Fuller asked if the Town Board was to approve this request, would it go to the Planning Board. Mr. Flanigan said it would not. He said if the Board wants to refer it back, and if the Board feels the whole area should have the same, then it would be referred back. He said they can go through the process and change the building project approval after public hearing. He said he thinks this represents a major change in the project after it has been built.

Supervisor Fuller clarified with Mr. Flanigan that this request was not just Mr. Minick's but for the whole Planned Residence District, Eastmont, and must permit approval to all the units. Mr. Flanigan confirmed that this could be referred to that way. He said he referred to Counsel on that issue. Attorney Kaplowitz agreed that this could be referred to the Planning Board and ask for an amendment to the building project approval. He said if it is amended, it would be for everyone or nobody. Mr. Flanigan agreed and that was his major point.

Supervisor Fuller said it remains to be determined if this proposal is a material change or not. Mr. Flanigan indicated he feels it is a material change. Attorney Kaplowitz said he agreed with Mr. Flanigan that it is a material change. Supervisor Fuller also clarified the reason for this item on the Town Board agenda, indicating it is a Planned Residence District change and the Town Board has the authority to do it.

After further discussion, this item was tabled in order to obtain further information and consultation by Mr. Minick with his attorney.

The motion was made by Ms. Burns and seconded by Mrs. Fuller to table the request to permit approval of construction of an addition in Planned Residence District No. 9, Eastmont, to permit further investigation and obtaining of information. The motion was passed by the following vote:

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

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Supervisor Fuller thanked Mr. Minick and Mr. Sipperly. Mr. Minick and Mr. Sipperly thanked the Board.

The next item was to adopt an approval resolution for American Housing Foundation, Inc. Supervisor Fuller said the Board Members have in their packet information regarding the Van Allen Apartments for senior housing. She explained it is an Industrial Development Agency project and basically the Town Board has to approve the resolution. She asked if there are any questions on this project.

Approval to permit
construction
planned Residence
District No. 9
tabled for further
information

Approve resolution for American Housing Foundation, Inc. Van Allen Apartments for Senior Housing

Councilman Davis asked Comptroller Kehoe how the \$11,000 initial payment, the fee for services agreement, is arranged with American Housing determined. Comptroller Kehoe said at the preliminary IDA meeting, American Housing Foundation was willing to make a fee for services agreement with the Town. She said as a non-profit they were not required to make a payment. She said the fee came about through a review of the types of services that the project would be receiving from the Town. She said they looked at statistics from the Police Department on number of calls for similar projects and assigned a per call cost to the figures. She said they made assumptions as to what the expectations would be at the Van Allen project as well and used that for the basis for the cost figure.

Councilman Davis said the agreement indicates it will be for a 30 year term, noting this seems like a long time. She asked Mrs. Kehoe to explain that. Comptroller Kehoe said the 30 year term came from paralleling this agreement with the financing agreement that the American Housing Foundation project is receiving from New York State. She said she sees a longer term as a positive with this project because it is a voluntary payment and the fact that American Housing is willing to commit to that term of making what will be an escalating payment over the term of the agreement as a beneficial arrangement for the Town. She said they are still working on that with the attorneys to determine whether it will be a 25 or 30 year term. She said they should have resolution this week and the actual fee for service agreement will be coming to the Town Board at the next meeting on June 23.

Councilman Davis asked if over the 25 or 30 years this fee for services will be reviewed to see if it possibly can be increased. Comptroller Kehoe said the agreement is based on a percentage of gross collected rent. She said if the project is a wonderful success and the rental payments go up, there would be a corresponding increase to the Town, keeping in mind, that it is a project for lower income residents and the rental increases are tied to the annual median income as set forth by HUD. Mrs. Kehoe said she does not think you will necessarily see market based income with this project. Councilman Davis thanked Mrs. Kehoe.

Supervisor Fuller said we are still getting calls from residents wondering when they can move in. She said it is a project that everyone has waited a long time for. Councilman Davis noted we certainly have a need. Supervisor Fuller said we are glad to see it here. She said it is a 110 unit senior housing complex for low and moderate income senior citizens located on Route 9W.

COUNCILMAN Burns offered the following resolution, and moved its adoption:

RESOLUTION

RESOLUTION APPROVING THE ISSUANCE OF CERTAIN BONDS BY THE TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY TO FINANCE A PROJECT FOR THE AMERICAN HOUSING FOUNDATION, INC.

WHEREAS, pursuant to Article 18-A of the General Municipal Law of the State of New York and Chapter 582 of the Laws of 1973 of the State of New York (herein collectively called the "Act"), the Town Board of the Town of Bethlehem, County of Albany, New York (the "Town Board") has heretofore appointed the Chairman and members of Town of Bethlehem Industrial Development Agency (the "Agency") and has duly caused to be filed in the office of the Secretary of the State of New York the certificates required by Section 856 of the General Municipal Law of the State of New York; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to issue industrial development revenue bonds to finance the cost of the acquisition, construction, reconstruction and installation of one or more "projects" (as defined in the Act), to acquire, construct, reconstruct and install said projects or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the American Housing Foundation, Inc. (the "Company") has presented an application (the "Application") to the Agency, a

copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency reconsider issuing its industrial development revenue bonds in the principal amount of not to exceed \$5,250,000 (the "Bonds") in order to finance all or a portion of the cost of undertaking a project (the "Project") consisting of (A) (1) the acquisition by the Issuer of an interest in certain real property consisting of an approximately eighteen (18) acre parcel of land located at 790 Route 9W in the Town of Bethlehem, Albany County, New York (the "Land"), (2) the construction on the Land of an approximately 110 unit senior housing complex for low and moderate income senior citizens containing approximately 112,466 square feet of space (the "Facility"), and (3) the acquisition and installation of machinery and equipment and other personal property related thereto located thereon and therein (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a senior citizen housing facility for lease to low and moderate income households headed by an individual sixty years of age or older and any other directly or indirectly related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of its civic facility revenue bonds in one or more issues or series in an aggregate principal amount not to exceed \$6,250,000 (the "Bonds"); (C) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, deed transfer taxes and mortgage recording taxes (collectively with the Bonds, the "Financial Assistance"); and (D) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Town Board has been advised by the Agency that the Agency proposes to issue, subsequent to the adoption of this resolution, its industrial development revenue bonds from time to time in a principal amount sufficient to fund all or a portion of undertaking the Project, together with incidental costs in connection therewith, which principal amount is presently estimated to be in an amount not to exceed \$6,250,000; and

WHEREAS, the Company has requested that interest on the Bonds be treated by the federal government as excludable from gross income for federal income tax purposes pursuant to Section 145 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, pursuant to Section 147(f) of the Code, interest on the Bonds will not be excludable from gross income for federal income tax purposes unless the issuance of the Bonds shall be approved by this Town Board after the Agency has conducted a public hearing thereon following reasonable public notice; and

WHEREAS, on June 1, 1999, the Agency held a public hearing to consider both the issuance of the proposed Bonds and the nature and location of the proposed Project and a report of said public hearing has been made available to each member of this Town Board prior to this meeting; and

WHEREAS, pursuant to Section 147(f) of the Code, the Town Board desires to allow the interest on the Bonds to be treated as excludable from gross income for federal income tax purposes; and

WHEREAS, the Town Board has received notice from the Town of Bethlehem Planning Board that it has determined that the Project will not have a "significant impact on the environment" within the meaning of Article 8 of the Environmental Conservation Law of the State of New York;

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Bethlehem, New York as follows:

Section 1. For the sole purpose of qualifying the interest payable on the Bonds for exclusion from gross income for federal income tax purposes pursuant to the provisions of Section 145 of the Code, the Town Board, as the elected legislative body of Town of Bethlehem, New York, hereby approves the issuance by the Agency of the Bonds, provided that the Bonds, and the premium (if any) and interest thereon, shall be special obligations of the Agency and shall never be a debt of the State of New York, Town of Bethlehem, New York or any political subdivision thereof (other than the Agency) shall be liable thereon.

Section 2. This resolution shall take effect immediately.

The resolution was duly seconded by Councilman Davis and the resolution was duly adopted by the following vote:

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

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

Parks and
Recreation
approval
seasonal
personnel

The motion was made by Mrs. Davis and seconded by Ms. Burns to approve the appointment of seasonal personnel as listed on the Memorandum from David Austin, Administrator, Parks & Recreation Department, dated June 9, 1999 at the titles and salaries indicated. The motion was passed by the following vote:

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

The next item was a request from Engineering Services Administrator, Michael Cirillo, for acceptance of a deed for Twenty Acres Subdivision. Supervisor Fuller explained it is a drainage easement between lots 9 and 17 Neil Boulevard, Selkirk to permit the Highway Department to make drainage improvements to the area.

Request from
Engineering
Accept deed
for Twenty Acres
Subdivision

The motion was made by Ms. Burns and seconded by Mr. Johnson to approve the acceptance of a deed for Twenty Acres Subdivision from Mr. and Mrs. Joseph T. Pomakoy, for a drainage easement between lots 9 and 17 Neil Boulevard, Selkirk. The motion was passed by the following vote:

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

Request from
Commissioner
of Public Works
approval of
expenditures
for maintenance
regulatory com-
pliance at Water
Plants, expenditure
of Water District
Capital Reserve
Funds. Followed
by resolution

The next item was a request from Commissioner of Public Works, Bruce Secor, for approval of expenditures for maintenance and regulatory compliance at Water Plants and authorize expenditure of Water District Capital Reserve Funds. Supervisor Fuller asked Mr. Secor to give information regarding this item. Mr. Secor said it was a relatively short memo and he reviewed this information with the Board. He said there has been a series of notices or requirements from the State, Federal and County Health Department officials including recommendations and some are mandates. He said he has listed them.

The first one, Mr. Secor said, was the underground storage tanks. He said they are both an EPA and DEC ruling. He said they had to remove the tank for the heating fuel oil at the Vly Creek Water Plant. It was estimated to cost \$19,000 to replace it. He said the chemical bulk storage requirement is another EPA and DEC requirement for secondary containment. He said the new plant was built with secondary containment so that is all taken care of and noted it was a newer regulation than what existed back in the 1950s when the Vly Creek plant was originally built. He said there are also some exterior requirements for exterior containment. It is estimated, according to Mr. Secor, that it will be about \$60,000 to do that.

Mr. Secor said the NYS Department of Health has been out and done a comprehensive plan evaluation at the Vly Creek purification plant and as a result they have asked that individual filtered waste valves be installed on the 10 filters. He said when the plant was built, that was not a requirement and is being looked for now. He said there are also meters to be installed and the activated carbon feed equipment must be replaced for \$8,000 and the furnished particle counters. He said not all of these have to be implemented this year but one of the things on the plan was to look at alternative

coagulants up at the Vly Creek plant. He said they use a packed material at the new plant. He indicated by this change it could reduce the sludge produced at the Vly Creek plant.

Mr. Secor said item number 4, the risk management plan is an EPA requirement. He said even though we have a Town-wide emergency plan, there is a water supply emergency plan for the Water Department which has a chlorine section on it. He said EPA wants their own plan, and it will cost \$20,000 to develop but it is a mandate. He said they have held off and will finish it and make sure there is no discrepancies or conflicts between the 2 plans.

Mr. Secor said the total of \$151,000 has to be looked at. He said in addition to the mandates for regulatory agencies, there are major maintenance items that are not practical to include in annual operating budgets. He said these include such work as roof replacement, installation of insulation, replacement of a 1955 vintage valve/meter at the Vly Creek plant, computer equipment which is a little at the Vly Creek plant and some out in the distribution system at the pumping stations and some down at the Clapper Road plant. He said the subtotal of these items is about \$70,000 and the total of page 1 and 2 is \$221,000.

Mr. Secor said the Vly Creek water plant was originally constructed in the 1950s and it must be expected that periodic upgrades are needed to keep the plant in compliance with advancements in both technology and regulatory requirements. He said in 1995, the replacement of the 2 main clarifiers and related equipment was undertaken at the Vly Creek plant. He said capital costs of the work was approximately \$400,000. He said this work was paid for from the Capital Reserve fund which had been set up by the Town as an alternative way to pay for major maintenance items without borrowing money and paying interest in addition to contractor costs. He said the clarifier work was the first major repair/replacement cost inside the water plant since its construction. He said the work provides the next step in maintaining the plant and meeting the distribution facilities current standards.

Mr. Secor requested the Town Board authorize the above list of items and ask for authorization of expenditures of the monies from the Water District Capital Reserve fund up to a maximum of \$221,000 as per the resolution presented. Supervisor Fuller noted this would be part of a permissive referendum. Mr. Secor said this resolution will accomplish this.

Councilman Johnson inquired as to this being the reason for building capital reserve funds. Mr. Secor said absolutely. He said a roof lasts 10 years and there has been an effort to put away money, just like a savings account, in anticipation of this so there is no borrowing. He said he has to admit that some of the mandates that come along were not something planned on but fortunately there is money in the capital reserve which is set aside exactly for this type of work.

