

TOWN BOARD
JUNE 11, 2003

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

PRESENT: Sheila Fuller, Supervisor
George Lenhardt, Councilman
Doris M. Davis, Councilman
Daniel G. Plummer, Councilman
Thomas Marcelle, Councilman
Kathleen A. Newkirk, Town Clerk
Robert J. Alessi, Esq., Town Attorney

- - -

SUPERVISOR FULLER: Good evening and welcome to a meeting of the Bethlehem Town Board. Please join us in the pledge of allegiance.

I'll ask the Clerk to read the call of the hearing, please.

TOWN CLERK NEWKIRK:
NOTICE OF PUBLIC HEARING
TOWN OF BETHLEHEM, ALBANY COUNTY

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, 2003 at 7:30 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, NY to consider a proposed Local Law amending Sec. 128-23 of the Zoning Code, dealing with permitted uses and uses permitted by special exception in Rural Districts not zoned.

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 Nan Lanahan at 439-4131. Advanced notice is requested.

BY ORDER OF THE TOWN BOARD
TOWN OF BETHLEHEM
KATHLEEN A. NEWKIRK, CMC,RMC
TOWN CLERK

- - -

State of New York)
County of Albany)

BRENDA WIERZBICKI of the Town of Bethlehem, being duly sworn, says that she is the RECEPTIONIST for 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 28th day of May 2003.

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

/s/ Brenda Wierzbicki

Sworn to before me this 2nd day of June 2003.

/s/ Sharon A. Doldo
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, 2003, 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
9th day of June 2003.

/s/ Julie S. McNeil
Notary Public

- - -

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

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

- - -

SUPERVISOR FULLER: Prior to starting the public hearing, I have detected that there is a great deal of confusion and perhaps some misrepresentation as to what the Town Board is actually going to be holding the public hearing on this evening. And, I have asked our attorney, Bob Alessi, to go through the process tonight so that everyone in the room will know exactly what it is the Board has proposed as a local law.

TOWN ATTORNEY ALESSI: Thank you, Supervisor Fuller. I'm going to start with the main precipitating action to the local law that is the subject of the public hearing. That was a decision by Judge Benza with respect to the Waste Management case. In that case, Judge Benza contrary to Bethlehem's interpretation of its Code said that in the rural not zoned area, the only uses that are permitted are the 32 listed in the Town Code. The Town of Bethlehem had never had that interpretation but that s the Judge's decision and order and that is what we must abide by unless that decision is overturned on appeal or otherwise affected by another court.

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

So, when that decision was looked at and its affect on the Town of Bethlehem, the Town Board realized that many uses that had been authorized that were in existence were no longer legal under that decision. The uses that were no longer legal under that decision were single family residences, which that consequence put into great jeopardy, people who wanted to refinance their homes, people who wanted to sell homes. Up until that point, if you want to engage in an agricultural use it wasn't on the 32 lists... the list of 32 uses so you could have done that as of right in the Town of Bethlehem. That was affected and by the court ruling as it stands today, an agricultural use is prohibited in the Town of Bethlehem not because of the action of the Town Board but because of the court decision. For people who had mining operations in the rural not zoned area, the Town of Bethlehem did not have a local law and does not have a local law for mining. And, that therefore, before the court decision if someone wanted to mine in the rural not zoned area, as long as they got a DEC permit, they were entitled to mine in that area. Under Judge Benza's decision, mining uses are prohibited in the rural not zoned area.

So, faced with this court decision, the Town Board had to make a judgment. They had to make a judgment as to what they could do in an expeditious amount of time to deal with the most pressing issues that were before the Board. And, it was identified as one of the most pressing issues to be single family residences. It was not meant and I will get to this in a moment, to be at the exclusion of anyone else that was adversely affected by this decision. It was a judgment that based upon the State Environmental Quality Review Act and other laws that to effectuate a change to encompass everybody that would be affected would be very difficult if not impossible to do within a short amount of time.

So, the Town Board stated and I submit made fairly clear on the record that it was charging the Planning Department and the Building Inspector to work with me to come up with a local law that would immediately fix the single family residence issue. And, that the Town Board stated that... very clearly I believe... that they were going to look at other people affected in a short amount of time but it couldn't be all done at once so let's address the issues that affect people the most. What happened after that Town Board directive was that the Planning Department, the Building Inspector and myself got together and as you will see in the proposed local law that is before the Town Board and before you as members of the public, we went a little bit more beyond that. We said we realize that people particularly agricultural uses that are in existence today that by fairly short quick process we could include those in this local law such that those that are operating agricultural uses today would be permitted to continue those uses and we would make valid by this local law those existing uses and we would allow those agricultural uses under the law to expand their existing uses under this local law. What we couldn't do now and do it quickly was to be able to say, for example for future agricultural uses, not in existence today a green-field peace of property we couldn't put that under the permitted use because we thought that would drag down the process and, therefore, drag down the people who have existing agricultural uses.

So, if you look at the proposed local law and if you look at specifically the section 1 a 13, and I am using agriculture as an example, it says that the following uses are permitted in a rural district not zoned – and you go to 13a... 13a says the following uses that are in

existence that are in existence on May 14, 2003 first one there is any other agricultural use because there are some uses up above that we said were going to be permitted and some of those uses could be categorized as agricultural uses. But, we said all uses... agricultural uses, any other use that's in existence on that date. So, I want to make very clear that if you have an agricultural use, farm operation, that under this law you are permitted and authorized to continue and you are permitted and authorized to expand that use. And, that for agricultural uses that have not come into existence... say somebody wanted to engage in a farming operation, it is the intention of this Town Board as stated on the record to take care of that issue in the very near future.

So, that is what this local law is intended to do and if you take a look at the uses that are added, 1 through 13, you will see single family dwelling is number 1. That is made legal cause the court decision I said has made them illegal. Those would be made legal. For a boarding house, lodging home, church, library, etc. you can go through the list, this law would make them all legal and remediate what has happened as a result of the court decision.

Now, there are, obviously, I've heard questions with regard to existing mining uses and other situations and the purpose of this public hearing is to hear from the public to see if there are other people affected how they are affected and once that is stated on the record, the Town Board will take that into consideration, those concerns, in determining whether or not there needs to be changes to this proposed local law before there is a vote on it.

So, I'd like to conclude my remarks here by underscoring 2 things. The Town Board's actions in terms of this proposed local law were to take care of as much as they can quickly and to thereafter take care of other issues that have occurred because of Judge Benza's decision and that there was a concerted effort, you'll let us know whether we succeeded to make sure that anybody who had an existing use as of this date, would be covered by this local law with the exception of some mine uses which the Town Board can discuss at the end of the public hearing. But, that is the Town Board's intent and Supervisor Fuller that concludes what I would like to have said about the local law.

SUPERVISOR FULLER: Thank you, Bob. I will begin the public hearing now and ask those wishing to speak in favor or in opposition to come forward. We need your name and your opinion. Please come forward.

MR. STOCKLI: I'm John Stockli from Crane, Greene and Parente. I represent Waste Management and my comments regarding the proposed law really center around some history here that I don't think we've covered tonight. And, that is the need to promptly get a law in place, as Mr. Alessi has referenced, in order to address single family homes. I think we don't have a complete picture because the Zoning Board of Appeal voted to appeal the court's decision which was contrary to everybody in the Town government's opinion of what the zoning law meant. The Zoning Board of Appeals, 2 building inspectors, I believe Mr. Lipnicky and this was addressed for many years in the LUMAC process. Judge Benza issued a decision which we think is erroneous and I think many people believe is erroneous. We've appealed it. The Zoning Board of Appeals wanted to

appeal and had then been able to appeal the judge's decision under New York State Law would be stayed. It would have no affect until the appeal was over. So, in essence the law as it exists and has always been interpreted would have continued to exist until the appeal was over.

The Zoning Board of Appeals couldn't continue that because you took their money away. And, let's just all be a little upfront and understand that that's why the Zoning Board of Appeals didn't continue because you wouldn't fund an attorney and that's your prerogative to cut off the funding but let's talk about what the result of that is. And, I would say there's been some special treatment here with regard to the Waste Management project. 1. I would like to know how often in the past the Town Board has declined to submit funds to either the Planning Board or the Zoning Board of Appeals when they were involved in a litigation. I would assume it's probably pretty rare. And, you know, we've run in from the beginning in the Town, we've tried to come in with a good application and have been treated to a variety of special treatment – one being almost a year ago when after sponsoring, along with others, a recycling program the award of which was a billboard for a student coming up with recycling art, Waste Management's logo was put on it and Supervisor Fuller ordered for it to be taken down. We're doing a community service and just because Waste Management's logo is there and a few people complained the billboard's taken down and all principle is thrown out the window.

And, we think it's time we just be a little more upfront about what's going on. There's no emergency to change the zoning law. And, if there is, it's because the Zoning Board of Appeals wasn't permitted to complete the appeal that they wanted to take up in the first place. Moreover, this law is much more than what I believe you are saying because what you're doing now is saying, in the past you've interpreted many uses to be allowed in rural not zoned. Now, at first you said it was going to be to cure the single family housing issue but you've added a few more things that you say now are allowable. By your definition and interpretation, anything not listed would then be prohibited and you went through LUMAC for years and years and years and ultimately declined to do that but now there is a concern on our part that you're using this Judge's decision which is under appeal and many of you, I believe, disagree with as a basis for now changing a law, getting things done and being out of there. And, you know, what this law doesn't do... maybe it doesn't affect existing agricultural uses but what it does do is affect what people can do in the future with open property in the Town of Bethlehem and you may never get to addressing this after this amendment. I mean, it sounds nice but it may get bogged down. You went through years of looking at this very recently.

