

TOWN BOARD
JUNE 11, 1997

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

PRESENT: Sheila Fuller, Supervisor
Freeman T. Putney, Councilman
George Lenhardt, Councilman
Doris M. Davis, Councilman
Robert C. Johnson, Councilman
Bernard Kaplowitz, Esq., Town Attorney
Kathleen A. Newkirk, Town Clerk

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Supervisor Fuller welcomed everyone to a meeting of the Bethlehem Town Board. She asked Councilman Putney to lead the pledge of allegiance. Supervisor Fuller thanked Councilman Putney.

SUPERVISOR FULLER: I would ask the Clerk to read the call of the hearing. We have 2 public hearings tonight. The first one is on the Telecommunications Towers being located in our community.

TOWN CLERK NEWKIRK:

NOTICE OF PUBLIC HEARING
TOWN OF BETHLEHEM

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing on June 11, 1997 at 7:30 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, New York to consider an addition to the Code of the Town of Bethlehem with regard to regulation of Telecommunication Towers in the Town of Bethlehem.

All interested persons and citizens will have an opportunity to be heard at the said hearing.

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

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

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State of New York)
County of Albany)

Public Hearing
Telecommunica-
tions Tower

MARY AHLSTROM of the Town of Bethlehem, being duly sworn, says that she is the Assistant Publisher of THE SPOTLIGHT, a weekly newspaper published in the Town of Bethlehem, County of Albany, and that the notice of which the annexed is a true copy, has been regularly published in said THE SPOTLIGHT ONCE A WEEK FOR 1 WEEK consecutively, commencing on the 28 day of May 1997.

/s/ Mary A. Ahlstrom

Sworn to before me this 29th day of May 1997.

/s/ Kathryn Olsen
Notary Public, Albany County

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

KATHLEEN A. NEWKIRK, being duly sworn, deposes and says that she is the Town Clerk of the Town of Bethlehem, Albany County, New York and that I posted on May 28, 1997, a Notice of Public Hearing, a copy of which is hereto attached, on the sign board of the Town maintained pursuant to subdivision six of Section thirty of the Town Law.

/s/ Kathleen A. Newkirk

Town Clerk

Sworn to before me this
6th day of June 1997.
/s/ Catherine T. Picarazzi
Notary Public

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

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

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SUPERVISOR FULLER: Mr. Flanigan, if you would like to do a quick run through on telecommunication towers. This is your expertise, John.

MR. FLANIGAN: It is, the Town Attorney wrote it. This is a proposal for a local law to regulate telecommunication towers in the Town of Bethlehem. As you are aware, over the past couple years, we have had a few come in. Some of them out in the unzoned areas and 3 in the zoned areas. They happen to be in the industrial and commercial areas at that time. This proposal is to provide standards for the safe provision of telecommunication consistent with applicable Federal and State regulations to minimize the total number of telecommunication towers in the community by encouraging shared use of existing and future towers. And, the use of existing tall buildings and other high structures and to minimize adverse visual effects from telecommunication towers by requiring careful siting, visual impact assessment and appropriate landscaping. All these applications shall go before the Zoning Board of Appeals for a special permit.

Section 2a. states that no telecommunication tower except those approved prior to the effective date of this section shall be used unless in conformity with these regulations. No telecommunication towers shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a telecommunication tower unless in conformity with these regulations. So, it is pretty encompassing what we are doing. Applicants proposing to collocate on a previously approved telecommunication tower do not require a special permit. They are, however, subject to site review by the Zoning Board. In other words, if we have a tower and someone wants to go on that, they have to go to the Board for the site part of it. That should not be a very big problem on the existing tower. The problem that I have seen up to this point on the first ones in are there and the other people coming in trying to use these towers or going to see these towers is the cost that the existing tower people have per month for these people and one was, I was told about, one company wanted \$2,000 a month to let them collocate on the tower with them which is really out of hand, economically for that company to be able to do that. But, these type of things would be brought up to the Board. And, as we go through this, shared use of existing tall structures, we are talking about that would be the best way to go here in Town because we have some structures where we could put them -- on our water towers, a couple antennas, there are 6 towers in town now. The school district is going to put some additional towers up for their use for their different things that they have going and with those towers if we could get the collocation on those towers, it might save everything else because the school district is exempt from this. We do not have any control over the school district but if we could get some sort of cooperation here, with them that they could go on those towers that might cut down on the number of towers we have.

An applicant proposing to share use of an existing tall structure shall be required to submit an application, documentation of intent from the owner, a site plan, an engineer's report certifying that the proposed shared use will not diminish the structure integrity and

environmental assessment form and a copy of the Federal Communication Commission license. If an applicant wishes to... proposes to share use on an existing tall structure, submits the same thing. So, it is not too hard going on existing structures or tall structures. Where you get into the problem is, it is going to be a lot tougher to come in for a new telecommunication tower because the Board may consider a new telecommunication tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical. An applicant shall be required to present an adequate report inventorying all existing tall structures and existing or approved towers within a reasonable distance of the proposed site. This addition shall be determined by the Board in consultation with the applicant. The report shall outline opportunities for shared use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate good faith efforts to a secured shared use from the tower and each existing tall structure and existing or approved tower as well as documentation of the physically, technical and/or financial reasons why shared use is not practical in each case. Written requests and responses for shared use shall be provided. That might be a tough thing for somebody to come up but I think that is one thing that they would have to do, at least we would know that they are out looking to share facilities.

A new tower... a new location... the Board may consider a new telecommunication tower on a site not previously developed with an existing tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical and submits a report described in Section 4 above and when the Board determines that shared use of an existing tower site for a new tower is undesirable based upon the applicant's investigation in accordance with Section 5, that's the previous one, any proposed use of a new telecommunication tower shall be subject to the requirements of Section 7 through 19 which is quite extensive which follows. Basically, to break that down through all those, the major point there is if someone does get a new tower, they have to build it structurally so that anyone wants to colocate on that structure with them, would have the capabilities of doing it because a lot of people would just build their structure for their own use and say well, we can't... it won't take it structurally. So, that is one of the requirements in here that the Board would be looking at through the submission and the hearing. Lot sizes really isn't too bad, they are talking about it being is the ice falls off may stay within the area, half the height of the tower whichever gives you greater set back. Visual impacts, the Board may require the applicant to undertake visual impacts. A zone or visibility map shall be provided in order to determine locations where the towers may be seen. A lot of times we have seen 3 new ones at the Board of Appeals and the people who are proposing them have gone out and taken balloons and tethered them and put them up where the top of the tower, so you would see exactly in the area where the top of that tower would be and then they went around and took pictures so the Board could see what that is going to show. That one definitely went on with the one behind the Delaware Plaza because that was a commercial zone with some impacts. There has been some talk about someone coming in and wanting to double the size of that tower -- that's at 75 now, that would make it 150 -- at 150 at the Delaware Plaza is not a very good situation. The one on Hannay Lane is 150-180, so that one is in an industrial zone which the impact isn't that bad cause there are other things in that area. The one back of Jolley Road which is right next to the Thruway and that's where everybody wants to be, along the Thruway corridor and the Northway corridor, that one really shows up. That shows up from over on 9W, so that would be a situation where maybe the Board could, you know, get them to cut them down, maybe give them more towers but if you get the colocation you may not need the height of the tower if you can get more towers but you can put them in steeples, there are some buildings around that we could put them on, there are water towers we could put them on which would be revenue to the Town or the school district, those type of things. But, what we are doing is asking the new applicants to look into all of this before them come for a new tower. There are several of them around, I don't know, if you have noticed them... the senior home on...

SUPERVISOR FULLER: Krumkill Road.

MR. FLANIGAN: On Route 85 at Krumkill, that home that sits there has got 2 of them on top of it. If you look at the big Stuyvesant building at the entrance to the Northway on Western Avenue up on there, you see 3 of them. All you see is just the aluminum... you can hide them very easily. There are ways to do it. You can put them in church steeples, you can put them around and you won't even see them. You won't even know they are there. When you see them is when you see the mono-poles or the other structures and that's... you know, they really stand out. Some of them more than others and a good place to see these is going south on the Thruway, once you get down Coxsackie, Ravena, that way they stand up on the sides of the mountains and they really stand out quite heavily.

What happened is along this, we have gotten a big influx. We had the original Sprint came in and Bell Atlantic NYNEX came in to put theirs in but now there are so many new companies that are behind and there are a couple of companies who are trying to get right along the Thruway corridor and that's what is happening. And, that's why you are getting this big push on towers.

I think this is a very comprehensive ordinance. I think it will work. Run through it one time with the Board and we will probably find some things that we should have done or maybe we shouldn't have done but that would work out. I don't know how things will hold up in the end. There is a severability clause in here which would not give us a problem if something or someone were to take us to court and find that, you know, there is something wrong with a section of the ordinance, we wouldn't lose the whole ordinance but there are some court cases that are pending right now which might have an impact on how we can go. Because most of these ordinances are pretty close together. You know, that's basically what it is. So, we may find out quickly how good it is and whether it is going to do the job we want it to. But, colocation, there are places in Town... it is just you have to go out and start looking. But, the ones who own the towers are... you know, they're in the drivers seat and it states in here, if you get a new tower, you have to sign an agreement with the Town that you will let someone else colocate on that tower with you if you get a new tower. That is in the... right here in the ordinance.

COUNCILWOMAN DAVIS: John, is there a number associated with that. I mean, you say colocate, is it one... two... three.

MR. FLANIGAN: You could, it depends on what it is. You know, I have seen some in the Northway area up there, they have 2 or 3 different ones on them, different sized antennas and different... but it depends on the system on how far you can get them apart. Now, we got a little bit lucky here with Bell Atlantic because they were able to put a couple of them on some tall buildings right adjacent to the Town to pick up that area. The area they couldn't pick up was the area down on Jolley Road at the Thruway. But, there still are some blank areas in Town for the ones that are here. They aren't completely covered and we hear that continually that they want to get in. But, the new ones coming and there have been a lot of new licenses issued for this, I expect to see a lot more of them. And, if we can get them to colocate, especially on the things we have and this is where this is really pushed is colocate. I don't think under the Federal law and I gave you a few things to read here tonight that are written by a couple of attorneys on there that colocation seems to be the way to go and we will have to see how it all works out.

SUPERVISOR FULLER: Is the school district putting them on every school building?

MR. FLANIGAN: They are putting them at every school building, on top of the roofs, some of them are 70 and 80 feet high on the roofs. The one at the high school, I think, is 185 on the ground. They are putting the ones at Clarksville is 250, so, there are some things there. But, on the Elsmere school at 80 feet, you could get some good coverage off of there. On the Slingerlands school at 80 feet or 85 feet -- now, when I say 80, 85, I am talking about on top of the roof at 80, 85, so you are up quite a ways. But, if you were to make

some reasonably nice looking towers, you'd probably hardly even notice them on top of bigger buildings. So...