Councilman Davis said if she remembers correctly, computer equipment was replaced and money was provided for that earlier this year. She asked why there was more for Y2K compliance. Mr. Secor explained that the first round that was done was due to the fact that they knew all of the equipment at the Vly Creek plant was more than 10 years old and was not going to make it. He further explained that they did the data concentrator and the main equipment and said in there that there would be a secondary round after the inventory was done and they knew what was needed. He said this investigate work has been done and this is another installment of another \$25,000. He said this should finish this work. He said when everything is replaced they will then have to challenge it. He said there is a whole series of tests to be done. He said his plan for New Year's Eve is for him to be at the Vly Creek plant. He said the Chief operator will be at one plant and he will be at the other. He said they feel they have the bases covered, noting the system is a gravity system and once it is out of the plants, everyone will have water. He said they have generators and back-up. He said the telephone system may have a problem of busy circuits. He said assuming the phone system is up and running, they do not expect they will be able

to get a hold of the employees. He said crews will be on site, just as a safety factor and because they know they will be able to contact them if they are needed.

Councilman Burns asked who keeps track of all the EPA regulations and State mandates coming down. She asked if they come to Mr. Secor and he keeps track of them. She mentioned she spoke with Ed Moore and he says there is no way any person can usually keep track of all of them. Mr. Secor said they usually get notified by the State. He said they are members of the American Water Works Association and they help keep track of Federal regulations. He said they are members of the Adirondack Waterworks Council and through the Council and the Rural Waterworks Association. He said it is a joint effort because no one person can do it. He said he does not read the Federal register every day. He said this has piled up on him and he did not anticipate having to do this much this year. He said when they did the comprehensive plan evaluation, it was obvious that these items had to be done.

Mr. Secor said you cannot dabble in this stuff, you have to get things done for all the system and retrain everyone. He said the operators have been cross trained. He said they are both water plants but they operate differently in the way they purify the water. He said the operators have to be trained and knowledgeable at each end. He said he does not know if this is everything that has to be done but it is everything he knows right now. He said some of the items are mandated for 6 or 12 months or 14 months but he has to get started on them now because there is order times to be considered.

Councilman Burns said she thought the comprehensive plan was started in June of 1998 and got it in November of 1998, however, the Board has not received it. Mr. Secor said he did not pass it out. Councilman Burns noted there is a section in it that says immediate needs. Mr. Secor said this was correct. Ms. Burns said there is also long term needs and they have no way of knowing what these are. She said he went through this and went through these but the immediate needs were the geese, coming up with a plan about the geese. She said the next thing he said was that there was to be a plan for the raw water quality pipeline. Mr. Secor said all of the immediate needs have been taken care of. Ms. Burns said her point is that the Board has not seen the report. Mr. Secor said he will be happy to get a copy for the Board, noting it is a very technical report. Councilman Burns also asked how Mr. Secor tends to implement it. Mr. Secor said the most immediate things are being addressed. He said they chase the geese but they fly up and come back. He said everyone has this problem. He said the wintertime is when they try to get the geese to leave because they try to keep a section of water open. He said once it freezes completely they go on. He said the geese are a potential source of contamination of the water supply.

Mr. Secor said the whole reason for a water plant is because you anticipate there is going to be bacteria that's going to be present. He said they will respond regarding the issues addressed in the plan. He said there are some items that he is not sure how to accomplish.

Councilman Davis indicated there will be a need to spend more money to address these issues. Mr. Secor agreed and said this is the implementation of the stuff that needs to get done and be worked on. Supervisor Fuller noted the plan is available in the Clerk's office. She said there are 2 binders of it and Mr. Davies has been in and reviewed it. Mr. Secor said that was the emergency plan and they are talking about the comprehensive performance plan, noting this is the one that the NYS Health Department did. He said he has lots of plans. Supervisor Fuller agreed and said we do not have the money to back-up all these plans that someone sits and decides we need to have. She said she hoped all the taxpayers are listening.

Councilman Burns noted she had the information from the computer request prior to this meeting. Mr. Secor said that was Vly Creek plant work. Councilman Burns said she did not see any mention of additional work. Mr. Secor said that memo was for the distribution system, the interconnects and software at the other plant. Councilman Burns said this did not come up with Y2K. Mr. Secor noted

it did come up with Y2K because the data concentrators and things are very solid and it worked wonderfully for 10 years. He said when they went back to the manufacturer, they could not or would not certify that these 10 year old pieces of equipment would be Y2K compliant. He said the bigger problem was that they did not support the software any longer that ran these machines.

Councilman Burns said she was having a problem because Mrs. Kehoe and Mr. Dammeyer said all the computers in the Town were Y2K compliant and everything was being taken care of. She said they also indicated there would be no more big expenditures and now this one is before the Board. Mr. Secor said when Mr. Dammeyer did his inventory, he did his inventory of the AS400 and all of the systems connected to that. He said it excluded the water plants, the waste water treatment plant and the distribution system. He said it was not part of the AS400. He said that inventory and discussion was specific to the AS400 and the affected systems.

Mr. Secor said the Town-wide inventory involves a lot bigger picture than this. He said the water and sewer are separate. He said he has already done the sewer plant earlier this year. He said this is the last round. Councilman Davis said she remembered Mr. Secor informing the Board of this earlier. Mr. Secor said he thought he had and that was the first round. He again said he is not going to say there will not be anything else because they are still testing. He said this is everything he knows right now and it will take care of this. He said any other minor things will be taken out of the regular operating and maintenance budget. He said these major things are beyond what you can do with the O and M budget.

Supervisor Fuller asked if there were any other questions. Councilman Burns asked if there was a consultant that worked on any of these mandates or the plan or anything. Mr. Secor said there was a consultant who looked at the bulk storage, Bob Ganley who also did the clarifier work. He said the rest was done in house by himself and Mr. Sayward. He said the \$19,000 tank is just done with 3 quotes from various suppliers. He said the risk management plan is being done by C.T. Male and there were 3 quotes on that with C.T. Male being the best price. He said the computer equipment is Rist Frost. Ms. Burns further asked if there will be rfps on the computer work and roof work. Mr. Secor said no, there will not be rfps, there will be bids. He said they will go out to construction bids if the Board funds this. He said the rfps have already been done. He said this would be another implementation and they will select a contractor. He said all the hardware for the computer is being bought off State contract. He said there is no rfp for that because it is on the State contract and it is a matter of getting software that will fit and quotes for that. Mr. Secor said the only real consultant was Ganley who did the inside and outside secondary containment for the chemicals.

The following resolution was presented for adoption:

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem in the County of Albany, State of New York has on the 9th day of June 1999 duly adopted a resolution as follows:

WHEREAS, The Town Board of the Town of Bethlehem has determined that it is necessary to replace various pieces of equipment which are more than forty years old at the New Salem Water Purification Plant, provide improvements to meet new State and Federal regulations, and replace computer equipment in purification plants and distribution pumping stations to address Y2K requirements in order to maintain plant operation and to protect the health and safety of the community; and,

WHEREAS, it is estimated that the costs of said work will be approximately \$221,000; and,

WHEREAS, in recognition of these needs, funds for such repairs have been set aside in the Water District Capital Reserve Account; and

NOW, THEREFORE, BE IT RESOLVED, that it is in the public interest to complete these improvements and related work; and

BE IT FURTHER RESOLVED, that the Town Board authorizes the expenditure of the reserve monies to fund these improvements up to a maximum amount of \$221,000; and

BE IT FURTHER RESOLVED, that the Town Comptroller is authorized to expend from the Water District Capital Reserve Account the funds necessary up to \$221,000 in said reserve fund to engage the lowest qualified bidders to effect said repairs; and

This resolution shall be subject to a permissive referendum, as permitted by law.

The motion to adopt the resolution was made by Mrs. Johnson, was seconded by Mrs. Davis, and duly adopted by the following vote:

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

Noes: None.

Absent: Mr. Lenhardt.

Commissioner
of Public
Works approval
of Water
District Budget
Modification

The next item was a request from Bruce Secor, Commissioner of Public Works, for approval of a Water District Budget Modification. Mr. Secor said again he gave the Board a memo and some back-up material. He reviewed the material for everyone's information. He said the budget was put together in the summer of 1998 based on projections for average weather conditions for the year 1999. Since the budget was put together, Mr. Secor explained there has been some very unusual weather. He said the fall of 1998 was one of the driest falls and the month of April 1999 was the driest month recorded this century. As a result, Mr. Secor said, of these factors water sales have been ahead of normal and is projected that water sales will exceed the original estimates. He said the tabulation shows the sales revenues for the period 1991 through 1998 and the amount budgeted for 1999. He said the total water sales revenue for 1997 was \$2,999,570 and this was the latest number available when the 1999 budget was prepared. He said the 1999 budget shows estimated revenues of \$2,930,000 which is basically the same as what was in 1997. He said that number is too low and needs to be adjusted based on current information. He noted the graphs for water use shows an increase of 14 percent in the spring of 1998 to 1999.

Mr. Secor said he recommends a budget modification to increase the estimated water sales for 1999 to \$3,238,000 which is basically a 6 percent increase over the actual experience for 1998. He said he also requests corresponding budget modification to increase expenditures so there is no net change to the water budget. He said there is no change in taxes and no change in water rates. He said both revenues and expenditures will increase equally.

Mr. Secor said the extreme weather conditions has affected this, noting there are water restrictions in effect at this time. He said he thinks they will remain through the end of June and may have to look at additional restrictions depending on whether there is rainfall. He said in the spring each year, there is usually 25 to 30 inches of rain, however, this year we have gotten 5 inches except for the month of March when there was an additional 5 inches, which is 10 inches for 1/3 of the normal from measurements taken at the Vly Creek reservoir. He noted it can rain at the Albany airport and not rain here and vice versa. He said there are 2 rain gauges up at the Vly Creek reservoir to track daily rainfall precipitation.

Mr. Secor said he remembers a discussion when the budget was put together about the revenue estimates and he was reluctant to predict changes. He said at this point we are having a good year.

Supervisor Fuller asked if there were any questions. Councilman Burns said at budget time, there was \$165,000 budgeted for Albany water rents in 1999. Mr. Secor said that was correct. Ms. Burns said at budget time she brought up the question because she knew from her projections that that was too low. Mr. Secor said his projections were based on 3 or 4 things. One was the fact that we would have a normal or average year, Mr. Secor explained. He said the second thing is that the production at the Clapper Road plant would continue to be at about the same levels as before. He said it was his anticipation that they would have some improvement in the raw water supply with hopefully hooking up a supplemental well which at that point had already been drilled. The possibility was discussed, according to Mr. Secor, with the Board of using this well as a

supplemental supply. He said based on the water quality, this may be something to be used. Those things have not occurred, according to Mr. Secor. He said the reality is that we are selling a lot of water and the actual revenues are going to be higher than what was projected. He said there is no impact as far as the users, no rate change but it is necessary to adjust the budget so it is a realistic budget and pay the electric bills and pay the things that must be paid when this volume of water is pumped.

Mr. Secor noted there has been a good job done as far as balancing the budget and a good job of keeping the tax rates down. He said the water rate has not changed in 6 or 7 years. He said the residents have seen a very level \$1.07 per thousand for residential use but there is a need to adjust the budget to make it realistic to the experience. Supervisor Fuller noted there has been an increase from the City of Albany. Mr. Secor agreed, stating it was a 6 percent increase which he did not think would be put into effect this year.

Councilman Davis asked Mr. Secor why he chose to do this now. Mr. Secor said he wanted to bring everything to the Board at the same time. He said there are the expenditures of the Capital Reserves and this. He felt this needed to be done at the same time in the event there were any questions. Councilman Davis asked if there was a relationship between this request and the subsequent request for the modification of the water supply permit. Mr. Secor said only to the effect that some of this money is going to pay Albany water bills and the next item is a discussion of how to mitigate those bills. He said again this can come together.

Councilman Burns asked Mr. Secor if he knew how much money has been spent to date on buying Albany water. Mr. Secor said he did not have the figure in front of him. Ms. Burns said she did and according to Albany their readout indicates \$147,136.73. Mr. Secor said he would have to verify that because getting the bill straight is an ongoing problem. He said he would assume that they have it correct. Comptroller Kehoe said it was probably cash basis not accrual. Councilman Burns said if you project what was done last year and add that to the \$147,000 that would equal \$346,086.23 by the end of the year, so that is possible. Mr. Secor said, again he can't project the weather. He said 2 years ago there was 10 inches of rain in July, he doubts we will get that this year. Councilman Burns said when she asked about the amount at budget time, she did not know what the weather would be either but she had numbers she worked with and she could not understand how he came up with his number. Mr. Secor said again, the projection was based on the minimum purchase which is about \$110,000 and is the minimum guaranteed purchase to Albany plus about a 50 or 60 percent cushion as far as over purchases. He said we have gone beyond that and there is no question about that. He said we have been forced beyond that because of underproduction at the Clapper Road plant. He said that would become part of the cost which would be included in the claims against the litigants. Councilman Burns said just as he could put in the litigation what we buy from Albany. Mr. Secor commented that was what he just said.

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

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the budget modification as requested by Commissioner of Public Works, Bruce Secor, and listed in his Memorandum dated June 1, 1999 and on file in the Town Clerk's Office. The motion was passed by the following vote:

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

SUPERVISOR FULLER: The next item on tonight's agenda is a request from the Commissioner of Public Works for approval of modification of the water supply permit. And, part 2 of that is going to be authorization to convert the test well to the production well, if at

the end of the discussion we decide to go that route. Part of it was left off the agenda item.

COUNCILMAN BURNS: What do you mean part of it was left off.

Commissioner
of Public
Works request
Modification
Water supply
permit and
authorization
to convert
test well to
production
well

MR. SECOR: It is in the memo.

SUPERVISOR FULLER: It's in the memo to you, it just wasn't carried over on the agenda.

COUNCILMAN DAVIS: The language.

COUNCILMAN BURNS: I understand your intent...