So, let's talk about what happens if an existing agricultural use wants to do something different that under your past interpretation for 20 years would have been permissible but now by virtue of your Zoning amendments and the trail court's decision, which has not been fully adjudicated yet on appeal, they're no longer allowed to use. I mean that's really the issue here. And, to say people can come in and do new agricultural uses, I don't think agricultural is a growing industry in this State. It's put a further burden on people who have made their livelihood through agriculture and limit their ability to

recognize value in their land when their farming careers is over is incorrect. But, I just wanted to make that point and I don't agree that this is something that has to be done quickly as a bandaide because if you had let the ZBA go ahead and appeal, you wouldn't be in this situation, so you can't have it both ways. And, that's our opinion on it, thank you.

SUPERVISOR FULLER: Perhaps that's what as created some of the confusion in the community, Mr. Stockli. But, I would like to respond to one comment you made that we made the decision to not fund the ZBA. We are all elected here to represent a community and this is a community of 31,000 people. And, the decision of the Board not to provide the funding was just that, to represent the wishes of this community. So, I appreciate your input but I do think part of the confusion here tonight and the sing out in front that reads Town zones farms out, perhaps this is where it has come from.

MR. STOCKLI: It has not come from me and I will respond because...

SUPERVISOR FULLER: I hope that you do.

MR. STOCKLI: ...the minimal cost to continue with the appeal for the Zoning Board of Appeals versus the kind of land restrictions that you are imposing on people now, there's just no relationship. The Zoning Board had they used their legal resources officially could have prosecuted this appeal for a very minimal amount of money. But, you wanted to make political points. Two residents sued the Town...

SUPERVISOR FULLER: I have no need to make political points.

MR. STOCKLI: Okay, I'm sorry.

SUPERVISOR FULLER: Okay.

COUNCILMAN PLUMMER: Excuse me, sir, why do you suggest... I mean the Town Board felt that it was... if you needed to appeal, you would appeal as a company. Why would the Town Board to expend taxpayers money to appeal your case?

MR. STOCKLI: Well, I would ask in return, how often have you refused to fund the Planning Board or the Zoning Board of Appeals when they're in Article 78 cases other than this instance? Because, in those instances, there is usually an applicant at play as well. Or, it's an applicant who is suing you, why not just default and don't spend the money? The point being, yes we are appealing but had the Zoning Board of Appeals appealed and they did file a notice of appeal, by the way, and had they been permitted to continue their appeal, under New York State law, the judge's decision... because you're a municipal subdivision, would have been stayed which means the status quo, the whole... the interpretation that has always been placed on this zone would stay in place pending the appeal. And, you know, if the Appellate Division says Judge Benza was right, fine, then you know, we move on. But, to act now as if we promptly have to jam in some additional zoning restrictions because the single family homes are illegal – you

could have alleviated that like this (snap of his fingers) by letting the Zoning Board continue their appeal. I think we have to state that aspect of this because what I am talking about... you have a right to do whatever you want to obviously, but don't then say, well we're in a real rush to do this because otherwise all these people can't get refinances on their mortgages, etc. The easiest and I would submit the most cost effective way would have been to let the Zoning Board file the appeal. They could have filed the notice of appeal, probably could have filed a 2 page submission to supplemental redo and yet this whole issue wouldn't have to come up. And, the concern is, you went through this LUMAC process year-after-year and now you are shortcutting all of that by putting in, what you are calling, stop-gap measures. And, that's just not accurate. You should really say, yea, we helped create this problem not, we are only reacting to the judge. There are other avenues to take that wouldn't have cost a fortune. And, I understand that there are 32,000 members but for the minimum amount of money, I'm sure that there's... it's probably well spent as opposed to affecting people's property rights. And, I stand by that.

TOWN ATTORNEY ALESSI: Let me just respond to a couple... Mr. Stockli you can feel free to stand up here if you would like but let me respond to a couple of things that Mr. Stockli has said. One, the Town Board did not refuse to fund the defense of the Article 78. The Town Board fully funded the defense of the Article 78 before Judge Benza at the Supreme Court level and that there was a decision. Mr. Stockli, this is a public hearing on a local law, it's not a public hearing on whether the Town Board should have funded the Zoning Board of Appeals appeal. We had a public meeting on that. I don't believe you attended, there was a discussion and the decision was made. To come here tonight is off topic, frankly, for that particular issue.

MR. WATKINS: We want to hear about it.

TOWN ATTORNEY ALESSI: I would also...

MR. WATKINS: We want to know.

TOWN ATTORNEY ALESSI: I would also like to say that with regard to the automatic stay, you talk about, the automatic stay would occur but that would not allow the Town to continue to enforce the law as before the stay. As you may know, the automatic stay is a shield, it is not a sword. So, we would not have been... I disagree with you... we would not have had a local law here where we could have done what we did before the decision.

So, I just wanted to answer your question factually that the Town did fund the defense; the judge made the decision; the Town Board chose not to fund the appeal that was their prerogative; and they made that decision and that was debated at another meeting; and how many times has the Town Board not chosen to fund an appeal, I don't know the answer to that question but the question tonight for which there are a lot of people here that want to talk, regards the issue of this local law. And, let me also say that with regard to the local law and its affect on agricultural uses, I prefer to have the people who have agricultural uses in the Town come forward and speak as to how they are affected

because I am sure there are many of them here who want to let the Town Board know that and I know the Town Board is anxious to hear from them about how the law affects them.

MR. STOCKLI: I agree with that, Bob, and I won't take up any more time but it is relevant because you brought it up when you started, your whole emphasis is we're doing this because we have to do it promptly because we have a problem caused by Judge Benza. And, it certainly is relevant for people to know that this problem could have been alleviated through an Appellate process that would not be... and you can disagree with me... but let's lay it on the table and at least say that that issue is out there. And, I would certainly like to hear from the other people because I agree but I know the property that our project is proposed for has historically also been an agricultural use and what you do is you cut off people's rights to realize the value in their property by continuing to restrict. And, is that a Board's prerogative, certainly but let's make sure people are fully involved and have a full opportunity to address it. That's my only point, so I thank you for your time.

TOWN ATTORNEY ALESSI: That's why we have the public hearing tonight and I will just say that had the Zoning Board of Appeals gone through with an appeal, we would be in the exact same position we are now, single family homes would still be prohibited and that would not be cured if at all until there is a final decision from the Appellate Division and that could occur 8 months from now. So, I disagree with you that this would have been avoided had there been an appeal. If the Zoning Board would have appealed we could not... the single family residences would still be prohibited today and for 8 more months and the Town Board viewed that as an untenable situation.

MR. KLEINKE: Supervisor Fuller, thank you for the opportunity to speak before the Town Board this evening on this local law. I have a question which I would like to ask and I also have some comments. I didn't get the short straw so a couple of people with comments are going to be ahead of me but I would like to ask the question first because I think Mr. Alessi's explanation was very helpful in that this is somewhat confusing as an issue and it is... seems to have some gray areas but a particular question, if I may. Under item 13a of Section 1 of the proposed local law you talked about any other agricultural use in existence as of May 14, 2003. Being allowed... being considered, permitted and allowed to expand as any other permitted by right use would be able to expand. Am I correct?

TOWN ATTORNEY ALESSI: That's correct.

MR. KLEINKE: I guess maybe, take my family's farm and... for the record, my name is Ed Kleinke, 62 Maher Road... our activities that we are presently doing in terms of agriculture on our farms would be permitted to continue after the adoption of this local law. And, am I correct that anything we wished to do, any other agricultural uses that we wish to introduce to that farm activity after this local law is adopted would require a Special exception from the Zoning Board of Appeals?

TOWN ATTORNEY ALESSI: No. What you describe you could do as of right.

MR. KLEINKE: So, clarify for me...

TOWN ATTORNEY ALESSI: As long as it is agricultural.

MR. KLEINKE: Maybe it is nomenclature... our farm in existence prior to this date is a permitted use, after this date is it a non-conforming use because it is no longer permitted by right or is it permitted by right because it existed prior to the date?

TOWN ATTORNEY ALESSI: The latter.

MR. KLEINKE: Okay. So, agricultural use being technically the same thing because we don't have a definition, after the date of this local law would only be permitted by Special Exception of the Zoning Board of Appeals.

TOWN ATTORNEY ALESSI: No. Let me see if I can be helpful and you'll let me know if I'm being clear. Let me take your situation as a good hypothetical.

MR. KLEINKE: Sure.

TOWN ATTORNEY ALESSI: You own property, it's in agricultural use now.

MR. KLEINKE: Yes.