COUNCILWOMAN DAVIS: How do you make nice towers like that?

MR. FLANIGAN: Well, you don't make them as bulky as you see. The mono-poles really are bulky. You see those very definitely but you can do that. There... on the antennas, our own antenna right here in the corner, you hardly even notice that's there because it's built... it is not the huge one, it's... but it's up 100 feet. But, I don't think we could go on that or anybody go on that because there is so much on it already. One thing we can't work on is the Federal Communications of the idea that there is radiation and thing out of there, we don't have any say over that so that has been exempted by the Federal Government so we can't touch that. They say that it isn't and we can't go after that. The one tower on Hannay Lane had a problem after they got in there, they were interfering with one of the AM stations, so they had to go in and do some special wiring on there to get rid of the interference on the AM station. You don't even know... all it is is a copper wire running up the side of the tower, you don't know it is there. But, they do regulate these and if somebody gets into some interference, they have to fix it. So...

COUNCILMAN PUTNEY: John, you indicated that we might have a problem with their being reasonable about colocation, have we tried to explore the possibility of strengthening the ordinance to require colocation... being reasonable.

MR. FLANIGAN: Yes, it is in here. There is a section in here back towards the rear that pushes colocation and if you ever get a new tower, you know that somebody is going to colocate with you. That's the way it is written.

COUNCILMAN PUTNEY: It is written as strong as possible.

MR. FLANIGAN: Yes.

COUNCILMAN LENHARDT: On that particular subject, right up inside the first page on Section 3, the term shall be preferred. Could we strengthen that language to rather than... it sounds kind of weak.

SUPERVISOR FULLER: Section 3.

COUNCILMAN LENHARDT: Section 3.

MR. FLANIGAN: Section 3 on page 2.

COUNCILMAN LENHARDT: It says... in part an existing or approved tower shall be preferred to construction of new towers. I was wondering if the wording could possible be strengthened.

COUNCILMAN PUTNEY: Shall negotiate in good faith.

MR. FLANIGAN: I was shocked at that when they gave me that one price, what they wanted for a month on that tower. I mean I could see normal maintenance and things like that but...

ATTORNEY KAPLOWITZ: You don't want to require it because it may not be the right thing to do in each case.

COUNCILMAN LENHARDT: Okay. I just...

ATTORNEY KAPLOWITZ: So, the Board has to look at it all and determine, you know, what makes the most sense. I wouldn't make it any stronger. Every time you say must, you raise the problem does everyone have to be that way. You have taken away the discretion.

MR. FLANIGAN: There are 2 sets of criteria here. There is a criteria for colocation which is not as tough to meet as a new tower location is. So, maybe we can get people to lean towards the colocation as we go along.

COUNCILMAN JOHNSON: John or Bernie... John, you mentioned the \$2,000 a month rental or whatever and I know the Zoning Board when they

allow them to construct the towers, they do make them to agree to colocate, is there any control over what the owner of that tower can charge? I mean, \$2,000, \$3,000, \$10,000 a month.

MR. FLANIGAN: I think with new towers, the way this is written we can hold them to a reasonable amount some place.

COUNCILMAN PUTNEY: Negotiate in good faith.

MR. FLANIGAN: I think that that is the way it is written in there. That's right, we can negotiate a fee. If you are going to get that tower and somebody is going to colocate with you, we've got to see your balance sheet of what it's going to be and what it's going to cost. But...

COUNCILMAN JOHNSON: So, we would have a say in what the owner of that tower could charge.

MR. FLANIGAN: That's right. And, we also have in here we can't discriminate against different companies either for different ways or holding it back or anything like that. Which we have never done in the past but everybody that has come in has gotten their fair share at the Zoning Board already. They have heard 3 of them. There is a notification in there by landowners, notification that you have to notify the adjoining towns -- you know, so it could get...

SUPERVISOR FULLER: The revenue for the Town of Bethlehem is all over the lot and there are different companies with far different, from \$200 to thousands and thousands of dollars.

MR. FLANIGAN: I know and there are some communities picking up some, you know, good budget money from colocation on their water towers and things like that. So, those are the things we could look at.

SUPERVISOR FULLER: That is something we could consider and I know the one at the middle school, the water tower there, is something that, I believe, the school district may be looking into the possibility of using our tower.

MR. FLANIGAN: The only thing is we've got a lot of communications stuff on top of that water tower already, the repeaters are on top of the water tower for our radio system. So, I don't know whether there would be a conflict there, they say there isn't but that is something we would have to look at. And, there are filters and things that could be put on them.

ATTORNEY KAPLOWITZ: Question as to whether the tower would have sufficient strength and every thing else.

MR. FLANIGAN: That's right, that is a good point because that's an old tower. You have to be worried about wind load, you got to worry about ice load, you have to worry about all these things when you build them. We also have to worry about are they in the flight path, are they high enough. The ones out on the back of the rock cut down where the pistol range is, there is 3 of them up there and they all got lights on them because of the FAA qualifications but we had to have those before they could put the towers up.

ATTORNEY KAPLOWITZ: I was going to mention that in a minute, the problem. If I can interject something...

MR. FLANIGAN: Sure.

ATTORNEY KAPLOWITZ: I don't know if it works or not. A couple of weeks ago after we had the first draft of this before us, I received a call from a resident of the Town who is very much involved in this industry and who offered to help us sharing his expertise. I believe he is here, although I have never met him -- you are Mr. Comi. Hi. I thought that just about everything suggested was very good and decided to adopt them and give them to the Board to look at but the final... somewhere along the line the final document doesn't have the changes that were supposed to be. I can mention them to you now. I don't think there is anything terribly material that would require

another hearing or anything like that but... Mr. Comi, please feel free to correct me if I say this wrong.

The first suggestion was to perhaps prioritize the zones. In other words, make them go in an industrial zone.

MR. FLANIGAN: Oh, I am with you.

ATTORNEY KAPLOWITZ: If they can't do that, then a commercial zone. If they can't do that, then a residential zone. This is a very tight question because Guilderland may have already got burned and the reason they got burned is they said you can't do it in any residential zone. I think that is correct, so we are close. But, we think that we probably could away with saying you can go in a residential zone but not until you prove to us you can't make it work in a commercial or industrial zone or the other way around. That was suggestion number 1, that is well taken.

The problem with height is, I guess, lights are required above 200 feet. We talked about limiting, putting a cap on each one, something like maybe 190 feet. That would be a big one, we shouldn't get too many of those I wouldn't think.

Suggestion was made that perhaps we would include something providing for the right of the Town Board to hire an expert who would be paid for by the applicant. I know we do in some zoning and planning situations.

MR. FLANIGAN: For what purpose?

ATTORNEY KAPLOWITZ: Well, he could negotiate leases with all these people on our behalf.

MR. FLANIGAN: , I wonder because there is something in here that states...

COUNCILMAN LENHARDT: There is.

MR. FLANIGAN: ... that the Town can hire someone to make sure that an engineer's report will not... certify that the proposed shared use will not diminish the structural integrity or also that the tower that is being proposed we could hire our own engineer to make sure that it would be big enough or strong enough...

ATTORNEY KAPLOWITZ: I think that is a different problem. I think both problems you have to deal with but I think they are 2 different problems.

COUNCILMAN LENHARDT: That is engineering.

ATTORNEY KAPLOWITZ: The only other suggestion, I think, was that we get... require a certification from the applicant that the towers are not going to be faulty and blown over by winds or affected by the elements, thunder storms, what have you. That is a possibility.

MR. FLANIGAN: Well, those are engineered stamped plans which are required anyway.

ATTORNEY KAPLOWITZ: Yes, that one is less important in our situation but I thought all of these were worthwhile. We ought to put a cap on them. I apologize if it is my fault that... I just looked at Mr. Lenhardt's final draft and these changes aren't there and they were supposed to be. So, I don't know whose fault it is but if you don't vote tonight, we can vote the next meeting and have the changes made. No great harm done.

MR. FLANIGAN: There is also a removal clause in here that if they decide not to continue with the tower and they have 4 months to remove and put the site back the way it was. I don't think and the Board has tried this on 2 occasions, to tell them that they would have to remove the concrete footings for these towers. I don't think that is possible because some of those concrete footings for these towers are huge to be able to make them stay there, especially the one on Jolley Road. But, at least they could put it back even if

they buried it it would still be there but they could put it back in reasonable condition. I don't think that Jolley Road one will ever disappear. I think that is there for the duration or whatever goes on until something new comes along 10 years from now. I don't know what it would be but that seems to be the way it is, because it changes daily.

COUNCILMAN PUTNEY: Are these assessable?

MR. FLANIGAN: Yes, they are.

SUPERVISOR FULLER: Yes, they are.

COUNCILMAN LENHARDT: I have one more question. The comment was made that the school districts would be exempt from this. I was lead to believe that our ordinance could impact what the schools do, is that true or not true?

ATTORNEY KAPLOWITZ: I never looked, George, I don't know. Well, my guess is they are not exempt and the reason I say that is we always casually say they are exempt from zoning. Well, they are not really exempt but we are very limited with what we can do as far as schools are concerned. You can't turn a school down in just about any neighborhood, schools, churches, colleges or fire houses are needed and you put them wherever they have to go and I suspect for that reason. We may be much more limited in what we could do with a school but I would suspect we can do something.

COUNCILMAN LENHARDT: Okay. I just didn't want people to think that the school was a separate entity and was not affected by whatever we do with this ordinance.

ATTORNEY KAPLOWITZ: It's much harder for us to control the school or anything like that or regulate.

COUNCILMAN LENHARDT: I am not asking to do that I just didn't want the public...

SUPERVISOR FULLER: George, I was led to believe that they are exempt from the zoning laws here in the Town and I did write a letter to State Ed because we were contacted as a result of SEQOR with State Ed for our input on these towers going on the school buildings and we simply wrote a letter just asking them to consider the visual impact in our community. But, we haven't heard any more out of that and I assume they are proceeding ahead with their...

MR. FLANIGAN: I think from what I have read and I've got piles of it there, what I've read, as long as it's a school district using it for their own computer use, I think we might have a problem of regulating it but if they go to an outside entity and start leasing it to them, I think...

SUPERVISOR FULLER: Then we do have a say.

MR. FLANIGAN: I think we have jurisdiction over it.

ATTORNEY KAPLOWITZ: That could be.

COUNCILMAN LENHARDT: I just didn't want it to seem like they could do whatever.

COUNCILMAN PUTNEY: They should apply anyway, shouldn't they?