COUNCILMAN DAVIS: The language is not complete.

SUPERVISOR FULLER: Nothing is left off.

COUNCILMAN BURNS: I understand your intent but it is not on the agenda, that is correct.

SUPERVISOR FULLER: It's only because Kathy Newkirk didn't type it in. I am not blaming you but this isn't a major discussion item. It's in the memo and what she did was just go through the approval of modification of water supply permit.

Go ahead, Bruce.

MR. SECOR: Mr. Alessi was going to start off to keep me straight on the ground rules.

COUNCILMAN BURNS: I have that.

SUPERVISOR FULLER: Sorry.

MR. ALESSI: Good evening Members of the Town Board, Mr. Kaplowitz, Ms. Newkirk. It is nice to be back here. You know, I was hearing that discussion about plan development districts and you know, I kind of like going back to a time warp and hearing that and I said, gee, I feel like I am back on the Planning Board and then I looked at my watch and it was only 9 o'clock, so I knew I was before the Town Board.

On tonight's agenda, this issue with regard to the conversion of the test well to a production well, I just want to repeat what I have said at every meeting. And, that is, we are in litigation. We have a need to balance the need to keep our litigation position secure and, therefore, I am going to keep an eye on that as we have in the past trying to balance with that the need to keep the public informed about certain issues. So, as we have done in the past, the Town Board will get all of its questions answered, that's never been a question. It is not a question tonight. It's just that the form for answering those questions may need to change depending upon where we go. So, I just wanted to cover that important point with regard to the litigation. And, Mr. Secor is going to go over some issues with regard to this test well to a production well and then I will come back after Mr. Secor is done and put this in a context that has a legal slant to it and certainly be available for questions.

SUPERVISOR FULLER: Thank you.

MR. SECOR: I am going to speak without standing in front of the microphone, hopefully... Kathy if you have a problem picking me up, let me know.

TOWN CLERK NEWKIRK: It's okay.

MR. SECOR: I want to start back with the original... how we got into this and just give a couple minutes of background and then we'll get to the memo at hand. The Town Board meeting of May 13, 1998, O'Brien and Gere was here and presented to the Town Board their proposal and cost estimate for drilling the test/supply well installation and showed the comparative numbers. The purpose of this letter is to summarize estimated costs associated with the installation and pump

testing of the test/supply well in the vicinity of ground water infiltration trench. Along with that letter was a fax letter that was attached to the information given to the Town Board as attachment number 2 and this says included in the fax is the location of the proposed test/supply well in relationship to the infiltration trench and the schematic of the proposed test/supply well. I will just throw that up on the board for purposes of clarification... what I am getting to is just the location map here.

This was a schematic... the test/supply well schematic that showed a 10 inch casing with a 16 inch outer bore. What was actually constructed was a 12 inch by 16 inch. They... When Rist Frost... when Rust and Fraser submitted their revised... they actually went to a 12 inch casing here. That's what's down there. That was built in the summer of 1998. This is the location map that was attached to that original material, approximate location of existing infiltration system... here's the Hudson River, here's the mouth of the Vlomankill. The approximate location of proposed test/supply well, 50 to 100 feet from the edge of the river in the field located and actually ended up to be about 50 feet from the edge of the river. And, it is about... between 700 and 800 feet south of the south end of the existing infiltration system. That's kind of an overall map. It shows Castleton-on-the-Hudson.

This next map is something that I included in the package to the Board. Again, this shows the location of the test/supply well, a little different scale. This is the Hudson River out here, this heavy line is the wooden bulk head which becomes a concrete and wooden bulk head up by the existing ground water infiltration system. This is pump station or well number 1 of the existing ground water infiltration system and this shows the 24 inch pipe line... existing raw water pipe line by the infiltration system where we're projecting to tie into, run a new 8 inch pipe line down to tie the test well in. That would be the physical improvement. The well is already there. We have to run electrical power, controls and things.

In the Memo I gave the Town Board for this meeting, after the test well was done, the testing was completed in February of 1999. O'Brien and Gere came back and presented the Town Board with its report on the test well. We had an extended discussion on February 24th. In the end, I was requested to find out from the Department of Environmental Conservation and the Health Department what would be the regulatory process if we were to consider using this as a supplemental supply and changing this test/supply well into a production well. I have included for the Board the response we got from the DEC which is a letter dated March 1st. It simply says we need to do a modification of the water supply permit. They sent me the forms. There were 2 phases of forms that I had to fill out. I filled those out in draft so that the Board would have the information and see what those forms would look like. I also enclosed this little bit of a plan, there is a 24 by 36 inch full scale drawing that Kathy has on file that shows how we are projecting to extend the pipe line to connect the existing test well to the raw supply line again so that the Board would have an idea of the physical construction and the costs involved.

O'Brien and Gere has provided a typical well detail showing the connection to the test/supply well and the meter pit. The estimated cost for installing the new well pump providing 3-phase electric service, motor controls and the 8 inch diameter pipe line, meter pit and appurtenances is \$150,000. That estimate was put together by O'Brien and Gere and I guess I forgot to put that in the package. But, I have that right here. But, I can put that out.

One of the issues raised during the consideration of drilling of the test/supply well was to compare these costs to the purchasing of water from Albany. A separate sheet is attached which shows that the purchasing costs... that is this chart... there is a typographical error on the chart, this was prepared using an average pumping rate of 300 gallons per minute which would be 42,000 gallons per day and 157,680,000 gallons per year. The costing is all based on that 157 million gallons. The cost of purchasing water from the Albany supply would also be at 157 million 680 thousand gallons. So, we are

comparing apples to apples, unfortunately I have a typo in this sheet. Showing this, there's the \$150,000 that would be an upfront expense to building the pipeline and connecting or refitting the well to make it a production well. Electricity costs are about 11 cents per thousand gallons pumped or about \$17,000 a year for electricity. We put in some money for maintenance. Purification plant costs are about 25 cents per thousand, that is the incremental costs not the total cost. We already have the plant operator. We're already paying the debt service. Everything is there. Whether that operator makes 1 million gallons or 1 and 1/4 million gallons, or 1 and 1/2 million gallons, your fixed costs are the same.

The incremental costs are the additional electricity and chemicals that it would take to produce that additional water. Just as your incremental cost will be how much would it cost to buy that additional water from Albany. So, again, we compare... we're comparing apples to apples because we're talking about if I have to buy another 400,000 gallons a day, if it comes from this source, this is my incremental cost. If it comes from the Albany source, this is my incremental cost.

The total cost of producing 157 million gallons in a one year period would be about \$208,000 if we did it ourselves. If we purchase that same volume of water from Albany at the current price of \$1.92 plus about 10 cents for pumping costs, the Albany cost would be about \$318,000. The Albany cost would be \$110,000 more than if we were to do it ourselves. In the second year, since we paid the \$150,000 costs completely in the first year, the second year that's paid so your... the next year, you're just dealing with the incremental cost for electricity and chemicals. So, your cost in the second year is \$60,000 compared to \$320,000. So, the second year you would save \$259,000 versus buying from Albany and the third year about \$255,000. I did not put any price increase in here from Albany. I used the same number from year-to-year for the purchase. I am assuming that since they just had a 6 percent increase, they would not have another increase right on top of that. If they were to have another increase in year 2 or 3, our savings would be greater. This shows that a projection for just the first 3 years of... savings of about \$625,000 doing the water ourselves by connecting this up versus purchasing water from the City of Albany.

On a unit cost basis, you are looking at the cost from the test supply well of about \$1.32 for the first year and about \$.38 a thousand for the second and third years. That compares to about \$2 a thousand from the City of Albany.

I've also included in the package again to give a comprehensive look to the Board, the full environmental assessment form. Again, I filled this out in draft and tried to identify things that are in here and answer all of the questions. Based on that, we have prepared a draft resolution on SEQR since this is an unlisted action, Bob, is that the right way to say it?

MR. ALESSI: Right.

MR. SECOR: The Town Board would have to make some kind of a SEQR determination before they could make a vote on anything they want to do. So, you'd have to do SEQR up front. So, we have provided that information for the Board. And, I've also attached a preliminary laboratory analysis which was provided by Adirondack Lab. Adirondack Lab is an independent testing lab. They had done... they were supposed to do a complete analysis according to part 5. There were a couple things that weren't ready last Friday when they gave this to me. They have since faxed me just today, a revised one that includes the radiologicals and pcbs and a couple other things. I will hand those out.

Unfortunately, Adirondack in preparing this report did not report in the same manner we would normally see them where they list the natural contaminant level or threshold level and compare it to the reading. I penciled in and they are barely readable, sorry about that... I penciled in some of the numbers. Adirondack is preparing a new report which they say they'll get to me tomorrow. It will have another column showing the ncis. It is a direct comparison between

the maximum contaminant levels and the method used, the result and the... so you can compare the result against the maximum contaminant level. In most instances, they are using a detection level which is low enough... there is a couple of them here that I am going to have to take issue with them on where the detection level is equal to the ncl and that's not normally... it's a barely acceptable lab result and I am disappointed with these people and I will get that straightened out with them because we had gone through this with them before on getting that straight. It is a matter of them going back and redoing some of the work. But, anyway, there's a copy of the water analysis. There is nothing in here that creates a problem that cannot be handled. Remember, we're actually talking about raw water. The iron manganese that are shown here are not as high as it had been in the earlier tests with the test well so it is mellowing out as had the infiltration system. The hardness is down to about 150 I think it was if I can find it... 156 and the iron level 14... But, anyway... which is good because it started out at 20 something. So, it has come down quite a bit. That is very treatable when blended with the rest of the water and goes through the plant, that's very treatable, we would have no problem making water to meet drinking water standards from that.

Based on the information provided by O'Brien and Gere, we recommend the Town Board authorize the Supervisor to sign the application to amend our water supply permit to proceed with the formal application to the Department of Environmental Conservation and the Department of Health to allow connecting the test/supply well. I further recommend that the Town Board authorize conversion of the test/supply well to a production well connected to the existing 24 inch raw water supply line as outlined in the letter, subject to receiving a report from a regulatory agency.

I just want to put this other map back up here for a second. When O'Brien and Gere was here on February 24th presented their report on the test well, one of the issues that... two of the issues that were discussed was the status of the siltation study. The silta... if I can say it.

SUPERVISOR FULLER: Siltation.

MR. SECOR: Thank you. The siltation study is still being finalized. They are still getting their final data together, getting all of their references under control. But, we expect to see that by the end of the month. I expect to be able to present that to the Town Board at the first meeting in July and have O'Brien and Gere here to present that. It was specifically asked and discussed during the presentation on the test well and actually going back to the earlier meeting, would that study have any effect on the test well? And, the answer really is no and I have verified that again with them today. There is no reason for us to have to wait to see that which was done up here by the existing infiltration system. The test well was set up and designed taking into account that they were allowing for siltation. They had used some very conservative numbers in giving us long term effects on this. The other issue, excuse me... I haven't eaten dinner but my stomach wants something.

Siltation... I am lost, I lost... hold on a second. I lost my train of thought, I am sorry. I'm sorry... I'm sorry I've lost it.

SUPERVISOR FULLER: Questions from the Town Board.

COUNCILMAN DAVIS: Yes, I have some questions, Bruce.

SUPERVISOR FULLER: Go ahead.

COUNCILMAN DAVIS: The test well is not... isn't, as you have made clear and your map shows, in the same area as the original infiltration gallery.

MR. SECOR: That's correct.

COUNCILMAN DAVIS: It's about... as I remember, it's about 800 feet.

MR. SECOR: It's 800 feet southerly and one of the discussion points when O'Brien and Gere originally recommended the location and presented that to the Board was they wanted to make it far enough away so that there would not be interference either from... either from the infiltration gallery on the test well or in the other way around, the test well on the infiltration gallery. So, they decided long enough away. So, there really isn't any conflict with those.

COUNCILMAN DAVIS: Okay. Not just conflict. Can you explain again, I mean I remember, but just for the record why this area is preferable to something further north or some other place?

MR. SECOR: Guy Swenson...

COUNCILMAN DAVIS: In relation to the aquifer, you know, what we've heard.

MR. SECOR: Guy Swenson had addressed that. Going back to the... let me get the bigger map out here. The existing infiltration system is up here it is about 800 or 1,000 feet southerly of the Vlomankill. It is about 1,000 feet long. Based on the borings we have it appears that the bedrock slopes to the south slightly. This was about 35 to 40 feet deep so it is a little... the aquifer thickness is a little deeper coming down this way. They had done some geophysical work looking at the rest of Schermerhorn Island and I do want to point out one other thing in that line. When we acquired the site to build this on, we had a survey done and it was done by Boutelle's office which is right here in Delmar. And, this is the best... this is a blow-down of the larger map. The infiltration system is at the northerly tip of Old Poplar Island. This whole area is now referred to as Schermerhorn Island but the infiltration system is here. The test well is basically in the middle of the old existing island. So, when we drilled down through, we went through some sandy material and actually got into some nice gravel down at the bottom which is a natural feature based on this old map. This map was prepared in 1993 and if you notice the shape of the end of Poplar Island and the angle point in the bulkhead, there's a much earlier map which was prepared by a civil engineer/surveyor back and this is 1909 and this shows again Poplar Island... you can see the shape of the end of this, the angle of the bulkhead, Sills Middle Island that shows up on the other map and where this test well is, PW1. Poplar Island goes so far, there is a fill area in here and then you get into the beginning of Schermerhorn Island. So, again, here is Sills Middle Island, Poplar Island where the test well is, the infiltration system is up here. So, the reason this area was selected was that the aquifer is deeper. You are into original material, you are in the middle of this island. There is still plenty of aquifer below us, this goes all the way down for almost a mile southerly of this. It was O'Brien and Gere's recommendation, one of their 4 recommendations... one of the 4 was that additional borings be taken down through here to look if the aquifer continued to get deeper, if the gravel vein continued to get larger and that's something that is still pending. But, we did do the geophysical work. The borings have not yet been done. But, the answer to your question is, they moved southerly to get away from the interference with the infiltration system and also because we knew from previous borings that this aquifer was getting thicker. Remember in the original design presented to us, this was 6 million gallons a day expandable to 12. So, we put a 24 inch pipe line in here. We spent some additional money to get up to 12 million gallons a day long term, future expansion. The water purification plant was built with the idea that it could be... go from 6 million and be expanded at some point in the future if we needed to to go to 12 million. So, it was always intended that this was the first phase of a development and that additional expansion would occur down further in the aquifer.