TOWN ATTORNEY ALESSI: Whatever you do to that property to change it, as long as the change is an agricultural use you are permitted as of right. You don't have to come before any Board. Only thing you would have to do if maybe you needed a building permit, you might have to go to the Building Inspector. We know the agricultural markets law, very well, in this Town. We respect it and we respect farming and we respect what the State Legislature has said about farming. They've made it very clear to municipalities in New York State – you don't put up roadblocks, you don't make it hard for agriculture to have use, you do the opposite. We have implemented that policy in the Town of Bethlehem even with regard to what would otherwise require an area variance under the old law. Town of Bethlehem's position has been clear, don't even come to the Zoning Board of Appeals, go to the Building Inspector and as long as there is no Code issue, you get to have that agricultural use as of right. You don't even have to go for an area variance. So, back to your point, what you described, if you have an agricultural use in place as of May 14th and you want to expand it, change it, as long as the change is for an agricultural use, you don't have to come to get anybody's approval. You get it as of right.

MR. KLEINKE: So, I go to the Building Inspector... what would be the Building Inspector's guidance in terms of my agricultural use existing or not existing or being old or new?

TOWN ATTORNEY ALESSI: You would just give to him a basic demonstration that you had an agricultural use as of May 14th.

MR. KLEINKE: Okay, right.

TOWN ATTORNEY ALESSI: And, we're hopeful as I mentioned earlier, we're hopeful that with the next change to the law that you may not have to even do that.

MR. KLEINKE: Okay, thank you. I do have some comments that I would like to address the Board with after...

COUNCILMAN LENHARDT: Can I just ask, Mr. Kleinke and I are old friends. Your particular property isn't in a rural not zoned zoning classification, as I understand it.

MR. KLEINKE: I understand that but I wanted to use my own situation to get a clarification of understanding.

COUNCILMAN LENHARDT: I just... okay, all right.

SUPERVISOR FULLER: If I can cut through some of this, I believe that the confusion is that you represent the Landowners, the agricultural landowners, and I believe you felt that they still had to now go through all this site plan approval or they had to go to some Board in this Town to be able to continue the agriculture. Is that correct?

MR. KLEINKE: That's the way it appeared to me in this proposed local law, yes.

SUPERVISOR FULLER: Okay, and I think that's what has, perhaps, created a lot of the confusion that has gone on this week and last week and brought people here this evening, interpreting what we're attempting to do here tonight is being anti-farmer and driving the farms out of town.

MR. KLEINKE: Well, I think everyone...

SUPERVISOR FULLER: But, if it's a simple confusion such as what you've led me to now understand here tonight, that you didn't realize that you did not have to go before Boards for approval, that did not change.

MR. KLEINKE: Well, I beg to differ, if I may, in that under Section 3, uses permitted as Special Exception of the Board of Appeals, it states any other agricultural use. So, the clarification that I was really searching for was that if I wanted to do any other agricultural use other than what I am presently doing as an agricultural entrepreneur today, would I be required to have a Special Exception.

TOWN ATTORNEY ALESSI: I understand your reading of it. I understand it but your reading skips over a very important part which is 13a which says the following uses are in existence on May 14, 2003, any other agricultural use. So, what you just referred to is

to reference people who do not have an agricultural use as of today. Best example, green field piece of property, it's not in agricultural use right now, those are the people that under this local law, would be subject to a special use exception but even those people with the State overlay law, under our policy in the Town, they'd go to the Building Inspector – they would say I want to put my green field in use as agricultural, the Building Inspector will look at it, oh agricultural use, meets the definition of farm operation you are okay. You don't even have to get the special exception because of the State law overlay.

But, Mr. Kleinke, I understand what you are saying, bottom line is you're reading skips over 13a but I am hopeful that regardless of who's reading it is, these laws are not always clear. They are written by sometimes the worst writers, lawyers, and therefore can lead to confusion. But, I hope I have cleared that up tonight for you and for everyone else that that is not the case.

MR. KLEINKE: Thank you.

TOWN ATTORNEY ALESSI: You're welcome.

COUNCILMAN MARCELLE: Bob, can I just quickly follow-up on a question? Under Section 3 then, 3c, what would be the situation whereby that section for other agricultural uses would be applicable – if you understand my question.

TOWN ATTORNEY ALESSI: I understand your question.

COUNCILMAN MARCELLE: And, it wasn't artfully phrased.

TOWN ATTORNEY ALESSI: No, I understand your question. The situation would be somebody owns property in a rural not zoned area because that is all that is at issue here is rural not zoned, it's not currently in agricultural use right now... best example is it's in there but it's just a big green field or maybe there is a house on it – somebody wants to put it into agricultural use, under this law, that's the type of person that would be subjected to a special exception process under this law but the special exception process for an agricultural use, as long as it meets the definition of farm operation, because of State law, in reality in the Town of Bethlehem is going into the Building Inspector and saying I want to do that and he says as long as, you know, there is no Code or building code, you go do it, you don't even have to go for the special exception. It's a gateway just to make sure that people who say they are going to have an agricultural use and it's going to meet farm operations go to the Building Inspector so he can determine, yes and that's the end of their process.

COUNCILMAN MARCELLE: So, just make sure I under... in my own mind I understand what you are saying. So, State law kind of preempts this field or takes this special use permit and switches it from the ZBA down to the Building Inspector, is that correct?

TOWN ATTORNEY ALESSI: That's correct.

COUNCILMAN MARCELLE: I mean, it's a very quick summary.

TOWN ATTORNEY ALESSI: It's a quick summary but it's an appropriate one. That's correct.

COUNCILMAN MARCELLE: Okay.

MR. MEAD: John Mead, President of Rural Landowners of Bethlehem. I got a little question with that thing yet though. It's bothering me a little bit now so you are saying that there's some land out there, let's say that hasn't been farmed in a few years and let's say I wanted to go and rent that farm and that piece of land and work it. I now have to go and ask the Building Inspector if I can go and work that piece of land?

TOWN ATTORNEY ALESSI: All you have to do is go to the Building Inspector and say I want to rent that land, I want to put it into use that meets the definition of a farm operation. As long as you demonstrate that it truly will... you describe what you want to do... the Building Inspector will say fine, go put it into that use and that's the end of the process you go through in the Town of Bethlehem.

MR. MEAD: Can I ask you...

MR. WATKINS: I've never seen the Building Inspector do that.

MR. MEAD: Can I ask you why?

SUPERVISOR FULLER: Excuse me, Mr. Watkins, can you refrain from shouting from the chair, you'll have an opportunity to speak so that you are not interrupting the other speakers.

MR. MEAD: It's still bothering me.

SUPERVISOR FULLER: Thank you.

MR. MEAD: I'd like to know why?

TOWN ATTORNEY ALESSI: The reason why and this has been discussed with the New York State Ag and Markets, the top people there, their counsel, that a municipality has to have some way to know that someone, in fact, is going to meet the definition of a farm operation in the Town. And, the Ag and Markets has said that's a proper function for the Town, they support it because they don't want people unlike, yourself, who would take advantage of this and go out there and make use of the land and say, oh well, I think it meets the farm operation definition. The Town still has a responsibility to enforce its zoning code and that Ag and Markets believe it's a very easy step for a person wanting to make use of their land as agricultural to come into the Town and just make that showing

without having to go to a Board. So, that's what we have been told by Ag and Markets, that that's an appropriate involvement of a municipality and a good one so that people don't abuse their statute.

MR. MEAD: I'm not sure I agree.

TOWN ATTORNEY ALESSI: I am not the one who created the law. I'm reporting to you what Ag and Markets says. If Ag and Markets were to issue an opinion that would say you don't... if you want to put something into agricultural use, you don't have to go to a municipality and demonstrate that, by all means, Mr. Mead, if that's what they tell us to do, that's what we'll do.

MR. MEAD: Because basically what you're talking about is that that piece of land was always a piece of farmland anyway. It always was a piece of farmland, cause the farmers were here first. So, why should anybody have to ask the government if it's okay to go and use that piece of land. We're not all of a sudden from outer space wanting to go and use that land. This is farmland, it's always been farmland you shouldn't have to ask for it to be used.

Now, the other thing about it is, that's fine while you people are here. You understand, it, you know it, you see it but you are not going to be here forever. Down the road somewhere, you've got to have everything spelled out these days because you're a lawyer, you know that. Down the road a ways it's like oh, now we can hold that farmer up if we want to. What if that guy needs that piece of land for it to grow his crop on it? You see the trouble with people is they, especially urban and suburban people, is the problem. They go by the clock and they go by the calendar but the farmer goes by the calendar and the weather, you see. So when you need something now, you need it now, you don't need it next week or next month or... you know, it might take a long while to go through. It's okay you say the Building Inspector can say yes today but maybe down the road they'll say no you got to go to the Board of Appeals. When you got to go to the Board of Appeals it might take a long while, you see, because that's something that... that's something that the urban and suburban people don't realize. Some days you go out on the farm and you go out to start to do something and you are going to do it but the weather changes your mind. You got to go over here and start doing something else you hadn't even started out to do. So you can't be held up by bureaucrats and bureaucracy.

TOWN ATTORNEY ALESSI: Mr. Mead, you're comments are very well taken. I grew up the first 18 years of my life with farms on 3 sides of my house. I understand what you are saying. I want to be clear there, nobody has said that you have to go to the Building Inspector for his okay. All you got to do is drop off a piece of paper and just let him know, this is the land, this is what I'm going to farm, I'm going to put it into agricultural use... just give him a sentence or two that says why it's going to be agricultural use.