SUPERVISOR FULLER: I believe if they're receiving revenue from these towers then they become under the jurisdiction of the Town.

MR. FLANIGAN: It's not the school district... Yes.

SUPERVISOR FULLER: Is there any questions from the audience?

MRS. CAPONE: Oh, yes. To Mr. Kaplowitz.

TOWN CLERK NEWKIRK: Marie, please come to the microphone, please.

SUPERVISOR FULLER: You have to come to the microphone.

ATTORNEY KAPLOWITZ: I could hear you fine, Marie.

MRS. CAPONE: Okay, okay. John Flanigan was talking about the price an owner can charge a renter, are the owner allowed to charge whatever they want under free enterprise?

ATTORNEY KAPLOWITZ: As much as the traffic will bear, I suppose, is ultimately. But, there are reasonable charges. I have heard -- I don't want to repeat it because I am not so sure -- but I have been hearing figures like \$5,000, \$6,000, \$7,000 a year for one. Is that in the ballpark?

MR. COMI: Low.

ATTORNEY KAPLOWITZ: A little more than that but we don't have any experience with it.

GENTLEMAN: Well, you have some of these... sitting here too.

ATTORNEY KAPLOWITZ: All right. That is fair enough as long as we know where it is coming from.

SUPERVISOR FULLER: I knew the different people in the audience must have an interest.

MRS. CAPONE: Through all this discussion, there is one word I did not hear, insurance, if that tower falls down.

MR. FLANIGAN: That is up to the carrier to carry that.

MRS. CAPONE: Yes, but it has to be written down.

MR. FLANIGAN: It is automatic on the building permit, you got to have it.

ATTORNEY KAPLOWITZ: And, you wouldn't issue a building permit without it.

MR. FLANIGAN: Wouldn't issue a building permit without it.

SUPERVISOR FULLER: Thank you, Marie.

ATTORNEY KAPLOWITZ: What kind of coverage requirement, John?

MR. FLANIGAN: I would get a million.

ATTORNEY KAPLOWITZ: Yes, but can we make them get a million with just the building project?

MR. FLANIGAN: Sure, we do it every day, it depends on what it is.

MS. BARTKOWSKI: Good evening, Susan Bartkowski with Kingsley and Towne. We represent Omnipoint Communications. With me Chuck Smith, he is one of the surveyors for the Omnipoint group, as well as, Jim Town who is also a partner in our firm.

In general we support your efforts here to try and more clearly define and regulate telecommunications rules and what is required of carriers before they can install not only towers but also antennae inside of your Town. Omnipoint is digital communication company as opposed to cellular. They are in the process of installing their network from New York City all the way up the Northway and eventually will go out both east and in westerly directions. We currently have a building permit for a location on Old Quarry Road in Selkirk which is, my understanding, since we already have our building permit this ordinance is not going to apply to permits that are previously approved.

However, I would like to address a couple of points in your ordinance, specifically with the colocation issues. It appears and I just received a copy of the ordinance that the colocation is essentially mandatory. And, our concerns with that are really with

respect to the mandatory issue. To construct a mono-pole it costs approximately \$100,000 and that is envisioning just 1 application in order to construct a mono-pole that is going to be able to carry colocations of the cost increases is expediential. The primary concern is the wind load factor. The more installations that you have on top of this tower, the greater concern, as someone mentioned, will be that it could tip over and the cost to install one of those mono-poles not knowing whether you may ever have another opportunity to offer colocation to some other carrier, is prohibitive and may even deter an applicant, such as ourselves or some of the new carriers who are coming in, from even building in this area. One of the reasons that this is important is that our license requires us to provide continuous coverage. If we are starting in New York City and we want to provide coverage from here up to the Canadian border, we can't have gaps in our system. We have to be able to offer coverage because it is a public utility in every area from our starting point to our finish point. And, if we are not able to build in an area because we have to build for a colocation that may never happen, then we are going to have some problems and we are not going to be able to complete our network.

Another area that concerns us with your proposed ordinance has to do with paragraph 4 in which the Town determines what a reasonably... a reasonable distance is from another mono-pole. Digital communication is line of sight. We have to provide coverage from one point to another if there is something in the way, whether it is a hill or a tree or a building, our signal doesn't go through that object it has to go around it so that is part of the reason why these mono-poles have to be so high to get up over existing obstacles. We also may interfere with other applications or other carriers that are already in place. I believe that Sprint currently has to have 20 feet in between their applications. We are hoping that we can have another competitor within 10 to 15 feet but it all depends on where that location is whether it is appropriate for our carrier and whether there is anything else in the way. So, for the Town to say it is going to determine what is reasonable, the Town may not be... first of all not know what considerations we need in order to determine whether we can put up a pole or antennae in that spot, and you may not be able to determine whether or not we can have... offer colocation to someone or whether someone can offer colocation to us because the site may not be feasible at all. So, I think that that would require a little more flexibility on the Town's part.

I would like to ask... Chuck, if you could speak to us a little bit more to explain to the Town what it is that we require in order to transmit our signal from one point to the other.

MR. SMITH: Well, the only... colocations... everybody wants to build at the lowest possible height because they don't want these big tall towers but when you opt for colocation, that means usually you have to extend the tower because nobody can go lower than what is already on the tower. So, if you are forcing people to collocate, either you let the first guy build that 190 feet and everybody else comes in lower or you start at 150 and go in 10 foot increments. And, let people go higher because nobody can usually can go below that point they are already at with 150 or 125 or 100. They can't go any lower than that. They have already figured that out. So, if somebody else came in, you require them to collocate, they couldn't go any lower either. They would have to go higher or you let the first person go high and everybody else comes in a little bit lower than they are. Because...

SUPERVISOR FULLER: Well, if you are collocating on an existing structure...

MR. SMITH: That raises some can of worms because some of these structures aren't designed at all for colocation especially mono-poles. The mono-pole foundations like he said, all you see is a 6 foot ring of concrete on top of the ground. Some of these things are 35 to 40 feet deep in the ground. And, if you start getting taller towers, they get bigger and bigger and bigger and you will never get them back out of the ground once they are built. I mean, he talked about the ones out on Jolley Road, I don't know how big that casson is but...

MR. FLANIGAN: It's about 40 feet deep.

MR. SMITH: 40 feet deep and probably 6 or 7 feet in diameter, you don't move them once they are in. They... the other alternative is lattice towers which are more unsightly than mono-poles, I think.

MR. FLANIGAN: Right, I think he is right.

MR. SMITH: But, they require less foundations and they are more flexible as far as colocations. But, a mono-pole has to be designed from the start for colocations. A lattice tower or guide tower you can put more guys on for more structural stability and the lattice towers are just inherently more structurally stable than a mono-pole is. So, like I said, it is up to you guys okay, you want to require 4 colocations, the first applicant build at 190 feet and everybody else goes lower or do you want the first applicant to build this big behemoth of a base for the tower just so that everybody else can go higher because they physically they can't go lower on the tower.

ATTORNEY KAPLOWITZ: Don't we have to look at each individual case and decide...

MR. SMITH: Yes.

SUPERVISOR FULLER: Yes, we do.

ATTORNEY KAPLOWITZ: ...what makes sense and what doesn't really.

MS. BARTKOWSKI: Well, that's why we are concerned that if you are going to require colocation, it doesn't really give the Board an opportunity to look at it on the individual case-by-case basis if you are mandating...

ATTORNEY KAPLOWITZ: Well, I think we said it is preferred and there is also a provision in there, if I remember correctly, it would require or suggest anyway that the Board talk with the applicant -- certainly it isn't anything you or your consultants have to say before making a decision.

SUPERVISOR FULLER: And, it is the Zoning Board.

ATTORNEY KAPLOWITZ: Right, it would be the Board of Appeals. It is not intended to make it required.

MS. BARTKOWSKI: The other area that you mentioned was a possible cap on the height of the towers. If you are requiring colocating, the starting point -- if you are talking about building on the highest tower first -- already exceeds or comes close to exceeding what your proposed height is. The other thing to remember when you are considering a height cap, is this is a hilly Town, some locations are going to be set down lower in the valley, some are going to be up higher. Ideally everyone is trying to get higher but an artificial height cap, isn't going to allow for the varying elevations and I believe that one of the towers -- these are microwave towers -- that are going up on the school systems, it is proposed at 225 feet. So, putting an arbitrary cap of 180 or 200 feet doesn't really take into consideration the engineering needs of the applicants, what is already being proposed, as well as, the geographic structure of the Town.

ATTORNEY KAPLOWITZ: Gregg, how many square miles do we have in Town? Any idea.

COUNCILMAN PUTNEY: 58.

MR. LIPNICKY: It's about 48.

ATTORNEY KAPLOWITZ: If we had 50 or 60 square miles, how many towers would we expect to have? Is it possible or am I asking an unfair question? I don't mean to be.

MR. SMITH: I am not a radio frequency engineer and we didn't bring one with us.

ATTORNEY KAPLOWITZ: I am just curious as to... we talking about 5 towers or 50 towers.

MR. SMITH: It all depends what area they want to cover. Now, if you go 200 feet with the lights is an FAA requirement, it doesn't matter whether... we could put a 50 foot tower on top of a hill and not have it lighted. We could have a tower that is 250 foot tall, it is lower than that tower that is 50 foot tall and it would be required to be lighted.

ATTORNEY KAPLOWITZ: How many licensees who can serve the Town of Bethlehem? Do we know that?

MR. SMITH: I think there are 6 currently.

MR. COMI: 6 PCS, 2 cellulars.

ATTORNEY KAPLOWITZ: So, there is as many as 8 companies.

MR. COMI: That is correct.

MS. BARTKOWSKI: That have been licensed. We believe that all but 2 are already in this area, so that was another issue of concern for us with the colocation, is that if there are not many others coming, we may be forced to build a tower to accommodate potential colocaters who are never going to arrive in this area because the area is fairly well built up already.

COUNCILWOMAN DAVIS: One of the, the first issue that you talked about was the cost prohibitive nature of building something to accommodate colocation. Would you not charge rent to anyone who collocates on a tower?

MR. SMITH: Yes, but he brought up the point about the colocation where somebody already... like Sprint has a tower and want to charge \$2,000 to go on their tower. If we can lease the land for \$500 or \$600, it would take us a long time to get that extra \$1,000... or extra costs for what Sprint wants rather than build our own tower and just pay for that out of the revenues from the system.

MR. TOWNE: How do we recover the cost if we build a tower to collocate?

TOWN CLERK NEWKIRK: Excuse me, we need you to come to the mike and identify yourself, please.

MR. TOWNE: Sorry. James Town. How do we recover the cost if we build a tower that is designed for colocation and nobody ever comes to us to collocate? We may have added \$200,000 or \$300,000 to the cost of construction in order to meet your ordinance trying to be a good citizen of the Town and nobody ever comes.