COUNCILMAN DAVIS: Bruce, how definite is the \$150,000 figure for this conversion?

MR. SECOR: The \$150,000 cost estimate provided by O'Brien and Gere is intended to be a conservative estimate. I would expect our actual out of pocket cost will be less than that. He had... let me throw that up for just a second. In this estimate he had \$25,000 for pumps, motors, ... whatever, that's probably pretty good, pump

installation, pipe line costs. I would expect we would do this ourselves. We have 8 inch pipe in stock, digging the trench in the field 4 feet deep -- our guys do that every day -- we would still charge it against this project but we would do it ourselves. The electric work, again, we would dig the trench but have a licensed electrician come and actually do the installation and there's \$50,000 in miscellaneous. I have done the engineering. I've got to hire somebody to do some electrical work but we're not going to spend \$50,000 on that. So, I... realistically we're looking at an out-of-pocket expense of around \$100,000 and the rest of it is contingencies. And, I don't expect we will get into that. It is an open corn field. We haven't allowed the farmer to plant it any more so it's just an open field that we have to put a pipeline through. And, I don't... we've already dug in the whole area with other things so I don't expect any... you know, no rock outcroppings or anything and we've got all the borings.

COUNCILMAN DAVIS: So, O'Brien and Gere arrived at this figure?

MR. SECOR: Right. That was prepared by O'Brien and Gere.

COUNCILMAN DAVIS: And, your calculations are based on the well production of roughly, and you had this up there earlier, 400,000 gallons a day.

MR. SECOR: That's correct.

COUNCILMAN DAVIS: How accurate... how dependable do you think that figure is?

MR. SECOR: The O'Brien and Gere report... we've pumped that well at more than... or just about 300 gallons a day since last November and it's held in very well. We've done extended pumping just to look at water quality analysis. O'Brien and Gere have projected a long term number... a conservative number of 275 gallons a minute over the long term, expecting that there would be some lessening of the efficiency of the well with time. In O'Brien and Gere's report and in the discussion with the Town Board in February, Guy Swenson talked about a 3 to 5 year cycle where you would probably have to go in and do some well maintenance but the first 3 to 5 years, we should expect that yield to stay at 300 and it may tail off to 275 in the outer years. And, again, you have to remember this is not a final solution to the problem. This is an incremental step. It was a test supply well, it's given us some very good information but someone still has to progress this to a solution. No one has put a solution on the table yet that says we should do rainy wells or horizontal wells or vertical wells yet. We are still waiting for that to be put forward. And, that again will come through the litigation process. Bob, I'm speaking out of turn but...

SUPERVISOR FULLER: But, I really think the bottom line and the most important line is how much money are we going to pay Albany. If we can save the money...

MR. SECOR: And, I'd ask Bob to step in on that just as far as the mitigation because he has spoken about this a number of times in our duties as a litigant.

MR. ALESSI: As I've indicated, we've got to be circumspect about how much we talk about the litigation. But, what I want to do is just... just to cap up one item Bruce was mentioning. Back in May of 1998, we came before the Board, O'Brien and Gere was here and we made it very clear at that time that we wanted to put in a test well, that we wanted the ability to go to a production well and we told the Board, we told the public, that that's what we wanted to do if the results would warrant it. And, that's what we've been doing since then... is testing this well to determine whether or not it could turn into a production well. And, again, since May 1998 before this Board, it was talked about in those terms. And, so, I want to go back to where we started with regard to talking about this production well to come to where we are now. After the Board finishes its questions, I will be able to address a little bit more this issue with regard to mitigation. I am not going to state any requirements that we may have that's not appropriate for an open meeting. But, I can tell you

very clearly that based upon what O'Brien and Gere has said and the response to Mrs. Davis's questions about what O'Brien and Gere has represented. What O'Brien and Gere has said to me that the siltation study is really no relation to the issue because they've assumed that there will be siltation of this particular well and they've added that into the calculation, something we never found was done with the infiltration system, at least Rust and Fraser has never produced to us that they considered that. That has been considered with regard to it so, I'll come back to the mitigation question if needed later on.

COUNCILMAN DAVIS: I may have some other questions but the \$1.92 figure per thousands gallon then, we really can't... we can't depend on that I mean, it was just increased to that, it was a 6 percent increase.

MR. SECOR: Our contract with the City of Albany says we are subject to whatever increases they...

COUNCILMAN DAVIS: Right.

MR. SECOR: ...install.

COUNCILMAN DAVIS: If they increase the cost from \$1.92 to whatever, the savings will increase.

MR. SECOR: That's correct.

COUNCILMAN DAVIS: That's the bottom line, I mean rather than \$625,000 it will go up as savings.

MR. SECOR: That's correct.

COUNCILMAN DAVIS: At least that seems to be pretty clear result.

MR. SECOR: Right, and even if you had to redevelop the well in the 4th or 5th year, the redevelopment cost from what O'Brien and Gere has presented is \$5,000 to \$10,000. I mean it's not \$150,000. You don't spend that again. So, it would be... there would still be savings, you might in the year 4 or 5 have some redevelopment costs or whatever but they would be... you pull the pump out, redevelop the well, clean the well and put the pump back in and you pump... you start pumping again. So, it is a very common practice for ground well, from ground water wells. I mean, that's just an ongoing maintenance item.

COUNCILMAN JOHNSON: Bruce, very simple observation but this test well ties in with our aquifer according to your drawings so it's still for the industry.

MR. SECOR: That's correct.

COUNCILMAN JOHNSON: Water just like the other source.

MR. SECOR: It's the same aquifer, it's just a different portion of the aquifer so there's not interference.

COUNCILMAN JOHNSON: Right, yes. I think your numbers make all the sense in the world.

MR. SECOR: Okay.

MR. ALESSI: Bruce?

MR. SECOR: Yes.

MR. ALESSI: If I can just supplement the answer about what Albany might do. I can tell you what they've done. Just to show you that they're not going down in their direction with \$1.92 and historically they haven't. But, they have already done something already that sort of gives you an indication of foreshadowing. They have indicated with regard to the Town that if the Town wants more money... more water, that they'll charge at least for now \$1.92 but what they are saying is... you got to tell us how much you're going

to use and that is what you have to purchase and whether you use it or not, you've got to pay for that. So, I think that is a clear indication of what's going to happen with the cost from the City of Albany. And, that's in writing from the City of Albany.

COUNCILMAN BURNS: I have some questions, Bruce.

MR. SECOR: Yes.

COUNCILMAN BURNS: Um, how much is it yielding now, the well... the infiltration well?

MR. SECOR: About 300 gallons... the infiltration system?

COUNCILMAN BURNS: The infiltration system.

MR. SECOR: About 1,000 gallons a minute.

COUNCILMAN BURNS: So...

MR. SECOR: It's about 1.1 million gallons, 1.2 million gallons.

COUNCILMAN BURNS: We started out at what?

MR. SECOR: We had averaged a little less than 2 for the last couple years. The one year was a little more than 2 and then the other year was like 1.7, 1.8... something around 1/8 to 2. It's about half of what it had been doing.

COUNCILMAN BURNS: So, it's gone progressively... it's progressively decreasing.

MR. SECOR: It leveled off... the first year it leveled off at about 1200 gallons a minute and then came back during the summer when the water warmed up. The second year it did a little bit of that... 96, 97... started in 96, 97, 98, yes, this is the third year.

COUNCILMAN BURNS: I guess my point is that it decreased.

MR. SECOR: It has decreased but it is stable.

COUNCILMAN BURNS: We have no assurances that what O'Brien and Gere said... this test well is going to produce... what they were saying is it will most likely decrease.

MR. SECOR: No, I don't agree with that. Their design is based on a conservative approach but remember what O'Brien and Gere presented to the Board when the question was asked, why do we need another test well, hasn't this been done before? And, the answer was no, it hasn't been done this way. It wasn't done correctly. Before, the people went in and did small diameter wells and O'Brien and Gere didn't feel they had stressed the aquifer. They went in with a large diameter well for a couple reasons and the biggest one was is to get a very thorough test under real conditions and we've done that. And, the long term number, the 275 gallons a minute, I think, is a very sustainable yield. It will require some maintenance but it's there and it is not... this is a standard well. There are millions of these things in existence. I mean, this is not some pipe dream, this is a standard well.

COUNCILMAN DAVIS: This is a totally different design.

MR. SECOR: Yes, the other well was different. The infiltration system, back site, clay barrier, whatever it was all predicated on certain filtration rates.

COUNCILMAN BURNS: We're still talking about an aquifer and the capacity of an aquifer which we don't...

MR. SECOR: But, we don't know the capacity of the aquifer.

COUNCILMAN BURNS: Right.

MR. SECOR: And, that's one of the things that has to be projected.

COUNCILMAN BURNS: There are variables and factors that we don't know.

MR. SECOR: That's correct.

COUNCILMAN BURNS: And, just to...

MR. SECOR: But, again, we are only looking 3 years out. We're not looking 30 years out at this point. This is... you have pay back in the first year. You save \$110,000 in year 1. It isn't like you have to wait 3 years and gamble on something. This is absolute pay back in 1 year.

COUNCILMAN BURNS: I understand the cost and what you put up there...

MR. SECOR: Okay.

COUNCILMAN BURNS: No problem. I just want to put on record that the test/supply well, for me, and when we discussed this at the time was for study purposes only. That was my intent, that was what I thought and that was how I proceeded. Also, the dredging that was brought forth to this Board and said we needed this dredging in order to study this test well and the aquifer was for that purpose and I find it amazing that now the dredging has no relationship on this at all...

MR. SECOR: If you go back and look at the Town Board minutes, that's not what you said.

COUNCILMAN BURNS: So, wait, I want to finish -- I want to finish and it is our duty as this Board, to properly analyze and project the yield. And, our investigation relies on this O'Brien and Gere report period, there is no siltation report, at all, not yet.

MR. SECOR: But, that's not a correct statement.

COUNCILMAN BURNS: Which we need to look at, therefore, it is a limited scope analysis you are asking us to do tonight and we can't properly predict that. And, it's incumbent on us to have all the information...

MR. SECOR: But, that's not true.

COUNCILMAN BURNS: ...make a decision, yes, it is.

MR. SECOR: Three of the things...

COUNCILMAN BURNS: I disagree with you.

MR. SECOR: ...you just said are not true and if you will look at the minutes of the Town Board meeting, you will see specific quotes, specific responses to your own questions which say what you just said is not true. And, that's my problem with this, is that the material is being presented, you specifically asked is this a well that could be used later and the answer was yes. You asked that question and got a direct answer.

COUNCILMAN BURNS: As I said, it was my impression and I proceeded along the lines that it was a test/supply well. I understand what your intent was.

MR. SECOR: All right. And, the other issue.

COUNCILMAN BURNS: So, we have a difference of opinion.

MR. SECOR: Which is fine, that's no problem. The other issue on the...

COUNCILMAN BURNS: The dredging issue and the siltation report...

MR. SECOR: ...test dredging...

COUNCILMAN BURNS: ...which we've already paid for back in November, \$8,000, though we don't have the report yet...

MR. SECOR: Well, that was a partial payment for a partial amount of work that they did. It was a progress payment.

COUNCILMAN BURNS: And, I can't believe, now you are saying it has no bearing on this.

MR. SECOR: But, it is completely correct in terms of what O'Brien and Gere has presented to you. The siltation study had to do with the infiltration galley and those effects. They did recognize that and they did, in the design of the test well, and the projections of what they had learned from the preliminary work on that and that was included in their presentation and concluded in direct responses to questions. But in terms of not making a decision or not making forward and losing the opportunity to save hundreds of thousands of dollars for our customers to wait for that study and wait for another month or two before that would go through, I think is nuts.

COUNCILMAN BURNS: Why can't we wait another month or two?

MR. SECOR: It's time... time is money. Time marches on and money marches on.

COUNCILMAN BURNS: But it is incumbent upon this Board to properly analyze the full scope of this project, not just one portion of it. We do not have that study to look at.

MR. SECOR: The study is not critical to the decision tonight, not because I say so, not because...

COUNCILMAN BURNS: I believe it is.

MR. SECOR: ...not because of the debate, because O'Brien and Gere...

COUNCILMAN BURNS: And, I believe the residents of the Town believe it is.

MR. SECOR: ...the people who are doing the study and putting it before have clearly stated that this was not dependent on that. And, again, we are not proposing a permanent solution to the problem. This is an incremental step. This is a mitigation measure.

COUNCILMAN BURNS: Why did we do the dredging?