MR. MEAD: That's today.

TOWN ATTORNEY ALESSI: And, also what I was going to get out was we can't take

your comments and look at our law and see if we have to be clear because I agree with you because nobody is around forever and nobody wants to rely upon an oral statement of somebody. You need to go farm in 24 hours, you don't want to have to say well, Bob Alessi, said this at a public meeting. You're comments are noted and if the Board wants to make some specific statements in here to make it clear, then the Board will do that. That's why we have public hearings and listen carefully to what people have to say so if you're comment is we need to make it clear here, then that's something I am sure the Town Board is going to seriously consider.

MR. MEAD: Well, now what I've got to say maybe will clear it up anyway when we're all done, I hope. Okay. What I got to say is, of course, we were here last fall and if the Board had considered our request last fall to adopt the agricultural business district overlay, the Rural Landowners wouldn't be worrying about this present proposal probably anyway to rezone the district in the not zoned area. So, we continue to urge them and you to do that for several reasons. And, one of the reasons is with an overlay in place, the opportunity to adjust the farm operations to meet the challenging markets and to plan for the use of our properties would not be threatened.

The definition of agriculture along with the overlay would address most of the land use concerns that the Rural Landowners have. Three is if the Board were to consider adopting the overlay first, it would guarantee the ability to those who are actively practicing agricultural business reassuring us that we could do what we know we have to do to compete with the marketplace to remain in business thereby continuing the presence of the rural look in Bethlehem. Or, the Board could add the definition of agriculture as we presented it and add agriculture to the permitted use list while removing all aspects of agriculture from all other Planning Board and ZBA reviews. This means that the proposed new rural district not zoned local law and proposed SEQR would have to reflect these changes.

While we believe that suggestion 1 is probably the best but the second could be moved on tonight if the Board wanted to do so. These proposals must be made and approved by the Board tonight in order to amend the local law and SEQR statement during the meeting.

I'm sure you have the definition that we have.

TOWN ATTORNEY ALESSI: I have that thank you.

MR. MEAD: So, that's all I had to say at this point, Thank you.

COUNCILMAN LENHARDT: Mr. Mead, just for the sake of those out there. Me. Mead is referring to a definition of agriculture adopted by New York Farm Bureau in December of 1999. I believe all the Board Members have...

COUNCILMAN DAVIS: No, we don't.

SUPERVISOR FULLER: We do not have that.

COUNCILMAN LENHARDT: You do not have that.

COUNCILMAN DAVIS: No, only some Board Members received it.

COUNCILMAN LENHARDT: Okay. I was faxed this in my office today.

SUPERVISOR FULLER: We do not have this.

COUNCILMAN DAVIS: I don't have it.

MRS. POWERS: I'll give it to you, sorry. I just discovered they are not all the same.

SUPERVISOR FULLER: Where did you get it from, George?

COUNCILMAN LENHARDT: Mine was faxed to my office this afternoon.

SUPERVISOR FULLER: And, who faxed it? Did you get it?

COUNCILMAN LENHARDT: Sheila Powers.

TOWN ATTORNEY ALESSI: Sheila Powers, looks like. I didn't check who it came from, Sheila Powers shows up on mine.

COUNCILMAN LENHARDT: Here's a cover letter.

SUPERVISOR FULLER: No wonder there is confusion. For the third time I am saying it.

MR. KLEINKE: May I make comments or would you like me to wait until the end.

SUPERVISOR FULLER: How about we give some others a chance since there is a room filled with people unless Ed is representing everyone. Is there anyone else who would like to address the Board?

MRS. POWERS: I would like you to hear Ed's questions because they are part of the presentation. I have to read you because I got handed this Fred Rickter's statement. He apparently fell yesterday and seems to have maybe broken his leg but he can't walk on it so he asked us to read his statement.

At the 8/14/02 Town Board meeting Mrs. Fuller indicated she would schedule a discussion on possible rezoning of the rural areas. Rural Landowners presented its basis for a master plan concept. This was apparently shelved together with the previous LUMAC plan. Now, there seems to be a rush to rezone without counseling the previously submitted ideas. By creating a list of uses currently permitted in a residential district, the proposed new law would effectively rezone the rural area to a residential one.

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

If as noted by Mrs. Davis at the 5/14/02 meeting the purpose was to simply amend the rural zoning to include single family homes as permissive right, then it would seem this proposal for a new law goes too far. I submit that it is premature since a final court decision awaits the appeal by Waste Management. If the decision is affirmed there, there is time enough to remedy any problem. If the decision is reversed then the problem no longer exists. That's Fred's position.

I have... I'm listening, of course, to all the conversations. The thing that occurs to me is this, if the Town were to utilize in some way that we knew, that you were actually using the decision which has the newest language of agricultural terms, although of course that will change, but the reason for the use of that definition is just because it does include a wider parameter of agricultural activities and my worry about things is that some next person, -- I know you've seen the definition, I gave it to you before -- however, if that definition isn't accepted and stated some place so the people can read it, sure as I am here, there'll be a challenge to it because that happens and we'll be fooling around with Ag and Markets again. Not that they are not gracious but one does not like to have to do it every day.

So, that is my concern and it looks to me and of course, since you have the non-commercial greenhouse phrase in here somewhere, which initially raised my blood pressure very substantially, I might add after Verstandig's experience I'm inclined to pay attention to those kinds of phrases -- so, I'm concerned that that's evening anything because why would you have a non-commercial greenhouse if you expected to permit commercial agriculture or agricultural business. You... that phrase is to prevent that from happening, it seems to me. I don't like it. I would like to see the non-commercial part of it gone.

And, otherwise, my questions are like John's -- I'm assuming you mean exactly what you say Mr. Alessi and that you are going to make some effort shortly to remedy this situation. Again, I will suggest that the rural district... the agricultural district overlay would do exactly that and then it would be done. If you don't like the look of that, however, then we'll continue to worry and we'll just have to continue to participate which I suppose we have to do anyway. But, that's my concern is that somewhere between now and whenever, people are going to be challenged. I sat through the Task Force meetings. I sat through the LUMAC meetings. I listened to continual challenges -- that's not agriculture, agriculture is cutting hay and bailing it. Or, that's not agriculture, that's milking cows. The fact of the matter is if you expect to find... you have farms in your town because you have successful farming operations that are able to live with the markets demands. If they are not able to do that, they won't continue to be attractive or farms and you will, in fact, have people who are land poor because can't do anything with the farm. I assume that is not your intention. So, this has to be addressed.

Now, I did hear what you said, I'm taking your word for it. I am still very concerned about this because it just certainly wasn't clear to any of us although Mrs. Fuller gave me a sheet that I hadn't seen before which I don't agree with the conclusion of the writer on, however, I don't agree that he was as thorough as he said he was. However, I have read

it. I hadn't seen it before. I would have approached her in conversation had I seen it to clarify.

SUPERVISOR FULLER: Jeff Lipnicky... This is Jeff Lipnicky's letter of April 30th.

MRS. POWERS: Yes.

SUPERVISOR FULLER: It explained the whole thing and that is April 30th.

MRS. POWERS: You know I understand it's April 30th but I just hadn't seen it. I don't know if the Board knows that I've been rendered somewhat incapacitated for some months or so through dump trucks and I when they loaded.

SUPERVISOR FULLER: This was handed out to Mr. Watkins. It was handed out to Mr. Kleinke. All of it was a complete packet.

MRS.. POWERS: Well, I don't know. I didn't see that...

SUPERVISOR FULLER: And, that's all we had.

MRS. POWERS: ...sheet until you showed it to me this evening. That's my first look at it.

TOWN ATTORNEY ALESSI: Mrs. Powers, if I could ask you a question. I just want to make sure that I'm clear about your understanding. Do you understand that Judge Benza's decision rendered agricultural uses not permitted?

MRS. POWERS: I do.

TOWN ATTORNEY ALESSI: You do and, you understand that a good part of this effort... the proposed law, granted you've made some very good suggestions as have others to improve it more, but I hope you would agree that what is here is attempting to restore agricultural uses to permitted status in the Town of bethlehem and if we can do it better, that's a decision that the Town Board will make but we're moving in that direction and your suggestion – which I hear loud and clear is – try to improve upon the definition of agriculture uses so people don't argue well what they are doing... that's noted and I'm sure the Board will address that but I just wanted to be clear and you've made it clear that you understood Judge Benza's decision was to render agricultural uses prohibited in the rural not zoned area.

MRS. POWERS: Yes, I did.

TOWN ATTORNEY ALESSI: Great, thank you.

MRS. POWERS: I did understand that. I remain concerned because I am the one who sat and listened to the ZBA pontificate about Verstandig's operation not even being in the

definition of agriculture. Now, and that was the end of the discussion, right there. So, I point out, that happened. It cost him a lot of money and it wasn't necessary if we had clarified as we have now, at least it would have been up for some discussion. That's why I am concerned about the definition. It is unusual for New York Farm Bureau to take from a single county a proposal for a definition and for all delegates to vote on it, let alone to keep it in year after year after year for several years. That is happening here because regardless of where they farm, they all understand the problem we're in and they want to keep us so that we are understood as being agricultural. So, I can only continue to push that this year I will go and see if they won't vote to have the Legislature instruct the department to put that definition upfront which will help. But, after my conversation with Bob the other day, Bob Summers, I can tell you that they, in fact, are paying attention to those terms in practicality and in use. But, they still don't have that laid out the way that policy book does which is what you have. That's my concern. It will continue to be, you'll see a lot more of me until it's fixed because I am very concerned about it. Thanks. Now, Ed has questions.