COUNCILWOMAN DAVIS: But, on the other hand, if you do build a tower that is built for colocation and you do rent it to other, say 2 or 3 other companies...

MR. TOWNE: Correct.

COUNCILWOMAN DAVIS: ...you have probably very well covered the price of your initial investment...

MR. TOWNE: Correct.

COUNCILWOMAN DAVIS: ...several times over, over the long term.

MR. TOWNE: Probably not but...

COUNCILWOMAN DAVIS: I mean, you are not going to be loosing money.

MR. TOWNE: At least recovered it, correct, but with respect to a construction that we never have colocation on, how do we ensure...

COUNCILWOMAN DAVIS: Right but you have to look at both and we would have to look at both sides, as well.

MR. TOWNE: ...that we get our...

MR. FLANIGAN: And, I am sure the Board will.

COUNCILWOMAN DAVIS: Right.

MS. BARTKOWSKI: Absolutely, but the structure that you are asking us to build or may be asking us to build to accommodate colocation, as Chuck mentioned, is a much larger structure. So, the goal is to minimize the visual effect, that is something else that the Board should consider.

The last thing that I wanted to point out was that as you mentioned, Sprint was maybe charging \$2,000 to a potential applicant that wants to colocate, there is no provision in here that provides for some sort of arbitration procedure between the owner of an existing tower and someone who wants to come on and colocate. You know, if the Board determines that you have to colocate on the Sprint tower or your not going to be able to operate in this area, then we are going to be caught short and I think, that there should be some opportunity... I understand that there is an obligation to negotiate in good faith, but good faith is a flexible term and I think that if the ordinance would definitely from an arbitration procedure where the 2 parties... where it has been determined that there is going to be a colocation and the 2 parties can't come to terms.

SUPERVISOR FULLER: Okay, thank you.

COUNCILMAN LENHARDT: I have a question.

SUPERVISOR FULLER: Gentlemen.

MS. BARTKOWSKI: Oh, I'm sorry, there was 1 other paragraph.

SUPERVISOR FULLER: We need for the record, the name of...

TOWN CLERK NEWKIRK: Both of the gentlemen.

SUPERVISOR FULLER: Before we can go any further.

MS. BARTKOWSKI: Chuck Smith, Tectonic Engineering, consultant to Omnipoint Communications. James Towne. And, if I may, there was just one more point in paragraph 7c of the ordinance...

SUPERVISOR FULLER: Yes and we have a letter from them and they are working for the school district as well.

MS. BARTKOWSKI: It addresses the areas where... in which the collocating party has to help share... the 3rd full line from the bottom where you have and depreciation, I think you mean less depreciation.

ATTORNEY KAPLOWITZ: We have and depreciation.

MS. BARTKOWSKI: Right. It probably should read less depreciation.

ATTORNEY KAPLOWITZ: Yes.

SUPERVISOR FULLER: What page is she reading that on? Is she on the same one I am on?

MS. BARTKOWSKI: I believe it is 7c, it is just before paragraph 8.

COUNCILMAN LENHARDT: 7c. May I ask a question?

SUPERVISOR FULLER: Go ahead, George.

COUNCILMAN LENHARDT: Of anyone who can answer... of the 6 carriers and the 2 cellular carriers that were mentioned that are in the area, how many of those are in the Town of Bethlehem presently?

MR. SMITH: The 2 cellular carriers are Bell Atlantic and Cellular One, and they are already in here.

COUNCILMAN LENHARDT: And, they are here now. And, of the PCS carriers? I am not concerned about their names, I am just curious of the number.

MR. COMI: I am Dick Comi and I do a lot of work in this area for a lot of the communities. I will answer your question specifically. You have got Celco which Bell Atlantic/NYNEX in cellular. You have got Cellular One which is also cellular. Existing in PCS right now is Sprint. The fourth carrier coming in is Omnipoint, these folks here. You have 4 other carriers that have approved licenses for this area. The 2 big ones and to the best of my knowledge they have not done any applications anywhere in the area, at least that I have been involved in, are AT & T and a company called Nextel. There are 2 other smaller ones that won franchises and frequencies in a different way. So, you could have beyond Omnipoint, 4 additional that if you have not even seen yet in the area, at all, George, in terms of carriers.

I would like to give just a couple comments in terms of what I have heard here tonight. I think the first thing that becomes very apparent is that this issue is very complex in terms of a lot of areas and that the Town Planning and Zoning Board per the telecommunications agreement of 1996 has an awful lot of control on where these go. Yes, the carriers have the right to provide service and continuous service. You folks in terms of the Town Zoning, Planning Boards based on an ordinance that you construct and the permitted process that you make them go through have an awful lot of control where they go, how they go and how it can be done. There are a few things in that area that are important. Number 1. there is considerable revenue to be had by the Town. If it goes on Town property, such as water towers or whatever, so therefore, in terms of the priority that I was talking about, Bernie, I believe that shared use or use of existing structures and then right below that should be Town property and then zoning ordinances doesn't exclude anything. By the way, you can always write an ordinance that says that the Zoning Board of Appeals always has the right with an escape clause to exclude anything up there if reasonable consideration and analysis proves so.

Now, in terms of shared use which you have gone back and forth on tonight, they talk about \$100,000 for a tower. Well, if you are going to have the shared use, where does the revenue come from from the second person -- they don't have to put up and spend the \$100,000 so they can pay quite a bit more in rent than the first person pays. Because the first person is paying \$500, \$600, \$800 or \$1,000 to a land owner and then -- by the way, I wouldn't use the \$100,000 number but they have used it so that's fine -- the \$100,000 I would put in a bank at 8 percent. I can get \$9,000 or \$10,000 a year to pay as rent to go on that and I also don't have to pay the lease money. So, I can pay \$1,500 or \$2,000 as a shared person to go on an existing structure.

Now, the way in which you could put your ordinance and I wouldn't say that you want to have too many on there but the only way you are going to get shared use is if the tower is set up to begin with so that the second person that comes along -- and by the way, right now Omnipoint is the second, Sprint is the first in terms of digital -- when they come in, Sprint is going to say to Omnipoint, oh, we are going to make it tough for you to be here because we want our share, we're here first. But, if they built a new tower and it says that they must build the tower and already specified in the construction of it and the certification, where Omnipoint could have gone, at what height -- and by the way they can be about 15 feet apart -- so, on a tower of 100 feet, you could have 1. On a tower of 130, you can have 3 and they don't interfere with one another, folks. Okay, they will all tell you that whether it is cellular or digital there is ways they can preclude that. So, shared use is a reality of the ordinance specifies it in terms of preparing it up front. Otherwise, number 2 will go out and build their own. It is easier, they will get done quicker in terms of the shared usage.

The last comment I want to make is that I think that everything you have heard thus far leads you to believe one thing -- as you go through the application process, the ordinance will help you put

something in place that will be reasonable, will take care of the issues, presents to the applicant a general process. Having someone that understands what you mean by reasonable proof. These people can do technological studies that show coverage, height, direction, everything you can possibly think of. It is a technology, folks. So, in terms of a lot of the issues, they can give you all the answers in terms of why they've got to be there. There process is they are going to go out and get a lease, they are going to come to you or the Zoning Board saying we've got this lease, we want to do this here. And, by the way, we have to go there because that is where we have to go. They do have some options and you have control of that. So, I think it is simply a matter of making sure that you have a pretty good ordinance in place, a reasonable one, but then in each and every applicant you make sure that the process is looked at firmly and solidly. There is an awful lot in terms of revenue and other things that can be done. One of the things towns aren't doing is, they are not even reassessing the places the towers went up. You have 3 towers went up in the last 6 months, any of those places been reassessed?

SUPERVISOR FULLER: We are in the process of reassessing.

MR. COMI: And, for how much? Half a million dollars a site, maybe. The tower is \$100,000, they have over \$300,000 of equipment there, folks. You want to assess my home for half a million bucks, you are going to charge me a lot of taxes, why don't you go and assess that tower for half a million dollars. I mean, I am in... I am a resident of this Town too, so I mean, there are some real good things you can do. I am sorry I took so long, thank you.

SUPERVISOR FULLER: We are going through the reassessment, now.

Is there anyone else who would like to address the Board on this issue this evening? Well, I think the audience needs to. There are people here who came. Anyone else, any questions, any comments?

MS. BARTKOWSKI: Could I just?

SUPERVISOR FULLER: Okay.

MS. BARTKOWSKI: Could I respond to Mr. Comi's statements briefly?

SUPERVISOR FULLER: Well, I hope that we are not going to get into a back and forth on this.

MS. BARTKOWSKI: No, no, just briefly I just want to let the Board know that we prefer shared use. We prefer to be on municipal structures. We prefer to be on existing locations. The only problem I foresee when we don't get our first choices being a municipal place or an existing structure is that our locations are determined by very precise engineering standards and while Mr. Comi seems to imply that we can make it look like it can go one way or another, if the location doesn't work for us, we can't go there. And, that's a potential problem with the shared use location.

COUNCILMAN PUTNEY: But, don't you have protection under the telecommunications act of 1996, if you feel aggrieved that the Town is being unreasonable then you have that... some legal route.

MS. BARTKOWSKI: Yes, we do absolutely. We would prefer to not have to go that route.

COUNCILMAN PUTNEY: I understand that.

MS. BARTKOWSKI: We were trying to build our system and we would hope that your ordinance is flexible enough that it wouldn't force us to have to rush to that route. But, it is available, that's correct.

COUNCILMAN PUTNEY: Thank you.

MR. FLANIGAN: Just for that type... the Zoning Board Article 78 proceedings is always there.

COUNCILMAN PUTNEY: So there is a route if you feel aggrieved that you can follow that is already in place.

MS. BARTKOWSKI: That's correct but I would anticipate that it's a rather lengthy process and if it... we run into this problem in this Town and we have a gap in coverage from the areas to the south and the area to the north, that shuts down our network.

COUNCILMAN PUTNEY: But, we try to be reasonable.

MS. BARTKOWSKI: Thank you.

SUPERVISOR FULLER: Thank you. Those wishing to...

MS. BARTKOWSKI: I'm sorry, if you are not going to vote on this, we would like the opportunity to submit written comments to some of the issues that were raised here.

SUPERVISOR FULLER: Actually, the period of time that has just been taken up was for questions only, now I need to deal with those in favor and those in opposition and then the Board will have it back to make the decision whether to vote.

Is there anyone wishing to speak in favor of adoption of a local law to regulate the telecommunication towers in the Town of Bethlehem?

MR. FLANIGAN: I will speak in favor of it.

COUNCILMAN PUTNEY: You just did.