MR. SECOR: We did the dredging study as a result of O'Brien and Gere's recommendation on how to look at the existing system and whether or not dredging was going to be an effective maintenance tool to increase production up there and also to find out whether or not the siltation... what type of effect it had on the yield. And, that's specifically, word-for-word in their proposal and in their presentation.

COUNCILMAN BURNS: Let me remind you that there was a timing issue here. We had to dredge because they needed the information, we put...

MR. SECOR: Right and we were stalled for a whole year by people.

COUNCILMAN BURNS: ...the test well in. We had the before and after... there was a whole timing issue involved here.

MR. SECOR: Right and we started that...

COUNCILMAN BURNS: And, I will go back and look at those minutes.

MR. SECOR: ...and you can go back and I reread them today.

COUNCILMAN BURNS: That's why we did it.

MR. SECOR: We started in early 1998 trying to get the permits and we were stalled until December 1998 before we got the permits. We dredged last year in December.

COUNCILMAN BURNS: And, all along the way it was a timing thing. We have to do before and after so that we have a proper study done so

that we can present to the Board and to the residents of the Town and make a proper analysis.

MR. SECOR: But, that has to do with the infiltration system and with a final design for... this is an incremental step. This is not a final design. We are not asking the Town Board to commit a huge amount of money. This is a 1 year payback. Anything that is a 1 year payback is a very simple decision. I hesitate to use the word but it is a simple decision because if you don't spend the money you are just shelling out and shelling out and shelling out. If you have a 1 year payback, you do that, we are still looking for a long term solution but we are trying to save our taxpayers and save our residents money and to mitigate our damages. We are trying to be... work properly and move forward.

COUNCILMAN DAVIS: One of the points you made, Bruce, in your memo was that the cost of the conversion, the \$150,000 that we are discussing right now, would be included in the damages.

MR. SECOR: That is another point.

COUNCILMAN DAVIS: That Mr. Alessi will speak to recover in the litigation process. And, I think that is a very important point that we need to talk about here. That... it's not just money that's gone, this is money that we intend to recover. Am I right, Mr. Alessi?

COUNCILMAN BURNS: And, any money we spend from buying water from Albany, we also intend to get back.

MR. ALESSI: If I could address a couple of points that have been made. First, Mrs. Davis's point and then I'd like to come back to Mrs. Burns because Mrs. Burns you need to read the minutes. I did and I've got it with me and I'm going to start quoting them because I think that we have a team in this litigation and it's a 14 million dollar litigation that's working very hard for the residents and the citizens of Bethlehem. And, we do our homework. And, for 2 meetings I have come before this Board and you've impugned the accuracy of my statements. You just did it again to Mr. Secor and you are jeopardizing the litigation when you do it and I'm going to specifically quote minutes because you have referred to minutes. And, I would like to go through specifically what happened in May of 1988 with this test/production well.

And, in the June minutes, because this is important. In the June 10, 1998 meeting when I went before the Board, and I said that the test/production well should be approved and when I reference backed into May and I said I came before the Board and I said I wanted to make clear that when you made a decision on this test/production well that the people knew that eventually we were looking, if the test results would bare it out, that we would go to a production well. And, I stated that in the May meeting. June meeting, you said to me when I gave that introduction about that point and I am quoting on page 270, you said and I quote 'let me go back to something you said up front, you have been calling this well test/production well. Now the packet of materials I received is right here, this is the information I received. No where in this packet of materials does it say production well. Now these are materials well May 6, 1998 when we several weeks ago', you're referring to the May meeting, 'agreed to drill the test well and no where and I believe looking back into the minutes' -- you represented that you looked at the minutes -- 'was it ever brought to my attention or the residents attention that this was going to be a production well'. And, then you go on to say you first laid eyes on this fact in June and that somehow people were either not providing you information or providing you with inaccurate information. And, I said to you to go back into the minutes, I remember saying it and you continued on. And, you said it on page 271 again, 'and no where was it ever said to me or did I hear production well'. And, then you said, 'my vote essentially would have been different had you said it' on 272. And, then what you said at the end that was particularly noteworthy, you said that this isn't about and I am going to quote you -- 'I would just like to say this, my issue, this issue is not about trust as George and Bob just said and Mr. Alessi and I wasn't here on the Board when he was hired and it is not about money. The issue I brought up was about

accountability'. Your words. I want to talk about accountability because I want to be accountable and I think you, as a Town Board Member, need to be accountable. So, you said -- as I counted it, 5 times that I had never said nor had anybody else ever said production well on May 13. And, I urged you before you said it for the 3rd time to go back and look at the minutes but you had already represented that you did. In the May 13 minutes, I went back again and looked and on page 232 of the minutes, I will quote myself, 'with regard to how that helps us, I believe that the point of looking at a test well and this can become a production well and that is really the final engineering point' and that's when I was indicating very clearly, I wanted the Board to know what was happening. We put in the test well for cost purposes and for value added and then I described what the value added. 'This is the type of well that can be turned into a production well'.

Now, you asked the question of Mr. Geiss on page 234 on May 6, Councilman Burns: it is a test well that can be used later. Your words. Mr. Geiss: It is a test well built to final production well standards, is what it is. Now, I have come to several meetings before the Town Board. I have represented municipalities -- City of Albany -- I can remember specifically when Mayor Jennings was a Councilperson. He was against privatization of solid waste facilities. I was representing the City when they were for it. He disagreed completely with the policy of privatization. But, not once did he say that I said something that I didn't say. Not once did he say I looked at the minutes and that's not what you said. The reason why I bring this up and the reason why I think it is very important for the residents to know the facts, is because I now have responses in the litigation and this atmosphere of politicizing this law suit is jeopardizing my ability to do my job. And, I am going to specifically reference to you and to the other Members of the Board exactly what I mean -- in the interrogatory answers that Rust submitted, they said and I quote 'the Town could have mitigated its damages by way of sinking additional wells at the south end of the infiltration gallery. Rust has already designed and supervised the installation of a test/supply well at the south of the existing infiltration gallery. The test/supply well was drilled by Lane Christenson Company and the findings and recommendations associated with that test/supply well were given to the Town by O'Brien and Gere Engineers'. What are they saying? What are you people doing? You have a report from your experts. They say test well to production well. You've had that report and you haven't done anything and that is their major defense that they are going to have in the litigation. And, we have been standing here arguing about, did you mean a production well, did you say it's a production well and I'm trying to go out there and win a law suit.

So, what I am saying is and I'm urging this Board, is to focus on the issues and stop impugning the people without going back and looking at the minutes. This is not like other policy matters where there is not litigation pending. What you do is read by everyone and my other point I want to make is in their answers to their interrogatories that are going to be filed with the court, there are newspaper articles about the circus that has been going on about this. And, I've got to tell you, I have pride in what I do but I do not and will not any longer tolerate the politicizes of politics that are going on in this and try to win a law suit because I do not want to hear it at the end of the day that there was something about the way, you know, the litigation was handled or something because I am not being able to use all the ammunition that I need to on behalf of this Town. And, when a Town Board Member -- like what you did Mrs. Burns in June says you never told me production well -- I went back and read the minutes. I need to have credibility to go into court and speak to a jury and when a Town Board Member makes a reckless statement like that -- because you really didn't go back and look at the minutes and if you did, then you didn't state what they said -- so I am going to urge the Board and all Members of the Board to please focus on the issue. This is pretty simple, it's straight forward, more studies, more data. We hired O'Brien and Gere. This is what they said to do. They said that the test well can produce 400... .4 million gallons per day, 400,000. That's what they said. If someone on this Board has another study that says that can't happen, I'd like to hear it. I would seriously consider it. We've had some very constructive

comments. I remember Mr. Kelleher saying, what about the hardness?, what about clogging, iron clogging? That's constructive input. You know what we did? We went back and looked at that issue. And, that is what's going to come out with regard to the quality testing. The question about the siltation study. You have mischaracterized it. You have mischaracterized the intent of it. I am not going to take more time to go back but I have the minutes with me. O'Brien and Gere made clear 2 times, dredging was to test the infiltration system. Dredging wasn't to test whether or not this test well was going to have a production or not. And, what O'Brien and Gere said was and they said it to us and if someone on this Board has talked to them and gotten a different answer, I'd like to hear it, they have said that this test well has already accounted for siltation. They have already used information in terms of siltation in coming up with their 400,000 gallons. Now, if somebody on this Board has a consultant that has said something different, or if somebody else on this Board is an engineer and has come to a different conclusion, I'd like to hear it. But, we don't have it.

So, I am going to conclude by saying we're in a big litigation. I have said to Mrs. Burns many times. I have had conversations with her. If you have another alternative, if you have another solution to this problem, please let me know. All I have heard is let's not decide this. Let's delay decision on this. But, I haven't heard another alternative and we have just been hit with the defendants saying in papers that will be filed with the court, you've had this information and you haven't done it and we're going to try to hold you accountable for your inaction. And, I want to make the Board very clear this is a public document that this is what you face and these are the consequences of what happens when we don't stick to the facts. If there is a legitimate policy debate, that's your prerogative. But, when there is statements about what I said, about what the consultants have said that are contrary to black and white in the minutes, I need to stand up to protect our litigation position lest the record reflect that I am present and I'm agreeing with all these statements. If there is something that you have, Mrs. Burns, in the record that you can point to that says the dredging report was intended to address the test well, I'd be happy to entertain that question. But, I can tell you I looked at that point today and it's not there. Thank you very much, Board Members.

COUNCILMAN DAVIS: I have a question related to what you said. Are you recommending that we do this?

MR. ALESSI: My recommendation is that we do this and that recommendation is based upon O'Brien and Gere saying what they have said. This is straight forward. There's no magic to what's behind this. You hire a consultant. You rely upon what they do. You test their assumptions and you move forward. O'Brien and Gere has not said wait for the siltation study for this. As a matter of fact, this is something that they've had enough information on in order to do it. And, people can call O'Brien and Gere -- and this is the problem I have with these things coming up at meetings when we are seeking approval -- people know that this is about to happen. People can call O'Brien and Gere and ask them the question. Do we need to wait for the siltation study before we can make a decision on the test well? I haven't heard that that question has been posed. And, if it has been posed, I would be happy to hear what the answer was.

COUNCILMAN BURNS: I'd like to respond. I'll go back to what you said about accountability and I agree with that. And, that is why my issue is that we have not properly analyzed and projected the yield because we don't have the siltation study. I did talk to Tony Geiss, I didn't ask him that question, he didn't tell me if he did or not cause I didn't ask the question. I feel I do. I need that to make a decision because I feel it is a limited scope analysis that we have right now. That's how I feel. As far as an alternative, there is an alternative, we can get water and propose a contract to Albany that is an alternative, they told me that if we want to.

SUPERVISOR FULLER: I would like to address that very issue because I had a call from Mr. Cross, who is the Commissioner of the Water Board, and Mr. Ferrera who both asked me... that you had gone there and said I had sent you there. And, they wanted to know why I sent

you to meet with them. So, I said I think I know exactly where this is coming from that you had offered to... we should be looking at negotiating a better contract, a lower price to purchase water. You thought you could do it, I said go for it and that is exactly what I said so...

COUNCILMAN DAVIS: We all did.

COUNCILMAN BURNS: It was a joint decision.

SUPERVISOR FULLER: So, you went to negotiate the contract.

COUNCILMAN BURNS: No, I didn't go to negotiate the contract. I went to see if they were open to negotiating a new contract.

SUPERVISOR FULLER: And, they agreed that they would be open.

COUNCILMAN BURNS: Correct.

SUPERVISOR FULLER: And did they tell you what the next contract would look like when we went to purchase additional water from them?

COUNCILMAN BURNS: We didn't get into specifics. I didn't feel I had the necessary information to do that.

SUPERVISOR FULLER: The only information you needed is the contract that's before you. This was a question in which you had, it's a contract to purchase water from the City of Albany at a set rate which they have since increased by 6 percent, which we knew.

COUNCILMAN BURNS: I understand... right. I just felt I would come back to you and propose it to you, which I did.

SUPERVISOR FULLER: And, you told me that they were open...

COUNCILMAN BURNS: Not an attorney or having... you know that knowledge...

SUPERVISOR FULLER: I'm not an attorney. I am not an expert on water.

COUNCILMAN BURNS: I left it at that.

SUPERVISOR FULLER: And, you and I discussed it and you told me that they were willing to discuss it.

COUNCILMAN BURNS: Correct.

SUPERVISOR FULLER: And, they felt that we should be flexible. We the Town. So, I called and cited the flexibility I always have and asked about the contract. And, when I said that we were looking for a lower price, they really had a good chuckle when they said, do you really think we're interested in charging less than. So, I said, well, I didn't know but I thought I would ask.

Now let me tell you about how flexible the City of Albany has been. I had to write and ask a request to purchase additional water since we haven't had any rain and we have a need for additional water and they were so accommodating that they told me I had to pay whether we used it or not month to month. That contract isn't as good as the one that I did have. So, the City of Albany and negotiating a better contract, I have just told you, what it is. To purchase 14 million gallons of water, the cost went up. It went up 5 fold. So, obviously, we're not in the business of buying water from Albany and it's time to realize it. Because what you thought would work didn't.

COUNCILMAN BURNS: I only said they were... they told me they were open to looking at a proposal on paper, which I didn't have for them, and to, you know, let them see it.

SUPERVISOR FULLER: They have the proposal on paper, it is called the contract.

COUNCILMAN BURNS: Well, that's the contract that was last negotiated, the new contract.