SUPERVISOR FULLER: Go ahead, if there isn't anyone else wishing to address the Board, you are on.

MS. JASINSKI: Linda Jasinski. I have property in the rural unzoned. It's nice to know the Board has good intentions, however, intentions again are not always written in the law. I see this as being restrictive to landowners as to what they can do. And, we are not in Delmar. We are not part of the suburbia as in the zoning it says we are a rural district. Yet, in your SEQR you've mentioned that you're taking the zoning from the residential areas and putting this down there. You've contradicted yourself a couple of times here. You said if you want to do the farming, you have to go and see the Building Inspector but you really don't have to see the Building Inspector you can just drop off a piece of paper. And, for the zoning doesn't count because it is agriculture and Ag and Markets law counts but you're trying to zone in agriculture. I mean, let's make up our minds here.

Government doesn't move fast and when you start moving fast, it scares me because you are going to make mistakes. And, you spent a lot of time on the truck route on Cherry Avenue and defining all that and everything knowing that DOT was looking at it as a truck route. So, everything you did got thrown out anyway.

There are businesses down there that are not agricultural, as well. My brother has a septic business, it's not addressed in here and it's not even one of the current uses that can be allowed. And, I think you're really going to end up changing it down there so it will be residential and everybody wants their green space but nobody wants to buy it and keep it. And, when I go to brush hog my field, am I going to have to go into the Building Inspector and say, you know, gee I want to brush hog it and I'm cutting down those pretty daisies that are growing.

TOWN ATTORNEY ALESSI: Do you have an existing agricultural use on the property?

MS. JASINSKI: Yes, I do.

TOWN ATTORNEY ALESSI: I tried to make clear that you do not... if you want to brush hog... the situation you just described, you do not have to go to the Building Inspector, it's an existing agricultural use.

MS. JASINSKI: That's fine.

TOWN ATTORNEY ALESSI: It is permitted as of right.

MS. JASINSKI: That's fine. What if I buy another place that does not have an existing agricultural use and I want to do it? Now you are making me go to the Building Inspector to do something with it. It's still going to be rural. I mean I would still keep it green of one way or another and not build houses on it but if you are going to put me through all this stuff, maybe I'll just build houses on it. But, that's my opinion and I've voiced it how.

MR. KLEINKE: Thank you. Ed Kleinke, 62 Maher Road. A couple of concerns that I just want to relate and I appreciate Mr. Alessi's comments and I certainly believe they are reflective of all the Board's concern and interest in seeing that the agricultural community is well protected in any matters that come before the Town Board.

The definition that, I think, have in your hand now is a definition that Rural Landowners have presented on several occasions to the Town Board over the past several years. It's not anything brand new. As you can see, it was adopted by New York Farm Bureau in December 1999 so it has been around a bit. And, it is a result of the Rural Landowners having put information together, having presented that to the Town and taken it to Farm Bureau. This definition is in fact, something we've talked about a lot and I would suggest that if it is at all possible that that be included in this action so that it clarifies for everybody's benefit the scope and parameters around agricultural uses.

Secondly, I think that -- and I would refer mainly to the SEQR proposed State Environmental Quality Review resolution -- there is a couple things, I guess, that kind of concern me particularly from the perspective of the next steps that the Board would be undertaking. And, I guess the inference I get from some of these reasons for adopting a negative resolution seem to me to reflect an intent for direction perhaps, maybe not an intent fully, that the proposed local law is and perhaps, sets the foundation and the direction that the rural district not zoned would become more of a residential district much in the way our current residential districts exist in the Town. And, I think from the very beginning of the local law we talk about, it's an area of our community where much of our... many of the landowners make a living by agriculture. We need to give it some perspective that it isn't quite like a residential district as we're familiar with here in the central part... more populated part of Town. And, so I think the SEQR document leads us to believe that and I would express my concern over that because future actions by the Boar I would not particularly want to see guided by that premise.

The other thing I would like to comment because it concerns me is under the Be It Further Resolved there is 5 items and number 5 says 'local law would increase protections to the environment in that it reduces the scope of land use as permitted by right in the rural districts' and not otherwise permitted prior to the court decision. I think Mr. Alessi has clarified a lot of the question about agriculture but I would just like to reinforce that, I think you've certainly heard it from me and other property owners, that most of us feel that the agricultural community are the best keepers of the land. And, that environmental protection and the open spaces that we have are a result of having viable farming activities going on. Viable farming activities do not exist because there is nice open space. So, the protection of the land, the maintenance of it, the creation of open space, I think, that everybody desires and believes in are a result really of having viable farming operations.

So, it's the Rural Landowners concern that protection to the environment be expressed in conjunction with agriculture and not as a result of limiting land uses.

And, then finally, just for my own clarification in my own mind, make a suggestion with respect to this item 13 under Section A, any other agricultural use. And, I would suggest adding an item 14 that would say any other agricultural use provided it meets the definition of agriculture. That would render any other agricultural use, provided it meets the definition of agriculture, as a use permitted by right clarifying all of the issues of conformity, non-conformity, date of operation, before/after and everything else. So, in conjunction with adopting the definition, we would have those 2 things centered together and I think will go a long way to clarify a lot of the questions, some of the confusion and some of the issues that I think people have raised both prior to this evening and this evening.

So, I appreciate the chance to make those comments, thank you.

SUPERVISOR FULLER: Is there anyone else who would like to address the Board?

MR. WATKINS: Bern Watkins, 14 Saybrook. Mr. Alessi, have you ever drawn a public law like this?

TOWN ATTORNEY ALESSI: Several times.

MR. WATKINS: You've done it several times, then you wouldn't mind if we had an attorney go over it with you.

TOWN ATTORNEY ALESSI: I work at the direction of the Town Board, sir, so if the Town Board would like me to do that, I would be happy to do so.

MR. WATKINS: Would you mind if we do that because we have an attorney that we'd like to go over this? We just don't want to loose any of the farm rights looped in with...

SUPERVISOR FULLER: Why did you not have the attorney take a look at it? You

came into my office and picked all this up.

MR. WATKINS: We just realized the wording on it. We don't like the wording on it. And, there are many, many flaws on it...

SUPERVISOR FULLER: And, I do believe we've heard from Bob Somers has sent a letter to the Town Board from Agriculture and Markets.

MR. WATKINS: No, not Bob Somers.

SUPERVISOR FULLER: Yes, he has.

COUNCILMAN DAVIS: We have a copy.

MR. WATKINS: Did you get the letter from Kim Blot.

TOWN ATTORNEY ALESSI: It's signed by Mr. Somers.

COUNCILMAN DAVIS: It is signed by him.

MR. WATKINS: Oh, okay. Anyways, we'd like to...

SUPERVISOR FULLER: The letter Kim Blot is signed by Mr. Somers who sent it to all of us, including Mr. Alessi.

MR. WATKINS: Right. Basically we'd just like the opportunity to go over it and to clarify it and to agree with it. That wouldn't take very much but...

SUPERVISOR FULLER: That's up to the Town Board. You know, it's a public hearing, it's up to the Town Board what their pleasure is.

MR. WATKINS: We think there's a great loss for the rural owners... landowners. It's... you have to go into the Building Department to get various permits and...

SUPERVISOR FULLER: I think Mr. Alessi spent most of the evening...

TOWN ATTORNEY ALESSI: Not correct.

SUPERVISOR FULLER: ...discussing all of that.

MR. WATKINS: Well, then he could... you know, if he can explain that...

COUNCILMAN DAVIS: He did explain it.

MR. WATKINS: Well, he didn't explain it so that we understand it fully. We believe... he has said we have to go to the Building Department. They can turn you down.

TOWN ATTORNEY ALESSI: I did not say that.

MR. WATKINS: They can't turn you down in the Building Department... why do you have to go then?

TOWN ATTORNEY ALESSI: Because as Ag and Markets had said, the State Ag and Markets, they believe that it is appropriate for a municipality to make sure that the use someone says is an agricultural use or farming operation, is in fact one.

MR. WATKINS: Well, then, just let's put the wording in that's clear that Ed wants in.

TOWN ATTORNEY ALESSI: The Town Board has noted that. I, personally, think that that's a good suggestion and that's for the Town Board as the decision makers. I don't vote and I'm not a decision maker. If they think that's a good idea, then you will see that in the next version of the local law.

MR. WATKINS: Yea, we'd just like it clear and easy to understand because we're not attorneys and we don't have the sophistication.

COUNCILMAN DAVIS: Nor are we... nor are we.

MR. WATKINS: Okay. So, we both could be wrong. We want to get it right. We just want to have our attorneys understand it too and that they agree. We want everybody to agree, just time to everybody do it. We just don't want to be looped in if you are after one particular thing, let's not loop in the rest of the Town. And, as far as, Judge Benza's decision, it really should have been appealed. I mean, let's face it, you know. Thank you very much.