MR. FLANIGAN: How you going to enforce it?

SUPERVISOR FULLER: You just did. Is there anyone wishing to speak in opposition? May I have a motion to close the public hearing?

The motion was made by Mr. Putney and seconded by Mrs. Davis to close the public hearing at 8:21 p.m. The motion was passed by the following vote:

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

Noes: None.

Kathleen A. Newkirk
Town Clerk

The Supervisor convened the regular meeting following the close of the public hearing. Supervisor Fuller suggested that with the additional points that have been raised that the Board give some time to allow written communication. She suggested this be tabled and come back at another meeting. Councilman Lenhardt said he would also like to see a copy of the actual copy that will be voted on. Attorney Kaplowitz said it will be provided.

Tabled decision
on proposed local
law to regulate
telecommunication
towers

The motion was made by Mr. Lenhardt and seconded by Mr. Putney to table decision on the proposed Local Law to regulate telecommunication towers in the Town of Bethlehem. The motion was passed by the following vote:

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

The Supervisor noted the written copy of the draft local law will be available as soon as possible. She said she hoped this would be on the agenda in July, the first or second meeting, the 9th or 23rd. The Supervisor said it would probably be the second meeting on July 23, 1997.

Hearing began: 8:22 p.m.

SUPERVISOR FULLER: Okay. The next item on tonight's agenda is another public hearing to consider amendment to the Code of the Town of Bethlehem with regard to establishment of parking requirements for senior citizen housing. Jeff, if you would like to.

TOWN CLERK NEWKIRK: Did you want to read the notice of the hearing?

SUPERVISOR FULLER: Oh, I am sorry. Go ahead, read the call of the hearing. Sorry, Jeff.

TOWN CLERK NEWKIRK:

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT
TO THE CODE OF THE
TOWN OF BETHLEHEM

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing on June 11, 1997 at 7:45 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, NY to consider an amendment to the Code of the Town of Bethlehem with regard to establishment of parking requirements for senior citizen housing.

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

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

Public Hearing
Parking
Requirements
for Senior
Citizen Housing

BY ORDER OF THE TOWN BOARD
TOWN OF BETHLEHEM

Kathleen A. Newkirk, CMC
TOWN CLERK

Dated: May 14, 1997

State of New York)
County of Albany)

MARY AHLSTROM of the Town of Bethlehem, being duly sworn, says that she is the Assistant Publisher of THE SPOTLIGHT, a weekly newspaper published in the Town of Bethlehem, County of Albany, and that the notice of which the annexed is a true copy, has been regularly published in said THE SPOTLIGHT ONCE A WEEK FOR 1 WEEK consecutively, commencing on the 28 day of May 1997.

/s/ Mary A. Ahlstrom

Sworn to before me this 29th day of May 1997.

/s/ Kathryn Olsen
Notary Public, Albany County

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

KATHLEEN A. NEWKIRK, being duly sworn, deposes and says that she is the Town Clerk of the Town of Bethlehem, Albany County, New York and that I posted on May 28, 1997, a Notice of Public Hearing, a copy of which is hereto attached, on the sign board of the Town maintained pursuant to subdivision six of Section thirty of the Town Law.

/s/ Kathleen A. Newkirk
Town Clerk

Sworn to before me this
6th day of June 1997.

/s/ Catherine T. Picarazzi
Notary Public

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

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

SUPERVISOR FULLER: Jeff.

MR. LIPNICKY: Before I begin here, I have a correction on this.

SUPERVISOR FULLER: Oh, the law.

MR. LIPNICKY: Under Section 7.

TOWN ATTORNEY KAPLOWITZ: You are as bad as the Town Attorney.

SUPERVISOR FULLER: That's right, I was just about to say that.

MR. LIPNICKY: No, this is a relatively small one.

SUPERVISOR FULLER: This is simple.

ATTORNEY KAPLOWITZ: All mine were big ones.

MR. LIPNICKY: Under Section 7. Section 7 deals with amending, basically, the permitted uses and so we are talking here about site plans, okay. So that the footnotes, both footnote number 1 and footnote number 2, should read the Planning Board rather than the Town Board. So, this way the Planning Board has the authority to do that in the case of site plan reviews.

SUPERVISOR FULLER: Okay, Jeff.

MR. LIPNICKY: Basically, what's before the Board tonight is a draft local law that would establish parking space requirements, in other words, the number of parking spaces that would be required for senior citizen housing. This law was drafted upon the recommendation of the Town Planning Board. What we have been seeing over the past few years is an increase in the number of applications or inquiries for senior housing, whether that be senior apartments or assistive living facilities or whatever the case may be and it is a trend that we would expect to continue into the future as the general population continues to grow older. The problem that we have right now is that in our current zoning code, the code doesn't distinguish between conventional regular multi-family housing and senior citizen facilities but both the literature and really our experience suggests that senior citizen facilities generate less parking demand than normal multi-family housing. And, we have gone through a lot of the literature that's been published on this and basically, the parking demand that senior citizen facilities is really determined by the number of factors, one is location. Is it located in an urban area versus a suburban versus a rural area. Urban areas having lower parking demand at those types of facilities because there is public transit available and things like that. Income is a factor, subsidized units generally have lower parking demand than market rate senior housing for example. As I said, transit availability is a factor. Health and age of the residents of senior facilities is a factor such that if we had a senior facility really where everybody is 55 years old and highly active, we are going to have higher parking and car ownership than a facility where people are 85 years old and you know, they really can't take care of themselves independently but need assisted living. So, now only is there a difference between parking requirements, conventional housing versus senior housing but within different types of senior housing. Because there are so many types of senior housing, we couldn't design an ordinance that would deal with all of them because there... quite frankly, isn't enough objective research out there to suggest what parking requirements should be for all these different types of senior facilities. So, what we have done is we have submitted an

ordinance that would really establish new parking ratios for multi-family senior citizen housing for... and these would be facilities that are basically designed for independent living and at the same time would also have something in there that says if you have another type of senior citizen facilities, such as assistive living, that parking requirements would be determined by the Zoning Board of Appeals upon recommendation of the Planning Board on a case-by-case basis.

Currently under our existing code, senior facilities would require in a Planned Development District, for example, 1.5 spaces per unit. In every other zoning district, they would require 2 spaces per unit. Under the draft local law, we have distinguished between subsidized housing and market rate housing and have said that for market rate housing would require 1.5 spaces per unit, for subsidized unit it would require 1.1 space per unit. And, what we have also said, beyond that, is that for market rate housing, basically .25 spaces per unit could be planted in grass. For subsidized housing, .25 percent of spaces could be planted in grass based upon the determination of either the Planning Board or the Town Board, whether it is a planned district or a regular site plan. And, what we have said also, is that the Town would have the ability to require a performance bond for those parking spaces that are planted in grass and the Town could require the developer to provide those additional spaces in pavement if after one year of actual parking demand warrants those additional spaces. Basically, the set up here is almost identical to the current set up in the senior citizen residence district, okay, where the parking space requirements for senior citizen housing is lower than normal multi-family housing and where we have allowed a certain percentage again of spaces to be planted in grass. At any rate, the net results is that for market rate housing we are talking about 1.25 spaces per unit and for subsidized housing .825 spaces per unit.

The code itself also contains definitions of what senior citizen housing is, okay. Those definitions are tied directly to again the senior citizen residence district which has a quite lengthy explanation of what senior citizen housing is and that explanation in the senior citizen residence district basically came directly out of definitions contained in HUD regulations on the Section 202 program. Okay. At the time we did the SCRD zone, again, that zone was specifically designed for lower income, moderate income housing and those definitions of what a senior citizen family is from HUD regulations. Basically, it's a family with a person in the household who is 65 years of age or older, is basically what the definition is. Now, the 65 years of age is certainly a debatable point and the Board may be inclined to change that to some other age... not 65, I am sorry, it was 62 years old, not 65. The Board may be inclined, if they wish, to change that to some other age, if it so wishes. The reason that we set it at 62, was again, because it was already in our code. It was something that was defined by HUD in terms of what constitutes elderly and the 3rd reason is that... the third reason basically is that as you lower the age, okay, here, we are talking about increasing the amount of cars that might be expected. So, basically, that is the reason.

We did some research, in your code you have examples of what requirements are from other communities comparison, from the ITE manual of parking generation from conventional housing versus senior citizen housing. So, if there are any questions, I would be happy to answer them. There is an environmental assessment form and a draft SEQOR resolution also in your packets.

SUPERVISOR FULLER: Thank you, Jeff.

COUNCILWOMAN DAVIS: Jeff, I have a question. We received a letter from Doug Hasbrouck, Chair of the Planning Board, and I wanted to refer to one of the points that Doug made in his letter to us because it is a concern that I have particularly in relation to the fact that we have several proposals at the Planning Board stage right now. What happens if we approve this particular issue and what happens if these proposals are developed and built as senior housing facilities and in 10 years, either of them or both, become something other than a senior housing unit, proposal. What do we do then? How do we

account for then if it is a commercial use of some sort? What do we do to account for the shortage of parking in that particular case?

MR. LIPNICKY: I don't think that's any different than any other development site in the Town, okay. If somebody goes out and builds an office building, okay, they have certain parking space requirements and then they come back to convert that to a restaurant. Parking space requirements are going to change and they have to provide those extra spaces. So...

COUNCILWOMAN DAVIS: Except...

MR. LIPNICKY: I am not so sure that is all that much different.

COUNCILWOMAN DAVIS: Except I am thinking of 1 proposal in particular where right now parking is very tight and it would, I think, create some problems. I mean, how do we acknowledge that or how do we deal with that at this point?

COUNCILMAN PUTNEY: Is the code such that you cannot change the use without some permission from the Town?

MR. FLANIGAN: You need the... if the use changes, the parking changes.

MR. LIPNICKY: Well, if the use changes... Right, if the use changes your requirements for parking change, okay.

COUNCILWOMAN DAVIS: What happens? I mean, then you can't have another use, I mean, it just sits there idle?

MR. FLANIGAN: No, they would have to put in the parking.

MR. LIPNICKY: No, but... Right, but it is just like any other use anywhere else in the Town. If you have a use that you have a certain amount of parking space requirements for, you are going to build to those standards. If at some point in the future, you decide to sell and somebody comes in and is proposing a different use that has a higher parking space requirement, you are going to have to provide those extra spaces.

MR. FLANIGAN: In other words, if you change from a senior citizen housing with the lower parking requirements and you decide I am going to buy this building and I am going to make it an office complex. You go from what you got there to 400 square feet, then you divide it up... the parking would automatically go up with the change in use. The point that I would get here, suppose... let's take Adams Station. It was built, let's say it was built as a senior citizen housing with the lower parking ratio and after a few years go by, which you talk about, it isn't senior citizen housing anymore, its the transient type thing with a couple children -- then the parking requirements are way out of wack, how do we get it back. That would be the only problem I would have.