SUPERVISOR FULLER: That is the new contract and I will tell you, if we didn't have our own supply of water we still wouldn't have that contract. We did finally get the contract.

COUNCILMAN BURNS: Well, it is an option.

SUPERVISOR FULLER: Well, for our tax base...

COUNCILMAN DAVIS: It's an option but it's obviously not a very rational one and it doesn't make a lot of sense. I mean, considering the history and considering the figures that Sheila has just discussed, at least not in my mind. I mean, I can't reconcile that.

COUNCILMAN BURNS: Well, I don't think that we have actually entertained, we've made phone calls and I've had a preliminary meeting but we haven't actually said we want to sit down and negotiate.

SUPERVISOR FULLER: Oh, yes I did. Oh, yes I did. I did want to sit down and negotiate. They don't want to negotiate a lower rate. Do they want to sell me less water? No, they would like to sell me more water at a higher rate and that's what I have.

COUNCILMAN BURNS: All I can say is they wanted to see something on paper from me when I left there.

SUPERVISOR FULLER: And, why don't... what do you have to give them? Give them the contract. This is the one that they negotiated with me. And, I think Mr. Ferrara also told you he had no reason to change the contract. He felt they had a good contract with the Town of Bethlehem, negotiated with me, Tony Ferrara. He did tell you that.

COUNCILMAN BURNS: They seemed happy but they were open to renegotiate it.

COUNCILMAN DAVIS: Of course.

COUNCILMAN BURNS: I am just saying this is an option. It was on the table here that there were no options, this is an option.

SUPERVISOR FULLER: And, is it the best?

COUNCILMAN BURNS: I don't know, I am putting it on the table.

SUPERVISOR FULLER: It is the option that we looked at.

MR. SECOR: But, how can you say it's an option when our residential water rate is \$1.70 and they want \$2.50 a thousand. You going to double the water rate in Town? What is your plan here? I don't understand where you are going with this thing.

COUNCILMAN BURNS: Bruce, it was your plan to have a well field in... out there? You know, if we have 1 well, how about 50.

MR. SECOR: We're waiting for the engineers to suggest what the solution is. What we have is an incremental step that will save us \$600,000 over the next 2 years and you seem to have a problem with that.

COUNCILMAN BURNS: I believe O'Brien and Gere did recommend a well field in their report.

MR. SECOR: No, they said that we should look at the option of getting additional water from the aquifer. There has been no recommendation for specific design or solution to this. We are looking for that and this is a step in that direction. But, it saves us \$600,000 over the next 3 years.

COUNCILMAN BURNS: Though that may be something that...

MR. SECOR: Maybe if it's 622 instead of 625.

COUNCILMAN BURNS: If we put 1 well in, then what's stopping us from putting in 10 more?

MR. SECOR: Which residents do you want to go to to make up that \$600,000 with your deal with Albany?

COUNCILMAN BURNS: I put it on the table as an option.

MR. SECOR: But, it isn't an option.

COUNCILMAN BURNS: It is an option. I didn't say it was a good option. I didn't say a viable option.

MR. SECOR: Good, then it's a bad option.

COUNCILMAN BURNS: But, just...

COUNCILMAN DAVIS: Then why recommend it if it's not a good one. I mean, we need to have reasonable, rational decisions made here. So, why are we bothering with options that don't make sense. I don't understand that. I mean, that doesn't make sense to me. Maybe I'm just not responsible enough. I'm sorry.

SUPERVISOR FULLER: But, the real option is, and Susan and I both discussed it when she had gone, I welcomed her to go meet with these individuals. And, you did and you did call me back and we discussed it and then I called them. And, it wasn't a case of they didn't understand any of it. They wanted a proposal that was going to mean more to the City of Albany. That's not my business. My business is to protect the citizens of the Town of Bethlehem. And, I have to give Mr. Ferrara and Mr. Cross credit, they were a little confused by the question and rightfully so. Are we willing to make a proposal to the City of Albany to pay more for the water. We're not.

COUNCILMAN BURNS: No... .. I posed it in that we wanted to renegotiate the contract.

SUPERVISOR FULLER: Yes, we did, certainly not going...

COUNCILMAN BURNS: I don't believe I once said we wanted to pay more.

SUPERVISOR FULLER: But, that's what their answer to it is and just as they have done that to ask for more water to protect ourselves for the summer. No, it's additional. And, when I received the response I thought it was a little confusing. We had 3 phone calls to them and actually filled in the numbers to see if this was really what they were asking us to pay for water. And, we found out, yes it is. So, it becomes even more apparent to me that this is not a new issue. The water issue has been around for a long, long time and all of us started with it. We're still here and from day 1 the only important thing for me is, to make sure that I protect our taxpayers and that's what I am doing. And, I think that is something that this Board has tried to do and when we are now discussing the test well/production well for the third public meeting and looking to put it off again. I have a serious problem with that.

And, I made the point tonight to say it was authorization for a test well to production well because it was unfortunate that it wasn't put on the agenda because I have to tell you, Susan, I knew you would say it wasn't there. And, it was the only reason that I made a point of adding it. Because, if you read your memo on page 2, it tells you exactly what the authorization is for tonight.

COUNCILMAN BURNS: Well, I knew from the memo from Bruce that was his intent but it wasn't on the... you're right, on the agenda. So, I thought we were just going to be voting for the approval of the water district... or the modification of the...

SUPERVISOR FULLER: Modification of the permit.

COUNCILMAN BURNS: ...water supply permit.

TOWN CLERK NEWKIRK: Excuse me, may I interject something here. Only because I prepared this agenda and when I prepare an agenda, the

Library has asked me to keep it as concise as possible for their purposes. In that regard, when it's an approval of a modification of the water supply plant, that is... or permit rather, that is what was put on the agenda. That was entirely what I put on the agenda. It is a modification to the permit, it requires a motion. That motion will need to be done for that modification to the permit.

COUNCILMAN BURNS: But, we are doing more than just modifying the permit.

SUPERVISOR FULLER: The only need to modify the permit is if you are voting for the test well to go to a production well. I don't need to modify the water permit. We already have our permit to purchase the water.

COUNCILMAN BURNS: We don't know that they will approve the permit.

SUPERVISOR FULLER: That's true.

COUNCILMAN JOHNSON: I'd just like to say about 5 words. I haven't said much in this project because it just makes so much sense. And, Bruce, thank you for putting a good package together that's going to save the taxpayers some money and Mr. Alessi thank you for clarifying it. That's all I have to say and the project is a good one.

SUPERVISOR FULLER: The point that you raise that they may not approve it, is true and if they don't approve it, therefore, we are not going ahead with it. But, if they approve it, rather than waste another 3 months, we're giving the okay to go to the production well. Time is of the essence. Albany is getting wealthier by the day as we continue to purchase more water. So, I think we have to be real. We have to deal with, as Mr. Alessi said, the facts and as far as I am concerned, the facts are the 30,000 residents in this Town that we have to protect.

COUNCILMAN DAVIS: And, we're listening to those people who we have hired to advise us and their recommendations are that we do this. And, it just seems sensible that we listen. I'm not an engineer, I'm not an attorney and that's why, as a Board Member, I have to listen to the advice that they provide.

COUNCILMAN BURNS: And, we listened to the advice back in 19... in the early 1990s when they put the well in.

COUNCILMAN DAVIS: That's true.

COUNCILMAN BURNS: And, they told us 6 million gallons a day.

SUPERVISOR FULLER: They did.

COUNCILMAN DAVIS: They did and again, you know I am not an engineer, and had to make the decision that seemed to be the correct one. And, this seems to be the correct one now under very good advice, I think.

SUPERVISOR FULLER: You have before you... as you look through your packet the resolution.

COUNCILMAN DAVIS: And, that's a correction, in 1991 I did not, I was not on the Board.

SUPERVISOR FULLER: That's right, you were not, Doris.

COUNCILMAN DAVIS: I was not on the Board, just a correction, Susan.

COUNCILMAN BURNS: I said early '90.

MR. ALESSI: Supervisor Fuller, if I could suggest with the Board's indulgence, I can guide you through what needs to be done. It's not the simplest of process but the real starting point first is SEQR...

SUPERVISOR FULLER: SEQR.

MR. ALESSI: And, that is and specifically before you get to the resolution the full EAF that is attached to it that Mr. Secor has

provided recommendations with regard to part 2 -- the Board has had that and the Board needs to make that its Part 2. And, it's pretty straight forward but the Board...

SUPERVISOR FULLER: It is presently marked Draft.

MR. ALESSI: Correct and that has to... there needs to be a resolution if the Board is inclined to approve Part 2. The Board has to have a resolution with regard to that fact then if that motion carries, you go to the negative declaration and if it is your pleasure to have the negative declaration approved, there is a resolution to that effect. And, finally if it is the Board's decision to approve the submittal of the application, the modification, to the appropriate agencies, that would be the third and the last resolution that will be necessary, if that is the Board's inclination.

SUPERVISOR FULLER: Bob, you need to come back up and start over and tell exactly what the Board needs to do first and then we call for a motion and vote on that and then what is second. I want it very specific because this is important, each one of these motions.

MR. ALESSI: Yes.

SUPERVISOR FULLER: So, if you would.

MR. ALESSI: I would be pleased to do that.

SUPERVISOR FULLER: Do that for me.

COUNCILMAN JOHNSON: And, Bob, as our attorney... as the attorney, as you mention these, can you just specify your recommendation on each one of these?

MR. ALESSI: Yes.

COUNCILMAN JOHNSON: Thank you.

MR. ALESSI: The first item and this is attached to the package of June 3rd from Mr. Secor to the Town Board Members and I would say probably 10 pages in, right behind the map Wells Along the Hudson River, just wait until you get to the first page of it. It's up at the top...

SUPERVISOR FULLER: I went right to the SEQR resolution, Mr. Alessi, I am sorry.

MR. ALESSI: That's okay, it is 10:35.

SUPERVISOR FULLER: Okay.

MR. ALESSI: That is the first item for consideration and if... the full assessment form goes through and describes with regard to the application to submit it and for approval of the construction -- the conversion from the test well to the production -- and it goes through and Part 1 provides the factual information and that is something that Mr. Secor... it's his duty to provide and he has provided it.

Part 2, if you keep turning the pages, page 6 at the bottom, if you are looking at page numbers of the EAF go to page 6, that is Part 2 if you see up at the top -- Project Impacts and their Magnitude, says responsibility of the Lead Agency, that's you. And, as I am sure you have done, you have reviewed this. Part 2 that continues on through page 10 and keeps going on until you get to the page where it says SEQR resolution, there just needs to be a motion to approve the filling out of Part 2 and that the Board concurs with the filling out of Part 2. In some, a lot of these aren't even applicable. You know, they ask for impacts on transportation, open space and recreation, etc. etc. and those are checked. So, it would now be appropriate for the Board to entertain a motion to approve Part 2 of the full EAF as prepared.

SUPERVISOR FULLER: May I have a motion to approve?

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve Part 2 of the full EAF as prepared. The motion was passed by the following vote:

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

SEQR resolution
 Converting
 Test Well to
 production well

MR. ALESSI: The next step for the Board is the SEQR resolution which is the next page after the final page of the EAF. And, I won't read it verbatim but I will tell you that what it does is it gives background. It says the Town constructed the ground water infiltration system, the system was supposed to produce 6 million go to 12, we installed and operated this test/supply well for a certain amount of time and that the Town Board now desires to convert the test well to production well. It goes through and talks about the basis for it, the engineering report of O'Brien and Gere, references that that report was presented at an open meeting, that there was public comment, a couple meetings there was public comment and that it goes on to then talk about the SEQR requirements. It goes through what those SEQR requirements are on page 2 and then the resolution gets to the point that these particular impacts -- which are well known and you've had them before you. You did this already once for the whole system and this is really a small subset of that and we looked at 6 million gallons per day before, we are not talking about .4 million gallons or 400,000 and it references that fact and then the references compliance with SEQR forms that we just did and then the resolution is set forth there which basically would be appropriate if it's the Board's inclination to have a motion to approve the SEQR resolution which in the end and in the main is the issuance of a negative declaration under SEQR which means there are no significant environmental impacts from this permit application and namely the conversion of this to a production well and the construction of it and then the starting up of this to a production well, if it's approved by the appropriate regulatory bodies. And, that is the motion.

So, it would be appropriate if it's the Board's inclination to have a motion on that resolution.

SUPERVISOR FULLER: A neg dec and the SEQR resolution.

MR. ALESSI: Yes.

SUPERVISOR FULLER: May I have a motion to approve.