SUPERVISOR FULLER: Is there anyone else?

MR. DECKER: Good evening. I'm John Decker from Waste Management and as everyone knows, our intention is to purchase the property that the Thorne's own and hopefully construct an office building, truck maintenance and container repair shop. And, while I believe that the Town is sincerely trying to preserve what these people are doing today, I've gotten to know the Thorne's throughout this process. And, I think one of the concerns that has to be evaluated here is, what about these people tomorrow. Most of the people that are in this rural not zone or rural unzoned are farmers. They don't have a pension. They don't have a 401K. They're not getting overwhelmingly wealthy with what they are doing. Most of their equity is in the value of their land. And, the difference between the value of land based on the uses that you can put there can be dramatic, whether it be an opportunity for a commercial establishment or a residential home can have a significant difference in the value of their land. And, while they may choose to farm for the rest of their life, they may choose to some day retire. And, they've earned that right or their children may choose not to be farmers and what they are left is this land and the value of that land.

And, I just hope you consider that fact as to what you may be doing to the value of these people's assets as you go through this process. I think you've done a real good job of trying to preserve what they are doing today but as I read through those provisions, 13 of them, not commercial... no commercial signs, many provisions that would potentially reduce the value of their biggest assets, their farms. Thank you.

MR. ORSI: I'm Rich Orsi. I sort of been part of starting this unintended consequence of appeal. And, you know while that gentleman was talking about Waste Management, I was looking at the sign over here on the wall the quilt and I'm looking at the First Church which is the church our family goes to, Becker Homestead which is a mile from our house, Historical Association which is a mile north of our house. I don't think I am ever going to see Waste Management on one of those signs up there. If people want to have value for their property in this Town, they don't want to have a company come in here and devalue the property. This is not going to be the kind of thing we want to attract to Town especially in the high profile place like the entry to the Town. The only entry to the Town off of the Thruway. I own 30 acres... my family owns 30 acres and I would like to be able to do as much as possible with that if I can. I appreciate the work you've done to remediation, again, the unintended consequences of Judge Benza's decision. But, another clarification is that it is not just 2 people that appealed the Town's decision. We're part of a large group, the lawyer for Waste Management neglected to say that to do the appeal you have to be a contiguous land owner to the property. And, one of the other landowners was away in a different part of the world on vacation when that decision had to be made and we were available and we stepped forward for the group. So, again, we're talking about a large group that is very concerned about this Town and it's not an issue of the suburbanites against the farmers, I think the people in the group have a great respect for the farmers. They're wonderful neighbors and hope to continue to be that way. Thank you.

MR. POIRIER: My name is Marcus Poirier. I live at 1412 River Road. I would like to ask Bob and the Board if they feel there's anything in this amendment that would inhibit or prohibit people from their current agricultural uses or future uses in the agricultural area. And, if you do, are you willing to amend that and change it to make it more understandable or satisfactory to the people in the community who are in agricultural business and may have some concerns.

TOWN ATTORNEY ALESSI: My opinion and this law can, if need be, the Board wants to make it clear, in my opinion, nothing in this law that inhibits the use of agricultural lands now and for people who have it in agricultural use nor will it inhibit them in the future. There was a good comment made and one that I know all the Board Members respect and consider is the fact that people while they may have an agricultural use now may want to sell their land in the future and may want that land to be put to other uses. This Town Board has been clear and I know people don't have the opportunity or the ability to come to every meeting, but this Town Board made clear that this was as stop gap measure to put things back into permitted use for the very things you just talked about and they said that they will look at it further to see whether there are other changes

to be made to further protect the landowners in this Town. So, my answer to your direct question, sir, is that there is nothing in this law that prohibits an agricultural use in existence now that in any way affects an agricultural use in existence now. They don't have to come to the Building Inspector if they want to increase or expand their agricultural use that they have now. And, to clarify further another point because it was thought that where they might be some inconsistency, there's no Building Inspector approval or okay necessary for someone who has land that's not in agricultural use. They just have to provide documentation to the Town that it is, in fact, going to be put to agricultural use. They don't need a permit. They don't have to wait for an approval, they drop it off, they talk to the Building Inspector – however they want to do it, so that the Building Inspector can be satisfied. That person can go turn around, drop off the piece of paper and go put that green field into agricultural use. They don't have to await a decision but the Building Inspector will have that documentation should somebody come in and say, you know, what's that person doing, how do you know it's an agricultural use in fact. The Building Inspector can put out and say I have been provided with documentation, etc. That's the long answer to your question.

MR. POIRIER: Is that process required by New York State Ag and Markets?

TOWN ATTORNEY ALESSI: Yes.

MR. POIRIER: So, this isn't something that the Town decides. It is something that Ag and Markets requires the Town to do.

TOWN ATTORNEY ALESSI: That is correct.

MR. POIRIER: That people demonstrate that their property is an agricultural use.

TOWN ATTORNEY ALESSI: That is correct.

MR. POIRIER: Not something else.

TOWN ATTORNEY ALESSI: That is correct.

MR. POIRIER: And, then therefore, gain the benefits that a farmer would gain while he's not farming. Is that correct?

TOWN ATTORNEY ALESSI: That is correct and prevent other people who would say that they are going to do that, provide no documentation, in effect do other things with the land. It would be unfair to the farmers, as well as, the people who live around them.

MR. POIRIER: Thank you.

COUNCILMAN PLUMMER: Can I just... get a clarification on that, Bob. So...

COUNCILMAN LENHARDT: Dan, talk into the mike, the people can't hear you.

COUNCILMAN PLUMMER: So, under that scenario then, you cannot have... if a new company or somebody came and they wanted to acquire some land and they wanted to start a farming operation, that could not be because of State law as of right... a permitted right?

TOWN ATTORNEY ALESSI: The answer is because of local law, our laws, that would not be permitted as of right. Under a listed use it would be a special exception but because of State law overlay, the way the special exception is applied for that is just as I described it – go in, show that it is an agricultural use, provide documentation and that's the last you have to do with the Town of Bethlehem. You then are subject to the State Agricultural and Markets Law to be sure in fact that it is a farm operation as that term is defined in State law.

COUNCILMAN PLUMMER: But, if we wanted to make a change and we wanted to make agricultural as of right, is that superceded by the State?

TOWN ATTORNEY ALESSI: No, if you just chose to move the category of agricultural use out of special exception and put it into permitted... you know, as of right, you could do that. We would then have to come up with some procedures to make sure that we have documentation of that. It's still the documentation issue but as you suggest, you could choose to move it from agricultural uses, from special exception in the category right up here to permitted uses – accomplish the same goal.

COUNCILMAN PLUMMER: Okay, all right.

SUPERVISOR FULLER: Any other questions from the Board?

COUNCILMAN MARCELLE: Madam Supervisor, if I could ask our counsel a couple questions to make sure I understand some of the scope. This local law or this amendment to our zoning code would it effective... let me just strike that and do again. The Appellate Division makes its ruling. If we pass this local law anytime prior to that or even I guess subsequent to that, does that basically make the interpretation that the ZBA and the Building Inspector took prior to Judge Benza's decision kind of moot. That this replaces that interpretation. Is that clear, Bob? I'm sorry.

TOWN ATTORNEY ALESSI: No, your question is clear. The answer is I would want to look at that a little bit further but I would say that it would be largely moot. The judge's decision would be largely moot because you would have passed a law to change the law in this Town and that when you do that I would suspect probably one of the parties would make that fact known to the court.

COUNCILMAN MARCELLE: Okay. So, just so I'm clear, we pass this local law, the prior interpretation by Kevin Shea our Building Inspector and the ZBA... we're kind of now substituting their interpretation of the... if it's not explicitly prohibited, it is included with a list of only as of the list of 13 that we provide in the local law or have expanded to.

TOWN ATTORNEY ALESSI: Right. Well, this local law would add to the list not replace it. So, what would happen would be, Mr. Shea and Building Inspectors before him, their interpretation was of a law. That law would no longer exist in its form and this law would be the law so that's why I believe subject to check, I want to take a look further, that the law they interpreted no longer exists so the interpretation would not have direct relevance to the new law except for, perhaps, vestiges of the old law that are left over. But, in my view bottom line is, this will be the law now that will have to be interpreted.

COUNCILMAN MARCELLE: My second question, I guess will follow-up on that is.. now... I am not sure where Mr. Gushes property lies...

SUPERVISOR FULLER: Well, let's not go there yet.

COUNCILMAN MARCELLE: Well, I guess my question is in the rural not zoned area, is... if someone wanted to put up at the end of the Thruway a hotel or office space or tech park or something like that on some of the land in the rural not zoned would that be permitted or not permitted?

TOWN ATTORNEY ALESSI: Under this law, which keep in mind you wanted to have a stop gap to help people who had existing uses and you were going to come back and look at the broader picture including the scenario you just talked about, but to answer your question, that would not be permitted under this law.

COUNCILMAN MARCELLE: So, we would have to some time if we wanted that, would have to enact another local law.

TOWN ATTORNEY ALESSI: That is correct and my understanding of this Town Board's desire was to do the stop gap but to then turn to the larger questions that exist in the rural not zoned area and address them. But, knowing that would take some time they didn't want people like the ones here tonight who are adversely affected and would continue to be adversely affected, to be suffering while we go through that process.