COUNCILMAN JOHNSON: Well, isn't that where the seeded grass area is?

MR. LIPNICKY: Well, it's not...

COUNCILWOMAN DAVIS: No, that's only for 1 year, Bob, it's not for 2 years.

MR. LIPNICKY: But, it is not that much out of wack because to take the same, Juniper Fields, okay. That's a Planned District, under this code, basically, what you have to show is that you have enough room on the site, okay, to provide 1.5 spaces per unit which is the current requirement in the PRD zone, okay. And, then what we are saying is that a percentage of that can be planted in grass. So, that perhaps is a bad example because, in fact, if that is then changed from senior citizen to conventional housing, we know there is enough room on the site to do it because it has already been showed to us that there is enough room to do it and because the use is changed, they would be required to provide those spaces.

MR. FLANIGAN: The one thing that bothers me is you wouldn't know that the use changed some times. In other words, so they stop renting to seniors and start renting to anybody who wants to go in there... that's... and we wouldn't catch that... that's... you'd probably see the parking problem would start to come forward, you begin to see it.

SUPERVISOR FULLER: The other question that has been asked, in regard to handicapped spaces at some of these senior facilities, that there is so many spaces allotted for the residents for the employees, is the handicap parking space also counted for some of those residents? Say there are visitors going in.

MR. LIPNICKY: Yes, handicap space would be counted, yes.

SUPERVISOR FULLER: But, is it in addition to the spaces for the...

MR. LIPNICKY: No, no, it is just like any other use in Town. A handicap space is included as one of the required parking spaces.

MR. FLANIGAN: I believe it is 10 percent.

MR. LIPNICKY: So, if you are required to have 10 parking spaces on the site, what is it, John -- one of those would have to be a handicap, right?

MR. FLANIGAN: Yes.

MR. LIPNICKY: So, you would be providing...

COUNCILMAN PUTNEY: But, you could have more if you chose to.

MR. LIPNICKY: Sure.

MR. FLANIGAN: You could and most people do, they will switch if they find that there is a problem there. The problem that we see is that and go back to Adams Station or Juniper Fields, where we have these big parking lots, at 2 as multiple dwellings there's 2, and we have all these handicap spaces there because we have "x" number of units in each building, we've got 20 parking... handicap parking places in this area that are not being used because there are no handicap people living in these units. But, we have expansive blacktop over there, marked off.

MR. LIPNICKY: But, that's regulated by the State, so you know, we don't have any say in that, really.

MR. FLANIGAN: That's right but we could cut down some of the other part by going to the 1.5.

MR. LIPNICKY: I mean, you know, the basic purpose behind this is a couple of things, it is not only for, you know, the benefit of the applicant that he doesn't have to provide as many spaces, but it is also, I think, for the aesthetics of a project too. Rather than have all this asphalt if it is really not needed.

COUNCILWOMAN DAVIS: I guess I'm just... wanted to make sure that we are covering the bases so when... if a situation like this arises that wetlands and some of these other issues that we have had to deal with, aren't a problem to the person who comes to the Board and then ultimately it is not a problem to the Board.

MR. LIPNICKY: I... you know, there is absolutely... there is no absolute guarantees with anything but I think we're pretty safe here. Again, you know, there are 2 different things -- market rate housing, you know, we are requiring to show that you can do 1.5 which is basically the current requirement in the Planned Development District, okay. And... but for subsidized housing it is a little bit lower, it's 1.1 is required. But, you know, subsidized housing that's either run by a Federal agency or a non-profit, I think there is less likelihood that that's going to be converted to something else.

MR. FLANIGAN: Marie Rose is a good example. Marie Rose had quite a few people who brought their cars with them. There are very few of them left.

MR. LIPNICKY: If you go to Marie Rose, that's one...

ATTORNEY KAPLOWITZ: People or parking?

SUPERVISOR FULLER: And, there is a lot of asphalt over there.

MR. LIPNICKY: Marie Rose provided at a ratio of .825 per unit and if you go out there, most of the spaces are empty.

SUPERVISOR FULLER: There are people here who may like to speak. Are there any other questions from the Board?

MR. WENDTH: Hi, my name is David Wendth. I am with the Beverwyck project, employee of the Eddy. The Beverwyck as many of you may know is a joint venture agreement with the Eddy and the Albany Guardian Society. As Jeff had pointed out earlier, that there are many levels of senior housing out there. The Beverwyck as it is today is a good example of what we have market rate, independent living. Basically the people there are at the highest level of mobility, they are at the highest level of independence. And, you know, we look at them and... before elderly, we look at them as young/old or older young people.

Something that I just wanted to bring to the Board's attention, we have been looking at... with the Beverwyck community today... spending 4 years... today it is about... been operating for about 4 years. We have 235 parking spaces on site and that includes 20 parking spaces that are the private garages that some of our residents utilize. Today we are 93 percent occupied, 161, excuse me 162 out of 171 units. We have 86 residents who have registered cars on the campus. Basically what that tells us is 50 percent of our independent living residents have cars. The rest of them have come to the campus probably with a car, once they realize that scheduled transportation is available and that, you know, the campus itself has services and amenities that they can benefit from, opt to discard of the car. You know, you look at that and with that peak times with 35 employees, we have about 109 parking spaces that are vacant on the campus today. And, you know, you also hear now stories, the situation at Marie Rose. That is not uncommon for independent living. When you start looking at some of the levels of retirement communities, excuse me, of senior housing such as the assisted living, the assistive living, nursing homes, adult homes, and we have done this, what you begin to see is ratio of residents to parking spaces on average and actually we did sample some of the facilities here in the area and what we found is -- the ratio is about 26 residents per car. That is, per resident car. And, when you look at the parking spaces per resident, on average it is a ratio of 4 residents per parking space. So, really what we see is, with this population and as they age in, as we say and get into the different levels of care -- such as the assisted living and the adult homes -- they don't drive. Your typical resident is 84, 85 years of age and they are, for the most part, bound to that facility unless a relative comes, pick them up, take them out to dinner or out for the evening. Typically they stay there. So, the traffic that would be generated from a facility of that nature, as well as, for the most part the independent living, is predominately staff. I just want to bring that to your attention and if I can answer any questions, I would be more than happy.

COUNCILMAN PUTNEY: Have you factored visitors into this?

MR. WENDTH: Yes. With our... I can point to one project that we are looking at right now, we have visitor parking on site of about 13 spaces. That would be for a 41 unit facility and that's even on the higher side. Okay.

SUPERVISOR FULLER: Thank you, Dick. Lee.

MR. BORMAN: I... I am Lee Borman from Good Samaritan. I can probably add some confusion to your dilemma. Having been up here

many times asking for parking and waivers and everything else, we... at our adult home, which is not... First of all, assisted living hasn't really taken off in New York State yet. There is a lot of assistive living out there which is basically what we are doing at the adult home, giving the service, not getting... not licensed or reimbursed for it. But, we are licensed adult care facility at the new adult home and we have no cars. No residents... none of our residents have cars. For the past 4 years none of our residents have had cars. The administratives there has been there 12 years Madison Avenue and here and the most cars for residents that she has ever had was 3. So, that is a type of person that doesn't use cars. They usually are somewhat dibilitated, usually a little confused. Our senior housing, which is 36 units, we have never used probably half the parking that we originally allocated to it. Right now today and it is about the average and we have been watching it for the last 2 years because of the addition and so on, but right now, 14 residents have cars. We have a staff of 1.5, so there is 2 cars there at any given point. What we do get in there is 2 or 3 at the most home health aides during the daytime usually. It is limited but we may get a few of those and visitors, it would have to be a real peak situation like Mother's Day or something like that where you would get more than 4 or 5 cars there visiting. So, even at the rate we have now, we don't use anywhere near the parking spaces that we have available. Like I say, we are up to... if you had all of them at the same time, which chances are it wouldn't happen, we'd only be using 24 spaces for 36 units. Now, the nursing home is somewhat different because the staff... and it was nice that we had the extra parking at the housing cause the staff parks in the over what we had had for a long term parking lot and the adult home has a minimum amount of staff so we are going to have some of our staff utilize theirs too but... it... One of the things with the Town that makes it... you know we talk about suburban, urban, etc., is the Town's transportation. When people came to Good Samaritan in the beginning, three-quarters of them had cars at least. But, as they found out that transportation was so reliable, they decided to give up their cars and many coming in now don't have cars. We only have a few of the original people there. You know, I think, one... Doris had a point there about if you change but on the other hand, if you make especially if you are dealing, you know with not for profits or even for profits, if you make them take on an additional burden for parking, it's going to be more land and blacktopping, so on, and you might... you would be better off with more grass than blacktop, it could be a burden to the provider. We don't plan on any expansion in the Town at this time, so, you know, my comments are purely just to add confusion so.

COUNCILWOMAN DAVIS: I am not suggesting, Lee, that we have blacktop, I am just hoping or suggesting that we account at least for space for additional if the useage changes ultimately somewhere down the road. I would hate to see it blacktopped now.

MR. BORMAN: Yes, I...

COUNCILWOMAN DAVIS: But, I would hope that we could require...

MR. BORMAN: Well, you could allocate grass. When we started, we had a lawn, a big spot, that was allocated as grass but even the blacktop part which had 20 spaces we weren't using for the senior housing.

COUNCILMAN PUTNEY: And, do many of these spaces get taken up with snow removal and stuff like that?

MR. BORMAN: No, not if you plan it right, no. But, the transportation in Town helps. I think if we were in a different town more people would have to provide transportation and we... you know, and we probably would have had to. We tried running a van and couldn't get enough people to go in the van but it wasn't... that we sold only had about 15, 16 cars at the time. So, less than half our population have cars and the visitor population is not great, you know, the in and out.

COUNCILWOMAN DAVIS: At least one proposal that's at the Planning Board stage now would provide its own transportation. It would not be using the Town's senior services transportation.

MR. BORMAN: Well, then that's even better.

COUNCILWOMAN DAVIS: Which is another bonus.

MR. BORMAN: Well, our adult home does have its own transportation and that is another reason why... and we have a minimal amount of staff on, like I say. We... for a year we watched the parking down there and 13 cars was the maximum we had on Madison Avenue with staff. So, it is a lightly staffed facility as opposed to the nursing home which is heavy staffed and gets many more visitors.