The following resolution was presented for adoption:

SEQR RESOLUTION

WHEREAS, THE Town of Bethlehem has constructed a ground water infiltration system in the area of Schermerhorn Island in an attempt to meet the short and long term water supply needs of the Town; and

WHEREAS, the ground water infiltration system was expected to produce ground water in the amount of at least 6 million gallons per day (gpd), and with further modifications to produce as much as 12 million gpd, but currently is producing only approximately between 1 and 1.3 million gpd, and

WHEREAS, the Town has installed and operated a test supply well in the immediate vicinity of the ground water infiltration system to determine, among other things, whether the area is capable of producing additional quantities of water; and

WHEREAS, THE Town Board of the Town of Bethlehem now desires to convert the test supply well to a production well and connect it to the existing 24-inch diameter raw water supply line at the Schermerhorn Island ground water infiltration system so that this well can be utilized as a supplemental source of water for the Clapper Road Water Purification Plant ("the Proposed Action"), and

WHEREAS, the Town Board has received an Engineer's Report dated February 2, 1999 from O'Brien & Gere Consulting Engineers, entitled: "Installation and Testing of Test Supply Well," which describes the Proposed Action in more detail; and

WHEREAS, the Engineer's Report was presented to the Town Board at a public meeting on February 24, 1999 and thereafter has been

placed on file with the Town Clerk for public inspection, and O'Brien & Gere Consulting Engineers received and answered questions from the public concerning the Proposed Action at the public meeting, and

WHEREAS, the Proposed Action to convert the test supply well to a production well includes construction of (1) an 8-inch diameter pipeline approximately 800 feet long from the test well to the existing 24-inch diameter raw water transmission main at the ground water infiltration system, (2) installation of a meter pit, and (3) installation of a pump in the well with three phase electrical service and control wiring; and

WHEREAS, the New York State Environmental Quality Review Act ("SEQR") regulations found at 6 NYCRR Section 617.3(a) state that no agency may undertake, fund or approve an action until it has complied with SEQR; and

WHEREAS, 6 NYCRR Section 617.6(a)(1) requires, among other things, that as early as possible in an agency's formulation of an action it proposes to undertake, it shall (1) determine whether the action is subject to SEQR, (2) determine whether other agencies are involved, and (3) make a classification of the Proposed Action and determine whether a full or short environmental assessment form (EAF) should be completed; and

WHEREAS, the Town Board believes that the Proposed Action may properly be treated as a Type II action pursuant to 6 NYCRR Section 617.5(c), requiring no further environmental review under SEQR, and

WHEREAS, the Town Board herein nevertheless has determined to treat the Proposed Action as an unlisted action subject and pursuant to SEQR, and

WHEREAS, a few persons have commented that the Proposed Action may cause certain impacts to the environment, for example, that the well system will occur in part in a flood zone, the well is located in and draws water from a spoil/fill area, the water to be produced will be contaminated and cannot effectively be treated, and that the Proposed Action is not cost effective; and

WHEREAS, the Town Board has reviewed and analyzed Parts 1, 2 and 3 of the full EAF which is attached to and made part of this resolution, and compared the Proposed Action, the information provided in the Engineer's Report and public comment against the criteria contained in 6 NYCRR Section 617.7(c) and considered other relevant provisions of the SEQR regulations to determine if the Proposed Action may have a significant impact on the environment,

NOW THEREFORE BE IT RESOLVED,

1. That the Town Board hereby determines that the completed EAF, as supplemented by the Engineer's Report of February 2, 1999, as well as other data and public comment, provides sufficient information for determining whether the Proposed Action may have a significant impact on the environment.
2. That based upon its review of the proposed Action, public comment, the full EAF, the Engineer's Report, and the criteria for determining significance found at 6 NYCRR Section 617.7(c), the Town Board hereby determines that the Proposed Action will not have a significant impact on the environment, based on, among others, the following facts and conclusions:
 - (a) The Proposed Action involves relatively minor modifications to an existing water well and water system and neither the modifications nor operation of the well as proposed implicate the criteria set forth in 6 NYCRR Section 617.7(c).
 - (b) The well and associated pumping equipment will be designed and constructed to have minimal impact to the existing site and to be protected from flood conditions.
 - (c) The Proposed Action is designed to produce a supplemental water supply for the Town with a flow of approximately 0.4 million gpd. The magnitude of this withdrawal is not significant compared to the available average water flow in the river of 8,700 million gpd.
 - (d) In connection with approvals for the construction and operation of the ground water infiltration system, the Town received approval to withdraw at least 6 million gpd. Since the ground water infiltration system is currently producing only

- between 1 and 1.3 million gpd, the Proposed Action represents only a fraction of the ground water withdrawal previously approved for the system.
- (e) The construction activity associated with the Proposed Action will produce impacts of short duration.
 - (f) The water transmission mains will be underground and parallel existing highway rights of way.
 - (g) Repeated testing by independent laboratories of water samples from both the test supply well and infiltration system have demonstrated that the water obtained from these sources is acceptable as a supply of raw water to the new water purification plant on Clapper Road, as confirmed by State and Federal agencies that have considered this issue.
 - (h) At present, the Proposed Action is cost effective as compared to other options for securing a supplemental water supply for the Town.
 - (i) The Engineer's Report and Parts 1, 2 and 3 of the full EAF, each of which is incorporated by reference herein, provide further support for the negative declaration.

BE IT FURTHER RESOLVED,

That this determination shall be considered a Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law and the enabling regulations adopted thereunder, and

BE IT FURTHER RESOLVED,

That a copy of this determination shall be noticed and filed in accordance with the requirements of 6 NYCRR Section 617.12.

On a motion by Mr. Johnson, seconded by Mrs. Davis and a vote of 3 for and 1 against and 1 absent, this RESOLUTION was adopted on June 9, 1999.

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MR. ALESSI: And, I will add for the record that there was a negative declaration for the whole 6 million gallons per day when this system was initially proposed and we indicated that in the Board's consideration.

The final action, Members of the Board, is the question that is once again on the table and that is whether to convert the test well to a production well to proceed with the formal application to the applicable governmental entities for that conversion -- which as we've indicated requires a modification to the permit -- and that the Town Board authorize the conversion to the production well connected to the existing 24 inch raw water supply and then... operate it again that is subject to the State approvals. So, to put that in more concise terms, a motion to approve the conversion of the test well to a production well and subject to regulatory approvals to have that construction occur and have it start running.

SUPERVISOR FULLER: May I have a motion to approve.

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the conversion of the test well to a production well and subject to regulatory approvals to have that construction occur and have it start running. The motion was passed by the following vote:

Approval for
conversion of
test well to
production well
subject to
regulatory approvals
that construction occur
and have it start running

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

Noes: Ms. Burns.

Absent: Mr. Lenhardt.

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SUPERVISOR FULLER: I forgot to mention at the beginning of the evening, George Lenhardt had to be out-of-town. He is not here, that is the reason for the 3-1 vote. George is the 5th Board Member, obviously who is not here, so it's a total of 4 votes cast. Three in favor, one in opposition.

Thank you.

MR. ALESSI: Thank you, Members of the Board.

COUNCILMAN DAVIS: Thank you, Bob.

The next item was a request from Highway Superintendent, Gregg Sagendorph, for approval of hours of operation and fee structure for the yard waste composting facility at 1244 Feura Bush Road, Delmar. Supervisor Fuller asked Mr. Sagendorph to give an overview regarding the operation of the composting site and the fee structure. Mr. Sagendorph said the new facility was built on Feura Bush Road, next to the General Electric plant, across from Owens Corning. He said the construction was completed in 1997 and the first product put on site was the leaves that were collected that year. He said the brush collected in 1998, the spring leaves and the fall leaves were put on site also. He said the piles had to be ground twice in 1998, so needless to say, after a year and a half of tipping all the brush and leaves there is quite a pile.

Superintendent
of Highways
approval of
hours of
operation and
fee structure
yard waste
composting
facility

Mr. Sagendorph said now is the time to try to market the product and to give it to the Town residents for free. Giving it to the Town residents, Mr. Sagendorph explained, isn't something new. He said this was started by Mr. Cross many years ago when he hauled the leaves to the highway garage and they were turned with a front end loader and within 3 years they would be compost. He said Mr. Cross was way ahead of his time in this, one of the first Superintendent's in the area to tackle this. He said the community really appreciated it. He said the residents used to complain about picking up their leaves in front of their houses and 3 years later those same people were down shoveling their own leaves back into the trunk of their cars.

Mr. Sagendorph said the more the piles are worked, the less material results. He said this is the nature of the game. He said the marketing of this product is new and Mrs. Fisher, Recycling Coordinator, has been very active in trying to find markets for it. He said people as far away as Catskill are calling because they see the compost pile and they seek information about it. He said they have inquired with a number of other municipalities and he feels we will be very competitive with their charges -- the fee schedule and the hours of operation. He said they are not trying to put the private enterprises out of business, just trying to peddle the product.

Mr. Sagendorph said the hours of operation will be 8 to 4 Monday through Friday and 8 to 12 noon on Saturday. He said what they are trying to do is give the residents of the Town that work during the week a chance to come out on Saturday mornings and get the material. He said the fee structure is going to be free to the Town residents that load it themselves. He said this is the same thing they have been doing at the highway garage for years. If the Highway personnel load the material, it will be \$2 per yard. He said a regular pick-up truck would haul about 2 yards of the material. Commercially, Mr. Sagendorph explained, the charge will be \$3 a yard for wood chips, charge \$4 for unscreened compost and \$8. per yard for screened compost. He further noted there is no screened compost at this time. He said the screening plant would have to be rented and have them come in and do the screening. He said they think it will cost about \$2 a yard and they do not know which material will move quicker. He said this will remain to be seen.

Mr. Sagendorph said he mentioned the loading of vehicles and this brings up an issue that he will discuss with the Town Attorney and the possibility of the person coming in and signing a release for the Town. He said there are 2 reasons for this -- if there is any damage incurred to their vehicle during the loading process that the Town is not held liable for that and the material when wet weighs heavy. He said they do not want a vehicle to be loaded, go down the road and be stopped by a police agency or get into an accident and be held responsible for putting too much weight on a vehicle that could not handle it. He said they feel there should be a release signed by each person picking up the compost loaded by Highway personnel.

Mr. Sagendorph said they will accept yard waste at the site up to 4 yards per week from any Town resident for free. He said they do

not expect a lot of residents coming into the facility with brush and leaves. He said they pick it up once a week with the exception of somebody that is on Monday's brush collection route who might choose to bring the debris into this facility. He said commercial vehicles will be charged \$10 per yard to tip the waste. He said no logs or stumps will be accepted. He said the grinding equipment that is rented does not have the capacity to chew those up into wood chips or into compost. He said they make them but they are expensive to operate.

Mr. Sagendorph again stated they are going to be competitive with the other municipalities in the area, including the City of Albany which charges \$4 a yard for unscreened material and \$10 a yard for screened material. He said they do deliver it and there are no plans for delivery with our facility.

Councilman Davis asked if the screened just means that it has a finer consistency. Mr. Sagendorph said that was exactly it. He said all the lumps, the uncomposted leaves and wood chips are removed and it is a very fine material.

Supervisor Fuller asked how much revenue has been generated in other communities. Mr. Sagendorph said he did not know. He could, however, check with Mrs. Fisher. He does not expect this to be self-sustaining. He said he hesitated to open this up to the public because he did not want to tie up an employee, however, Department of Environmental Conservation regulations indicate whenever the site is in operation there must be someone on site. He said the employee has to be an equipment operator simply because he must turn the piles of leaves and load vehicles. He said any time brush is being picked up, 5 days a week, this facility is going to be in operation. He said they do have to put someone there.

Mr. Sagendorph said Councilman Davis called and asked some questions and he told her that he is not sure there will be enough work for this individual but they are going to use a highway employee to start with and he will come and take a Town truck over to the site each day. He said if there is not a lot to do, the employee will polish the truck. He said they will find work for the 8 hour employee.

Mr. Sagendorph offered to answer any questions. Councilman Burns asked if they would have to hire a new person or was it a current employee. Mr. Sagendorph said when they started construction of this facility, he had an employee come up and say he was interested in working at the site. He said the individual has a 4 year college degree and is interested in running the composting facility. He said there is a lot of technology with this facility. He said when it was discussed, there was a possibility of being at the site 2 days or 3 days a week, however, now it will be a full 5 day week. He said the employee has been advised that there will be other duties involved. Mr. Sagendorph said in the winter months, the employee will work for the Highway Department.

Councilman Davis asked about commercial users. Mr. Sagendorph said until they find out the demand for the product, it is going to be open to everyone. He said he does not wish to have an excess of product on site. He said if they see too much of the product is leaving, or there will not be enough for the local residents, and for the commercial people locally, then it will be curtailed from far away and work closer. He said they could curtail the local commercial entities, as long as, there is some left for the Town residents. Councilman Davis thanked Mr. Sagendorph.

Councilman Burns asked if Mr. Sagendorph thinks that after it has been running a year or so that the Board could have a report. She suggested the person could keep track and keep numbers and come back with information. Mr. Sagendorph said he thinks he will be back quicker than a year. He said these are very preliminary and they do not know the demand out there. He said it will definitely be within a year but he is expecting it will be sooner.

Supervisor Fuller said there have been many calls from residents. She said she thinks there is a demand from residents more

than anyone. She said it is another service that the Town will try and hope that they are successful with it. Mr. Sagendorph said he will put a sign up now.

The Supervisor noted we are very fortunate that General Electric donated the land for this facility. Mr. Sagendorph agreed and said as a side note, General Electric because they did donate the land, has been taking some compost from the facility for their own employees. He said they take it over to the GE site and their employees get it from there. He said that has worked out very well.

Supervisor Fuller thanked Mr. Sagendorph and asked for a motion to approve. The motion was made by Mrs. Davis and seconded by Ms. Burns to approve setting the hours of operation and the fee structure for the yard waste composting facility at 1244 Feura Bush Road, Delmar as requested by Highway Superintendent, Gregg Sagendorph. The motion was passed by the following vote:

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

The next item was to adopt a resolution appointing Republican Election Inspectors and Poll Clerks from July 15, 1999 through July 14, 2000.