SUPERVISOR FULLER: To answer your question on Mr. Gushes property, it is Niagara Mohawk site, he purchased the property there. His site is the one that the EPA has identified as the dewatering site.

COUNCILMAN LENHARDT: Madam Supervisor, excuse me just a minute, while we are on this subject, an example that Mr. Marcelle just brought up to Mr. Alessi. And, I am not an attorney but I am going to argue with one, was if they want to put up a hotel in this area... now, there is a section... we're looking at the changes, however, there is a section in the existing law that still remains and it is 32 or actually be 31 by this change but following uses shall be permitted following site plan approval by the Planning Board and motel or hotel is number 12 on that list. That still remains there.

TOWN ATTORNEY ALESSI: Mr. Lenhardt, I would not argue with you. I would agree with you. The question from Mr. Marcelle, as I understood it, was essentially Mr. Gushes proposal which was Tech Park and other uses and that proposal in toto would not be a permitted. But, there are certainly components of it where they could be stand alone as you correctly point out, motel/hotel, that would be and that was why I referenced this is in addition to the list of 32 that are already permitted. But, I agree with you, a motel or hotel would under our law that we would amend and even under the law that Judge Benza interpreted would be permitted.

COUNCILMAN LENHARDT: Sorry.

MR. TRYON: Gerald Tryon, Old Quarry Road.

SUPERVISOR FULLER: I didn't hear your name.

MR. TRYON: Gerald Tryon, Old Quarry Road.

SUPERVISOR FULLER: Can you hear him?

TOWN CLERK NEWKIRK: Yes.

SUPERVISOR FULLER: Okay.

MR. TRYON: I've lived in the Town for 70 years. And, my folks purchased our place from VanRensselaerwyck in 1754. And, these last 8 years we have been harassed more than I think is necessary from any Town Board because we are unzoned. Basically, I think all it is you want more money out of us out there. That's all it amounts to. We have taken all your crap going by our house down to your landfill for the last 70 years also. And, it was shocking me that you would want to go and pass this bill when it's on appeal for a judge that says that a single family house is illegal in our Town. My house was built before this Town was a town and you can't tell me that when it goes through appeal that it's not going to get thrown out. The people over in our part of Town just want to leave us alone and don't forget the south part of the Town... who's the biggest turnout for voters for you? You remember back in '60 when Lincolns wanted to run, who helped you to stay in office?

MS. JASINSKI: Linda Jasinski again. You have mentioned that you plan to address a lot of this in the future and this is a stop-gap, what is the future? Two of you will definitely not be here shortly, so that would put a whole new Town Board here that...

SUPERVISOR FULLER: That's very true.

MS. JASINSKI: ...has to address it and your intentions may not be carried through.

MR. TRYON: I'd like to ask each one of you Board Members, go down to the Town Library and get out Tin Horns and Calico and read it.

COUNCILMAN DAVIS: I read it.

MR. SELKIRK: Ron Selkirk, 85 Maple Avenue, Selkirk. Interpretation, all of this is open to interpretation. And, who is going to interpret these laws? Our Building Inspectors, I don't think are capable. We wouldn't be here about Waste Management if they interpreted the law as it was written. And, we're here having a big fuss when the codes did not permit Waste Management's operation. And, that was wrong interpretation and I've seen other wrong interpretations by that Building Department. And, something has to be done about that.

MR. WATKINS: If Attorney Marcelle agrees with everything that's in there. I think we should get a panel of farm lawyer, Thomas Marcelle and go over this bill. I don't think the thing... you've got how many acres are you buying down there?

GENTLEMAN: Roughly 140.

MR. WATKINS: And, you are rezoning 2000/2500 rural acres in the area. And, if you just... you're going very, very fast on it. If you go fast on it, if you go fast, you might make mistakes. People that go fast don't last. You know, you got to take it easy, take a look at it. I mean if he was our attorney on this thing, he'd find 50 things wrong with it. Now, he is not our attorney but we'd like to enlist his help and get a farm attorney involved and just over it with you.

TOWN ATTORNEY ALESSI: I'm sorry, you said Mr. Marcelle would find 50 things wrong with it.

MR. WATKINS: Yea, that's right.

TOWN ATTORNEY ALESSI: I haven't heard that.

MR. WATKINS: Well, when he gets attuned to it. Let him get up on it. He asked you a few questions, you've got to get back to him with answers. Okay. So that automatically delays this thing. But, it is not just that, we want to be able to bring our attorney in to go over it with you.

TOWN ATTORNEY ALESSI: Let me just be clear, he asked one question which was a hypothetical about how something might apply in the future. That was the only thing I needed to get back to him on.

MR. WATKINS: Okay. So, you got to get back to him on that. But, basically, if we're not planting the land this year, we can't plant it next year.

TOWN ATTORNEY ALESSI: That's not correct, sir. That's not correct.

MR. WATKINS: In other words we can go into the Building Department.

TOWN ATTORNEY ALESSI: That's not correct. If you have a land... I'll say it again, if you have land in agricultural use now, and you want to use it or expand it for....

MR. WATKINS: No, let's say a field is resting for a year and now we want to start using it again.

TOWN ATTORNEY ALESSI: It's not a field, sir, it's your property. As long as your whole property that you've owned has been in agriculture use... it doesn't matter if one field...

MR. WATKINS: Let's say it was off for 10 years...

TOWN ATTORNEY ALESSI: Let me finish... let me finish because you made an incorrect statement and I don't want people here to leave this room confused. If you have agricultural land and it's 150 acres say. And, you farmed 75 acres of it but the other 75 have laid fallow for I don't care how long, the next year you want to put that other portion of your property to farm land, you don't have to come in and see anybody. I want to be clear about that.

MR. WATKINS: Okay, let's take a farm that we haven't farmed it for 2 years, now we have to go in to see you. And, that's what we object to. Is all we want to do...

COUNCILMAN PLUMMER: Is make that as right?

MR. WATKINS: Yea, as a right... as a right.

TOWN ATTORNEY ALESSI: That comment has been noted. Mr. Plummer raised it, he asked me a question if that could be done. I said it could if the Town Board chose to do so.

MR. WATKINS: So, okay, so.... we'll get it in. You were going to ask me a question?

COUNCILMAN MARCELLE: Yes, I was just about to echo what Councilman Plummer said. I mean, as I hear the agricultural community's major concern is 2 fold. One, is the provision in Section 3 that talks about the application to the Zoning Board, special use permits and they are worried about okay you have all these suburbanites who when they hear... well, we're putting flowers in a greenhouse, well that's not agriculture. And, so, what I hear the concern is... look, what we want to do is make agriculture as of right and second it just can't be the phrase agriculture divorced of any definition of agriculture. So, they've proposed a definition and I don't... I guess my predisposition would be listening to the community's concern tonight, would be to accommodate both those things and I think probably – and I will defer to counsel – but probably both those things can be achieve without to much intensive labor and redrafting the local law. But, I will defer to Mr. Alessi on that.

TOWN ATTORNEY ALESSI: That's correct, there's not a lot of labor that would be involved in doing that and Mr. Marcelle, I will have to respectfully defer back to you because you have a vote and I don't.

COUNCILMAN MARCELLE: Well, that's why I'd be inclined... listening, it's still early and there may be other people wanting to speak but I hear those 2 objections and I think both of those objections can be addressed.

MR. WATKINS: I think your move tonight can dramatically alter the value of the rural unzoned land of people. And, that I don't think you want to do that to them but you're doing it anyways.

TOWN ATTORNEY ALESSI: Just to be clear on that procedure, sir, there is no move tonight. It is a public hearing. We are prohibited by law from voting on this law until the close of a public hearing and it was not the Town Board's intention to take any vote tonight. It was to actually hear from people like yourself and other people in the audience as to how it affects them and then to hear their suggestions as to how it can be improved to better help the people in the community. And, I think, the Town Board Members have responded.

MR. WATKINS: Yea, we just... we're concerned about the value of it. You are a very good speaker but when you give us assurances, put those assurances in the law and then... you know, we'll believe them. You know, when we walk out of here and the assurances aren't in the law, we've got nothing. Thank you.

COUNCILMAN LENHARDT: Just, Madam Supervisor, can I for the sake of the people here. The Board received from the Albany County Planning Board their recommendations regarding our local law and I'm not sure everyone is aware of them but there is an advisory note. The Albany County Planning Board recommends that the Town consider the following modifications to the proposed text, inclusion of agriculture as a permitted use in the district and exemption of agriculture from advertising restrictions included in Section 128-23a number 8. Which basically they are telling us the same thing we're hearing from most of the residents here tonight. I just wanted everyone to be aware of what their position is.

MR. STOCKLI: I'm John Stockli. I just... one short question because it came up after I spoke. I'm not going to rehash anything. Mr. Alessi, is it your position based on Mr. Marcelle's question that once this law is passed it will supersede the old law? And specifically, are you saying that it's the intention if you pass this law the proposal of Waste Management will no longer be permitted based upon a new law regardless of the fact that we are appealing a decision and already have taken significant steps to try and get an approval over the last several years? Is that what this will result in if passed as is? And, if so, we certainly object to it and would request that fundamental fairness, as well as, constitutional protections that you specifically exempt our proposal from this rezoning effort that you are undertaking an allow us to move forward assuming that the appeal is found favorable to us.