COUNCILWOMAN DAVIS: Can you 2 gentleman bear with me for a question that has nothing to do with the parking? But, it is something that a number of people have asked about and I've had a question about and even Karen wasn't sure about. I remember when the Beverwyck came to the Planning Board and the Town Board with their Phase 3. We were told, I believe, that assisted living was not something that had been approved by New York State. At the time you were waiting for an approval because that was what you were hoping for at that... in that phase. Has that happened at this point?

MR. WENDTH: When you look, assistive is starting to come in. Actually, Governor Pataki is starting to...

COUNCILWOMAN DAVIS: So, it was assisted that we had and waiting for assistive.

MR. WENDTH: Assisted is regulated. It is a regulated. It is an ALP program. And, what that is... is regulated by New York State. You have to go and actually submit similar to like a certificate of need for that program.

COUNCILWOMAN DAVIS: And, you were waiting for your CLN.

MR. WENDTH: We never filed and ALP.

MR. BORMAN: No, but the plan was for that.

MR. WENDTH: The plan was for assistive.

MR. BORMAN: No, the plan was assisted at the time.

COUNCILWOMAN DAVIS: I believe.

MR. BORMAN: I went through the hearings with them so and behind them.

(Discussion by a number of people regarding assisted or assistive.)

MR. WENDTH: Our application that is here today is assistive.

COUNCILWOMAN DAVIS: And, that was my question because we have been talking with, I believe, Doug that the group that just came before your Planning Board is assisted living. And, that is why I brought the question up to Karen because I didn't think that it had been approved yet in New York State. At least not when you came to us.

MR. WENDTH: If I may, I was at that meeting, certainly Jeff or Doug...

COUNCILWOMAN DAVIS: And, I apologize for holding people up but it... while you are here, I thought I would ask.

MR. WENDTH: Could shed some light on this and that is, I think the developer that you are referring to had implied that they call it assisted living, however, was quick to point out that it is not the ALP program that New York State is regulating.

MR. LIPNICKY: I tell you, we are not using it as a legal definition if you will.

MR. BORMAN: That was similar to one our developer put our senior housing in and tried to call it enriched housing and it isn't... it wasn't enriched.

MR. FLANIGAN: There are so many different names.

MR. BORMAN: Yes, see there is...

COUNCILWOMAN DAVIS: And, I apologize to the Board and everybody here for asking the question and holding everybody up.

MR. WENDTH: If I may, just quickly, for independent living units, what... based on our experience to date, it would seem reasonable if you had spaces, 75 percent, compared to the total number of units, 75 to 80 percent that that would be a workable number of spaces for the facility. It would certainly provide for guests and visitors, would provide for resident parking, staff parking, etc. When you take the step towards the higher equity level, if you will of this population and start putting them into enriched housing, assisted, assistive, adult homes, really you should begin to look at based on what we see, nationwide as well as locally, you know, 50 percent parking to unit ratios. Because that is really the utilization that is out there and that's allowing for, you know, the residents to have their cars, staff, visitors, etc. Okay.

SUPERVISOR FULLER: Thank you, Dave. Doug.

MR. HASBROUCK: Just a couple thoughts that may help Doris feel a little more comfortable and perhaps some of the rest of you too. Unlike gas stations, grocery stores, shoe stores, these kinds of facilities don't tend to turn over very frequently to begin with. They tend to be long term occupancy, long term ownership. If they do turn over, it is most likely to another provider who provides exactly the same services and the people that are in there stay there and it is just another operator owning and operating the place. In the rare circumstances where they might go out of business, the way they are designed, these living units are very small as a rule. They are not the kind of thing that you and I would move into -- not you and I Doris, you or I -- would move into as a family apartment because they don't have that much space. The new one, for example, that is coming in now is a very small kitchenette and in fact, they have already said they will discourage the use of that kitchenette because of the dangers involved with people that age. So, you are looking at very small spaces in large numbers in a facility that is not easily adaptable to any other kind of use without major retrofitting and I can tell you having been in the business of major retrofitting, not directly but indirectly, for a long time, parking would be one of the least complicated of the problems involved. You are talking in turning over the use of this facility to something dramatically different in terms of function or utilization. You are talking major construction costs, mostly within that building and not outside. Parking would not be a major problem there. Okay.

SUPERVISOR FULLER: Thanks, Doug. Anyone wishing to speak in favor? Anyone wishing to speak in opposition? May I have a motion to close the public hearing?

The motion was made by Mrs. Davis and seconded by Mr. Putney to close the public hearing at 8:55 p.m. The motion was passed by the following vote:

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

Noes: None.

Kathleen A. Newbirk
Town Clerk

The Supervisor reconvened the regular Town Board meeting following the close of the public hearing. Mr. Lipnicky said the major issue here is really where you set the age limit at, should it be 62 or should it be something different. Mr. Lipnicky said as an example, there is a current proposal before the Planning Board where the applicant is proposing senior housing along Route 9W, a market rate type of facility, where he has indicated the minimum age there would be 55 years old. He said facilities such as that would not benefit from this ordinance.

Councilman Lenhardt asked if this referred to facilities going into zones other than senior housing zone. Mr. Lipnicky said this was correct. Mr. Lenhardt said he thought Mr. Lipnicky said earlier that adequate space would be allocated to accommodate the normal number of parking spaces that would be required in the zone, however, they would not have to blacktop that area, they could plant grass or some other landscaping, in the event that some day it may convert to an allowable use in the zone. He said this would allow for the addition of parking spaces if they are required. Mr. Lipnicky said not in all cases. He said for any market rate housing that is built, they would be required to have enough room on site to provide 1.5 spaces per unit for parking in planned development districts. He said in other zoning districts the requirement is 2 spaces per unit. Mr. Lipnicky said the code has some inconsistencies.

Councilman Putney said in light of comments from operators of existing facilities, he asked Mr. Lipnicky if he would be moved to reduce the number of parking spaces in the recommendation. Mr. Lipnicky said in his view he would not. He said parking proposals would be reviewed by the Board of Appeals on a case-by-case basis for determination with regard to the number of parking spaces. CMI, Mr. Lipnicky commented, as a new proposal, would have to go to the Board of Appeals for a determination as to what the requirement will be and they will have to provide the data and background studies to support their proposal.

Mr. Lipnicky said he feels this is a reasonable ordinance.

Mr. Lee Borman of Good Samaritan Health Care Center said with putting an age to it, nursing homes do not have an age, except that they cannot take pediatrics. He said that was why they changed to Health Care Center as opposed to nursing home. He said the same is true with senior housing, 50 year old age limit or disabled. He said one person has been there since the day they opened that still is not 50 years old. He said she may be now but she is disabled. He said in the adult care facility they also have people less than 60 years old. Mr. Lipnicky asked what the minimum age requirement is in senior housing. Mr. Borman said it is 50.

Supervisor Fuller asked Mr. Lipnicky what he was recommending in regard to the age. Mr. Lipnicky said it goes back to the point that 62 is the age that is defined under the HUD Section 202 program as elderly. He said it is his view, that the lower the Board sets, the parking needed is going to be higher. He said Good Samaritan is different due to it being subsidized housing. Mr. Flanigan suggested using 62 and see what happens. Mr. Lipnicky said it can always be changed at a later date.

Supervisor Fuller asked if there was a motion to approve the adoption of a Local Law to Establish Parking Requirements for Senior Citizen Housing.

Adoption of
Local Law No.
9 Established
Parking Requirements
for Senior Citizen
Housing

The motion was made by Mr. Putney and seconded by Mr. Johnson to approve adoption of Local Law No. 9 of 1997 Establishing Parking Requirements for Senior Citizen Housing, with the age of 62, in the Town of Bethlehem Code. The motion was passed by the following vote:

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

TOWN BOARD
TOWN OF BETHLEHEM
SEQR RESOLUTION
DETERMINATION OF SIGNIFICANCE/NEGATIVE DECLARATION
ESTABLISHMENT OF PARKING REQUIREMENTS FOR SENIOR CITIZEN HOUSING

SEQR Resolution
Parking
Requirements
for Senior
Citizen Housing

WHEREAS, the Town Board of the Town of Bethlehem is considering adoption of a Local Law, entitled "Establishment of Parking Requirements for Senior Citizen Housing"; and,

WHEREAS, the purpose of said Local Law is to amend the Town Zoning Code as it relates to parking space requirements (ratios) for multifamily housing, and specifically to make a distinction in the Code between requirements for conventional multifamily housing and requirements senior citizen projects; and,

WHEREAS, the State Environmental Quality Review Act regulations found at 6 NYCRR Part 617.3(a) require that no agency shall undertake fund or approve an action until it has complied with the requirements of SEQR; and,

WHEREAS, 6 NYCRR 617.6(a)(1) requires that as early as possible in an agency's formulation of an action it proposes to undertake it shall determine: (i) whether the action is subject to SEQR; (ii) whether the action involves a federal agency; (iii) whether other agencies are involved; and (iv) the appropriate classification of the action; and,

WHEREAS, 6 NYCRR 617.6(a) also requires that for Unlisted actions the agency must determine: (1) whether a short or long environmental assessment form is appropriate for determining the significance of the action; and (2) whether the action is located in an agricultural district and complies with applicable provisions of the Agriculture and Markets Law; and,

WHEREAS, 6 NYCRR 617.6(b)(1) indicates that when a single agency is involved that agency shall be the lead agency and determine the significance of the action; and,

WHEREAS, 6 NYCRR 617.7(a) requires that a lead agency must determine the significance of an unlisted action in writing and in accordance with 6 NYCRR 617.7; and,

WHEREAS, the Town Board has received a short environmental assessment form and supporting materials prepared by the Town Planning Department which address the proposed action and said documents indicate that: (1) the proposed action is subject to SEQR; (2) there are no federal agencies or other involved agencies in the action; (3) the action is appropriately classified as Unlisted; (4) the action complies with applicable provisions of the Agriculture and Markets Law; and (5) the proposed action is unlikely to have a significant adverse impact on the environment; and,

WHEREAS, the Town Board has considered the potential environmental impacts of the proposed Local Law by applying the criteria for determining significance found at 6 NYCRR 617.7(c);

NOW, THEREFORE, BE IT RESOLVED,

that the Town Board of the Town of Bethlehem hereby determines that adoption of the Local Law to establish parking requirements for senior citizen housing is an Unlisted action subject to SEQR and that there are no involved federal agencies or other involved agencies with respect to this action; and,

BE IT FURTHER RESOLVED,

that the Town Board hereby determines that it is lead agency with respect to this action, that adoption of the Local Law will comply with the Agriculture and Markets Law, and that a short environmental assessment form is sufficient for determining whether the proposed action will have a significant impact on the environment; and,

BE IT FURTHER RESOLVED,

that based upon its review of the environmental assessment form and supporting materials prepared by the Town Planning Department, and comparison of the action with the criteria for determining significance found at 6 NYCRR Part 617.7(c), the Town Board of the Town of Bethlehem hereby determines that adoption of the Local Law to establish parking requirements for senior citizen housing constitutes an action which will not have a significant impact on the environment and therefore, does not require preparation of a Draft Environmental Impact Statement; and,

BE IT FURTHER RESOLVED,

that this determination shall be considered a Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law; and,

BE IT FURTHER RESOLVED,

that a copy of this determination shall be filed in the Office of the Town Clerk; and,

BE IT FURTHER RESOLVED,

that this determination is based upon the following facts and conclusions:

1. It is generally accepted in the planning literature that multifamily senior citizen housing creates a lesser demand for parking at such facilities than is created by conventional multifamily housing.
2. The current Town Zoning Code does not distinguish between parking requirements for senior citizen housing and conventional multifamily housing available for rent or ownership by the general public.
3. The current parking requirements in the Zoning Code with respect to multifamily housing are excessive when applied to senior citizen projects and result in unnecessary pavement area which might better be devoted to landscaping, site amenities, or other activities which would enhance the living environment or aesthetics of such projects and the community in general.
4. Adoption of the proposed Local Law, in itself, would have no significant adverse impact on the environment and would not result in the exceeding of any threshold criteria listed in 6 NYCRR 617.7(c). By reducing the parking requirements and associated paving for senior citizen housing from that which would otherwise be required under the current Zoning Code, it is expected that adoption of the Local Law would enhance protection of the environment.