Resolution to appoint Republican Election Inspector Poll Clerks July 15, 1999 through July 14, 2000

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

RESOLVED, that pursuant to Article 3 of the Election Law, the attached list of persons be and they hereby are appointed Election Inspectors and Poll Clerks as recommended by the Republican Committee (see list on file in Town Clerk's office) to serve for the conduct of elections from July 15, 1999 through July 14, 2000.

The resolution was adopted by the following vote:

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

Supervisor Fuller asked if the Democratic Election Inspectors and Poll Clerks list has been received yet. Town Clerk Newkirk said they have not been received at this time. She noted both Chairmen were contacted a couple months ago but the Democratic list has not been received. Supervisor Fuller asked if there was a time limit on the receiving of the list and appointments. Town Clerk Newkirk said Albany County Board of Elections prefers they be done by the end of May. She noted she has contacted Mr. Clyne and he advised that they are working on them.

The next item was to adopt a resolution setting the polling locations for conduct of Elections for 1999. Supervisor Fuller asked for a motion to adopt the resolution.

Resolution to set polling locations for Conduct of Elections for 1999

The following resolution was offered by Ms. Burns and seconded Mr. Johnson:

RESOLVED, that in accordance with Election Law, Article 4, Subdivision 4-104, the Town Board of the Town of Bethlehem, hereby designates the following names locations as polling places for any election to be held in the Town of Bethlehem effective May 1, 1999 through April 30, 2000:

| <u>District</u> | <u>Polling Location</u> |
|-----------------|---|
| 1 | North Bethlehem Fire House 589 Russell Road, No. Bethlehem |
| 2 | Beverwyck 1 Autumn Dr., No. Bethlehem |

| <u>District</u> | <u>Polling Location</u> |
|-----------------|--|
| 3 | Slingerlands Fire Department 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 Hall 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 90 Adams Pl., Delmar |
| 12 | Elsmere Fire House Poplar Dr., Delmar |
| 13 | Elsmere Grade School 247 Delaware Ave., Delmar |
| 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 House Delaware Ave., Delmar |
| 18 | Hamagrael School McGuffy Lane, Delmar |
| 19 | Bethlehem Central Middle School 332 Kenwood Ave., Delmar |
| 20 | St. Stephens Church Elsmere Ave., Delmar |
| 21 | Glenmont Grade School Route 9W, Glenmont |
| 22 | Selkirk Fire House #2 Glenmont Rd., Glenmont |
| 23 | Delmar Fire District Annex Feura Bush Rd., Delmar |
| 24 | Selkirk Fire House #2 Glenmont Rd., Glenmont |
| 25 | Glenmont Grade School Route 9W, Glenmont |
| 26 | Bethlehem Vol. Ambulance Service 1121 Route 9W, Selkirk |

| <u>District</u> | <u>Polling Location</u> |
|-----------------|--|
| 27 | Parks & Recreation Building 261 Elm Ave., Delmar |
| 28 | Bethlehem Historical Museum 1003 Route 144, Selkirk |
| 29 | Selkirk Fire House #3 Bridge St., So. Bethlehem |
| 30 | Selkirk Fire House #1 Maple Ave., Selkirk |

The resolution was adopted by the following vote:

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

Noes: None.

Absent: Mr. Lenhardt.

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Supervisor Fuller asked Town Clerk Newkirk if the locations were the same as last year. Town Clerk Newkirk confirmed they are the same.

Supervisor Fuller asked if anyone wished to address the Board.

MR. DAVIES: Good evening. My name is Sherwood Davies. I would like to say that I think everyone in the community and I think everyone on the Town Board would be supportive of Mr. Alessi in a 14 million dollar law suit involving our water system. So, I would personally want to support whatever efforts you are into, wouldn't want to damage in any way your efforts.

Discussion
Mr. Davies
Water Issue

I would also like to say that I think this has been one of the most interesting and... meetings. I think more has come out in terms of discussion than I've heard in a long time. I would like to just zero in on a couple of memos that Mr. Secor wrote. One has to do with the Capital Reserve Fund. Why did we have such a build up in this Capital Reserve Water Fund? Was it frugal operations? I doubt it. In 1993 the Town reassessed our properties. The tax rate was supposed to be revenue neutral. In other words, no essential increase in income. This was not the case for the water and sewer funds.

I would refer you to an attachment to one of Mr. Secor's memos, water district budget request for budget modification. He has here a summary of water district revenue. If you will note, in the year of 1992, the water tax revenue was 1.118 million dollars. In 1993, property reassessment it was increased to 1.32 million dollars an 18 percent increase. This is not revenue neutral. This was a very substantial increase. This increase followed through on the subsequent years, thus you accumulated in your Capital Reserve fund hundreds of thousands of dollars in both the water and sewer funds. These are monies taken out of the taxpayers pocket.

I would also point out that in that same column, the tax revenue, over 90 percent of that revenue it would be from residential taxpayers. Our industries, although use 50 percent of our water, pay probably less than 10 percent in terms of the water tax. Mr. Secor referred to our residents paying \$1.07 per thousand gallons of water. He did not include the water tax... the water property tax.

These budget modifications which occurred in the past 7, 8 years need careful oversight. I would again recommend as I have previously that this Board consider the establishment of a board of water and sewer commissioners to provide oversight of both the water and sewer funds. I would just like to say that in terms of Albany water costs, Mr. Secor had referred to an increase of up to \$1.92 per thousand gallons that we pay for Albany water. I might say that Cogen pays only \$1.69 per thousand gallons and GE Plastics pays less than that. So, who subsidizes this, it is the residential water users.

I would like to comment on... quickly, on the water emergency response plan. I understand this has been sent to the State Health Department. I've been anticipating that there would be a public notice as is required under the Sanitary Code soliciting comments from the public. I hope that this comes out shortly so that comments can be provided. I have a few.

In regards to the Schermerhorn Island test well. Mr. Secor recommends that we proceed with the development of this as a production well. Frankly, this is a Band-Aid approach and I think, Mr. Alessi, even referred to it because this is not the answer to the overall problem. We don't have an answer today and I'm not sure we will get one in the near future.

Bethlehem has already retained 6 consulting engineer firms on this water system -- Fraser, Dunn, Rust, Ganet-Fleming, O'Brien and Gere and C.T. Male. We face a law suit and we have a well that produces less than 20 percent of the expected yield. If we proceed with what is recommended by Mr. Secor in order to meet the 6 million gallons a day we would need 12 additional wells or more to this one. If we want to come up to the 6 million gallons a day. Is that feasible? I think not. What is the alternative? I think what's most important is the quality of the water. Mr. Secor referred to tonight to the MCL, maximum contaminant level. That is a State Health Department Sanitary Code requirement. He should have also referred to the DEC Ground Water Quality Standards which are more stringent. I would hope that this new well, the water quality is referred... is looked at in the light of the DEC Water Quality Standards. This well was drilled in an area in which spoils from the Hudson River had been deposited. So, the ground water aquifer is below bottom sediments from the Hudson River. This you can confirm by looking at the water quality analysis, the high iron, the high manganese, barium, arsenic, pcbs they didn't provide an analysis for.

If any of you happen to have seen 60 minutes this last Sunday night, there was an arsenic problem in the well water in Bangladesh and I thought back to the analysis that I reviewed for this new test well. This new test well, the sample that I reviewed, showed 15 parts per million arsenic. The international standard is 10, the State Health Department standard is 50. You can buy any standard you want but it would be my concern that we in Delmar, take a look at the most stringent standard and apply that to any water that we plan to produce and use. I think that, in my opinion, this recommendation by Mr. Secor to develop this new well should be looked at rather carefully. Obviously, this is after the fact.

I would urge that O'Brien and Gere or some competent engineering firm make a comprehensive analysis of our need... total needs, the water quality in the light of the DEC requirements and look at our overall financial interests in this endeavor that we have been involved in. Thank you.

COUNCILMAN DAVIS: Mr. Davies, you didn't see the lab report that Bruce handed out?

MR. DAVIES: I never see them.

COUNCILMAN DAVIS: Well, it came late. We had the other one and this one came... it does have what you said it didn't have.

MR. SECOR: But, they're both the same.

MR. DAVIES: My question to you though is, you are given the raw data and are you competent to review that raw data or should it be reviewed by a competent engineer?

MR. SECOR: But, Sherwood, you stand here and make misstatement after misstatement.

MR. DAVIES: And, you've given this....

COUNCILMAN DAVIS: But, but, you said that we hadn't received it, that it wasn't in there and it is in here. I am just correcting what you said.

MR. DAVIES: Hadn't received it... all right.

COUNCILMAN DAVIS: No, you said that that information was not included in here and it is in here.

MR. SECOR: In both reports, both the one that...

COUNCILMAN DAVIS: It's in here.

MR. SECOR: ...was handed out to the Board. I don't know what you are looking at. The arsenic level is nondetectable, less than .005 parts per million, in both reports.

MR. DAVIES: The first sample that was collected was 15 parts per billion.

MR. SECOR: The current number is, after the well has been pumped for almost 6 months, is zero. You stand here and you do this time after time. It's scare tactics.

MR. DAVIES: Because.....

MR. SECOR: It's scare tactics and it's a misstatement. And, I can't believe you, as... with a background in science would do that. That's very, very poor.

MR. DAVIES: Thank you, Mr. Secor.

MR. SECOR: The number has been presented to the Board. The numbers are here. It's very disturbing when somebody gets up and does this... play to the camera and play scare tactics to the community. It's very poor.

MR. DAVIES: I would only ask that...

COUNCILMAN DAVIS: We've heard it before, Bruce, we are used to it now.

MR. DAVIES: Well, I can only ask that the Board ask Mr. Secor and/or O'Brien and Gere to give their evaluation of this water quality data you have in front of you. It's raw data. Let them review it and indicate to you if it meets the requirements of the State Sanitary Code and the Ground Water Standards of the New York State Department of Environmental Conservation. That's a simple request.

MR. ALESSI: I would just like to remind the Board that this application will go to the New York State Department of Environmental Conservation. It will go to the New York State Department of Health. Those are the agencies charged by law with looking at the data and determining -- because that's why we've got to submit a permit application to them -- whether or not the issues Mr. Davies has raised meet their regulations and their requirements. We could in theory hire a consulting firm to do what the DEC and the Department of Health are going to do but the history of this Board, I believe, is that with regard to economic decisions such as those, they tend to go down the road that most boards do and that is why pay somebody to do that when the regulatory agency is going to look at those issues. And, lest there be any concern as to whether the regulatory agencies do that, they've done it with every application that the Town has submitted and Mr. Davies -- and you can correct me -- has been accorded and afforded the opportunity to correspond with them and I am sure he will have that opportunity when we submit the application on this issue. So, I just wanted to highlight that point for the Board.

SUPERVISOR FULLER: And, Mr. Davies, you do receive reports from them because they send copies of the letters here too on some of them.

MR. SECOR: Here's 2 more letters -- one from the New York State Health Department, one from DEC -- to you, personally, saying that we are in compliance and that the water meets all water quality standards. You don't take the time to hand these back to the Board. You make statement after statement, misstatement, you make scare tactics and never tell them the truth.

MR. DAVIES: Mr. Alessi, I will send you and also the Board Members copies of the recent correspondence I have had from both DEC and the State Health Department concerning evaluation of this raw water quality and it might be very interesting. I think you'll find it very interesting.

MR. ALESSI: My only response, Mr. Davies, is if you are right, they will deny our permit. And, if you are not right, we will get a permit.

MR. DAVIES: No, the question I've raised is who evaluates the DEC requirements?

MR. SECOR: DEC.

MR. DAVIES: No, they don't. No, they don't... I'll get you the letter. That's interesting.

SUPERVISOR FULLER: I also have a statement that will be part of the record. Mr. Kelleher had a previous commitment and was unable to attend our Board meeting tonight and he has requested that the statement be made part of the record. So, we will have... part of the minutes will have his statement included. Thank you.

Supervisor Fuller asked if anyone else wished to address the Board. Town Attorney Kaplowitz said very quickly and very briefly he would like to bring the Board up-to-date on the issue of the judgeship. He said he reported the status on Judge Munnelly's case a few weeks ago and he made a statement that the County attorney more or less agreed with our position and did not support Judge Munnelly's position which was a little out of the ordinary or unusual. He said he could not remember all the details and he wanted to report back to the Board. He said he was not at the last meeting, however, what he handed out to the Board was a memorandum to one of the Election Commissioners from Michael, who is the County Attorney, and he says in his view Judge Munnelly was duly elected to a 4 year term as Bethlehem Town Justice commencing January 1 and goes on. However, Attorney Kaplowitz, noted 3 weeks later in a sworn statement in which he was under oath, he says this holds true notwithstanding the fact that I rendered an opinion to the Board on the substantive issues presented. He says this statement says this being said, the respondent Board of Elections is required to accept respondent Newkirk's certification and will otherwise abide the decision of the court. Mr. Kaplowitz said the last paragraph says your client, who is the County Attorney, respectfully requests a judgement dismissing the petition. He noted that was Mr. Munnelly's petition. Mr. Kaplowitz noted the case has not been decided and we are waiting day-by-day for a decision.

Attorney
Kaplowitz
up date on
Judge Munnelly's
case

Councilman Burns said they were both right. Attorney Kaplowitz disagreed. He said she was not right at all. He further noted the County Attorney could not have told her that they supported Mr. Munnelly's petition. He said someone else might have told her that but it is wrong.

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

The motion was made by Mr. Johnson and seconded by Mrs. Davis to adjourn the regular Town Board meeting at 10:55 p.m. The motion was passed by the following vote:

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

Kathleen A. Newkirk
Town Clerk