On a motion by Mr. Putney, seconded by Mr. Lenhardt, and by a vote of 5 for and 0 against, this RESOLUTION was adopted on June 11, 1977.

Comptroller
appointment
of Account
Clerk I

The next item was a request from Judith Kehoe, Comptroller, for appointment of Account Clerk I at grade 8, step 1 to fill the vacancy created by the retirement of Kathy Milette who has been a 17 year employee. Supervisor Fuller noted Mary Tremblay has been an account clerk in training in the Comptroller's office, indicating she was hired as a part time employee.

The motion was made by Mrs. Davis and seconded by Mr. Putney to approve the appointment of Mary Tremblay, Selkirk, NY to the position of Account Clerk I, at grade 8, step 1, \$21,561, effective June 23, 1997, to replace Kathy Milette who retired after 17 years of service to the Town of Bethlehem. The motion was passed by the following vote:

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

Noes: None.

Reception
planned for
Mrs. Milette
in Town Hall

Supervisor Fuller said she will send a letter to Mrs. Milette, noting she has been a very faithful, devoted employee over the years. She said there is a small reception planned for Mrs. Milette in Town Hall on Wednesday, June 18, 1997 at 10:00 a.m.

Adoption of
resolution
proposed
repair work
Heldeberg Lake Dam

The following item was a recommendation from Bruce Secor, Commissioner of Public Works, for adoption of Resolution pertaining to State funding for proposed repair work to Heldeberg Lake Dam. Supervisor Fuller said there has been an award of some grant money to help with repairs.

The motion was made by Mr. Putney and seconded by Mr. Johnson to authorize the Supervisor to sign a grant for State funding for the proposed repair work to the Helderberg Lake Dam. The motion was passed by the following vote:

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

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

Parks and
Recreation
Seasonal Personnel

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

Senior Lifeguard at a rate of \$8.50 per hour.

Patricia F. Mazzella
10 Dorset Street
Delmar, NY 12054

Attendant at a rate of \$5.10 per hour.

Colleen M. Doody
31 Stratton Place
Delmar, NY 12054

Lifeguard at a rate of \$6.70 per hour.

Nathaniel H. Beyer
4 North Street,
Delmar, NY 12054

The motion was passed by the following vote:

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

The following item was a request from Gregg Sagendorph, Highway Superintendent, for acceptance of resignation of Laborer I, Paul Goebel, Delmar, NY, Bethlehem Sanitation Department and appointment of Donald VanAlstyne, Selkirk, NY to the position of Laborer I, Sanitation Department.

Highway
Superintendent
accept resignation
of Laborer
I and appointme
of Laborer I

The motion was made by Mr. Putney and seconded by Mrs. Davis to accept the resignation of Laborer I, Paul Goebel, Delmar, NY, Bethlehem Sanitation Department and appointment of Donald VanAlstyne to the position of Laborer I, Bethlehem Sanitation Department effective June 7, 1997 at a Grade 7, Step 3. The motion was passed by the following vote:

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

Supervisor Fuller indicated she will send a letter to each employee -- one thanking Mr. Goebel for his years of employment with the Town and one congratulating Mr. VanAlstyne on his new position.

The next item was a request from John Flanigan, Building Inspector, for approval of a construction trailer at Brookhill Subdivision, North Bethlehem. Supervisor Fuller said Mr. Flanigan included a picture and recommends the placement location. Mr. Flanigan said for the Board's information, the Michaels Group bought

Building Inspector
approval Construct
trailer at Brook-
hill subdivision

this subdivision out. He also noted he asked the developer to put the trailer in the furthest back location indicating they were cooperative with regard to the location. He said these are most of the types of trailers that are being used at this time.

The motion was made by Mr. Putney and seconded by Mrs. Davis to approve the placement of a construction trailer at the Brookhill Subdivision, North Bethlehem as requested by The Michaels Development Group, Inc., Clifton Park, NY. The motion was passed by the following vote:

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

The next item was to approve ratification of the Telecommunicators Contract and authorize the Supervisor to sign the contract. Supervisor Fuller noted it is a 5 year contract which expired on December 31, 1996. She said there is a 3 percent increase for 1997; and for 1998 through 2000 the increase/decrease will be the same as the Town hall employees or non-union employees.

Supervisor
to sign
Telecommu-
nicators Contract

The motion was made by Mr. Putney and seconded by Mr. Johnson to approve the ratification of the Telecommunicators Contract and authorize the Supervisor to sign the Telecommunicators Contract. The motion was passed by the following vote:

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

Supervisor Fuller extended special thanks to Mr. Putney and Mr. Martin Barr who successfully negotiated the contract that she views as a win/win for both the Town and the Telecommunicators. She said the Telecommunicators ratified the contract on Monday afternoon.

John Flanigan
appointed as
a Member of
NY State Fire
Prevention
Building Code
Council by the
Governor

Supervisor Fuller congratulated Mr. John Flanigan for his appointment as a Member of the New York State Fire Prevention and Building Code Council by Governor Pataki. She said she received a letter from Secretary of State, Alexander Treadwell, notifying her of the appointment. She said it is a credit to our Town and she thanked John for being willing to serve. Councilwoman Davis congratulated Mr. Flanigan.

Water
Restrictions
in place

Supervisor Fuller reminded everyone that there are water restrictions in place, as is always the case, water conservation. She said basically ours are prohibiting sprinkling between the hours of 10 a.m. and 8 p.m. She said this is all the restrictions. She said there is a need to remind people that we have this in place every summer.

Mr. Secor asked if the Board would formalize that in the form of a resolution so that there is something current on the books for this year. Councilman Putney asked if this will be publicized on the water bills. Mr. Secor said it will be in the newspapers, indicating the water bills are printed and pre-enveloped. He said the space is limited, however, if he can he will have it on the next bills. Supervisor Fuller noted that most people in the community are aware of it.

The motion was made by Mr. Putney and seconded by Mr. Lenhardt to resolve that water restrictions be in place pertaining to the prohibition of sprinkling between the hours of 10 a.m. and 8 p.m. each day. The motion was passed by the following vote:

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

Noes: None.

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Resident George Harder asked if water conservation is observed by the residents and that results in usage below the minimum, why do the residents have to pay the minimum fee. He said if we are not consuming the amount of water that qualifies for the minimum fee, why would they have to pay the minimum fee. He asked if the fee isn't related to the amount of water that is actually used. Supervisor Fuller said this is relating to a water tax rate and a water use. Mr. Harder said he is talking about the water bill which has a minimum charge. Supervisor Fuller said not necessarily using less, conservation is asking everyone to conserve on water but as an example, she might not be watering her lawn everyday like someone else might be, but she has a larger family that is using water. So, she said it is really a balancing act. When 1 person is using water in the home and then out watering their lawn 24 hours a day, that's probably taking more water than her house would be. She said this is just an example to try and make it easier to understand.

Mr. Harder
on using
water and fe
charged

Mr. Harder said this is not answering his question. Mr. Secor said the minimum water bill is \$11.20 for 4 months and what the Town Board has done over the years. He said they use to bill every 3 months and then it went to every 4 and then every 6 months but returned to 4 months. As the Town Board has adjusted the rate, they have also reduced the minimum amount. He said there has to be payment of what the business costs. He said that \$11.20 maintains the service to the home, the reader, read the meter 3 times a year, and go and fix it and repair it. He said how little can you charge to run a business without having other people subsidize it. He said of the \$11.20 over 4 months, you spend a lot more than that on your newspaper.

Councilman Putney asked if Mr. Secor knew what portion of the water district customers are paying the minimum and not using it. Mr. Secor said he did not. He said he would assume it is a small amount. He said if someone leaves their home, it is \$4. a month.

Councilwoman Davis said she cut an article out of the Troy record that relates to the problem in Clifton Park. She said they are having a real, real, real problem with water and supplying it to their residents. She said they introduced a plan in April to eliminate the odd/even system. Their new pricing plan charges residents on usage ranging from \$3.24 per thousand gallons to as much as \$12.96 per thousand gallons, based upon how much water is consumed. Councilwoman Davis said we are getting one heck of a good deal in the Town of Bethlehem if you deal with this one. She said she does not think anyone could complain about what we are paying. Supervisor Fuller said this was an interesting article. Councilwoman Davis said she had copies for anyone who would like one.

Supervisor Fuller asked if anyone else had any questions for the Board. Mr. Harder asked if the 2 positions that are being filled are Civil Service positions. Supervisor Fuller said they are. Mr. Harder asked if the candidates have passed the exams. Supervisor Fuller said the Comptroller's office position has not but she is a probationary appointment until she passes the exam. The Highway Department position is exempt because it is a laborer position. Mr. Sagendorph said this was a lateral change, he worked for the Highway Department.

Mr. Harder
asked about
the positior
being filler
were civil
service

Mr. Harder thanked Supervisor Fuller. Supervisor Fuller thanked Mr. Harder.

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

Supervisor Fuller asked for a motion to adjourn to Executive Session to discuss litigation matters following the close of the regular meeting.

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to approve meeting in Executive Session following the close of the regular Town Board meeting to discuss litigation matters. The motion was passed by the following vote:

The Town Board adjourn to Executive session no formal action was taken

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

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

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

Kathleen A. Newkirk
Town Clerk

EXECUTIVE SESSION

There was no formal action taken at the Executive Session.