TOWN ATTORNEY ALESSI: I understand your question, Mr. Stockly, the Town Board is aware of the very issue you have just raised. To answer your question, my interpretation of this law as proposed would – because Waste Management’s use would not be listed in any of these uses – the effect of this law as it is currently drafted and it is a draft law, would be that. It would be to render the property upon which Waste Management has its application that use to be prohibited or I’ll put it this way – not prohibited, not permitted under this law. And, I understand your comment about fundamental fairness and that is... the purpose of the public hearing for people to hear form representatives like yourself as to how it affects them and you’re belief as to whether that affect is fair on the m.

MR. STOCKLI: And, then I would stress then that it certainly would be unfair at this point having gone through an elaborate review process in this Town over a 2 year period. To pass a law that would effectively attempt to zone us out of this property and basically kill this project given the efforts we’ve put into it and given the facts of our application in the last several years. And, so, we would, I guess, have to demand that it be exempted, or frankly, then we’re going to have to resort to a litigation approach and you know, I’m not saying that as a threat necessarily but we have rights to protect. We have been through numerous public forums, responded to numerous comments over the years, invested a large amount of money and because we have a decision by a Supreme Court Judge – that I don’t believe any of you really agree with but, you know, made a decision that’s not worth appealing, you are going to try to pass this law that will bar our project. So, we have to, you know, insist that we be specifically exempted in this law, otherwise we’ll have to protect our rights otherwise.

TOWN ATTORNEY ALESSI: I understand exactly what you say, Mr. Stockli. Just to be clear, this law – if it is passed in this form – would render your client’s proposed use to be not permitted. It would not bar your project. As I am sure you know being an experienced land use attorney, that you can go to the Zoning Board of Appeals and get a use variance. So, this law would not bar, it certainly would make it more difficult for you but I just wanted to be clear that it wouldn’t by itself barr you.

MR. STOCKLI: And, I guess my position would be 1. I certainly would have a different legal theory as to our ability to get approvals which wouldn’t include the necessity of going through a use permit and I think, as you know, especially in this Town any approval you have to get anywhere can lead to an enormous amount of time and expenditure, as we’ve experienced. I mean one thing we talk about tonight is interpreting this law as to agricultural uses and people are making assurances as to what it means. Over 2 years ago when Waste Management walked in the door, they were given assurances as to what the rural not zoned zone meant too. And, look where we are today. So, I’m going to have to again... request that we certainly be exempted expressly. I can’t think of a fair reason why we wouldn’t be but if we are not, we’re going to have to protect our rights in another form.

COUNCILMAN MARCELLE: Can I ask Mr. Stockli a question? I probably should

know the answer to this but I don't have the familiarity with the litigation which probably you do in your zealous representation of your client. Was the... there were 2 issues, if I recall, or 2 different types of uses which you applied for. One was the office building and one was the garage, is that correct?

MR. STOCKLI: Yes.

COUNCILMAN MARCELLE: And, the office building was permitted, is that correct?

MR. STOCKLI: The office... under the initial interpretation of the Town, consistent with how it has always been interpreted, the office building element would require a site plan approval. The remaining aspects would be permitted as of right. The Building Inspector said that the Town would consider them all together and basically require a site plan approval for the project, including full SEQR review and we consented to do an EIS and we consented to all kinds of review.

COUNCILMAN MARCELLE: Okay. Just again, I don't have the familiarity, now Judge Benza's decision with respect to the office portion of the Building Inspector's and ZBA's determination, did it disturb that?

MR. STOCKLI: I think that the court intended to say that as to the office portion, it was a permissible use with the site plan approval. As to the remaining portion, the court ruled that under the law and under his interpretation that those uses were prohibited. And, we of course, have appealed.

COUNCILMAN MARCELLE: Say that one more time, if I...

MR. STOCKLI: The remaining uses under the judge's decision, he ruled that they were not permitted. The office part was plainly listed as a site plan approval.

TOWN ATTORNEY ALESSI: That's a correct interpretation of the decision.

COUNCILMAN MARCELLE: Okay.

MR. STOCKLI: Thank you.

SUPERVISOR FULLER: Okay, last call. Anyone else who wishes to address the Board?

MRS. POWERS: I regret to say I have one more question. I'm listening to the backyard comments back here. If someone already in agriculture or intending to go in agriculture and is there a difference there, by the way, that just occurs to me? If the land hasn't been in agricultural production, do you have any kind of an idea as to putting something in as to a period of time that it has to have been in before you can then act agriculturally on it?

TOWN ATTORNEY ALESSI: Let me get to that question in a moment. As you stand

here today and I'm glad to see you are back on your feet, as you stand here today all agricultural uses are prohibited until this Board passes a law.

MRS. POWERS: That I know.

TOWN ATTORNEY ALESSI: I want to underscore that because as we're sitting here today, single family residences are prohibited, etc. That's why the Board wanted to move fairly rapidly to do something quickly and then move on. But, let's get to your question, in terms of a time period. There has been no discussion of a time period but I... the Town Board Members can speak for themselves but I think it is each one of their intentions to be very liberal in their analysis of an agricultural use as to a time period because the goal is basically to come as close as possible for agricultural uses as to what it was before the decision.

MRS. POWERS: Okay. Okay. Then the next question is, and they only have to go to the Building Department if they intend to erect an additional building, is that right? And, they don't need his approval but they go and tell him, is that what I heard you say before?

TOWN ATTORNEY ALESSI: That is correct. They just give him a record of what they are doing for people who have their property in agricultural use. That's all they do.

MRS. POWERS: Okay and he has no power to refuse them an opportunity to do that.

TOWN ATTORNEY ALESSI: He has no... if they meet the State definition of a farm operation, he has no authority to do anything other than to read the piece of paper, determine that it meets the definition of farm operation and that's it.

MRS. POWERS: Well, all right. That brings up then, does... do you believe... think – that has to be an opinion on your part – but do you believe that that will mean that it will have to be 10 acres or as if you were going to put your land in the agricultural district? Or, do you believe that any amount of land that you wanted to put into... let's say a field, flowers, you know something that does not take a large number of acres of land use the way crops do, field crops do... but flowers which you can grow and sell at much better profit. Do you see an objection to a smaller number than 10 acres as a problem?

TOWN ATTORNEY ALESSI: Let me just answer the question this way, you're referencing the 10 acres because, as you know, that's a State law threshold and if you have 10 acres you get the benefit of the State law override of local zoning.

MRS. POWERS: Right. That's right. That's why I am bringing it up.

TOWN ATTORNEY ALESSI: Right, it's a very good question. If you are under 10 acres, you don't have the benefit of the State law override, you are then subject to the local zoning. And, that discussion has not been had with this Town Board and, I therefore, do not want to say one way or another what they might feel about that – other than I understand your question and I am sure the Board will consider that as they

continue to consider the law.

MRS. POWERS: Oh, then let me go one step further and urge the Board to consider smaller acreage because there is no question in a community like Bethlehem which is why I was seeing red over the non-commercial greenhouses. In a community like Bethlehem, Bethlehem.... Where someone either has the expertise or expects to get it and grow, for example, decorative horticulture of various kinds or flowers or whatever, he has a market right here in his Town to sell those by virtue of the kind of Town it is. So, therefore, it becomes particularly important to be generous about not requiring a large amount of acreage whether or not he would put it in for the State override protection. The fact of the matter is, then he is farming if he is doing that. What would be your position there do you think? We would ask you to be generous about it. What do you think your positions would be?

COUNCILMAN PLUMMER: I have no problem with that. I, personally, my view of this is I would support agriculture to be used as of right in all instances. I can't imagine any scenario... and we've talked about going to the second phase here at some point where we would sit down with the various groups – the Rural Landowners, the BREATH Group, Bethlehem Tomorrow – to come up with what the specific uses would be in the future. We've talked about hiring a land use planner and that's going to happen next. But, in the interim, ultimately, however, I can't imagine any scenario where agriculture would not be permitted. So, I would be supportive of allowing it as of right now. The definition appears fine with me as well. And, this issue... I can't imagine, as I've said, a scenario where we would not want to have agriculture.

MRS. POWERS: You all do understand that that definition originally I found in SMART Growth, right?

COUNCILMAN DAVIS: Pardon?

MRS. POWERS: We found that definition in SMART Growth – in its original writing as a matter of fact.

COUNCILMAN DAVIS: You're referring to the new definition adopted in 1999.

MRS. POWERS: Definition, yes and it looked so wonderful that it was not necessary to tinker with it and we didn't and there it is.

COUNCILMAN DAVIS: And, that's why you have no reference to the size of the parcel of land.

MRS. POWERS: No, no, no.

COUNCILMAN DAVIS: That's not mentioned in here.

MRS. POWERS: I'm bringing that up because I know that's a problem. I know that's a

problem. Everybody knows that's a problem, we have farms in this county where people have just under 10 acres and can't get that State override protection.

COUNCILMAN DAVIS: But, this definition does not include size.

MRS. POWERS: No, it does not and I didn't tinker with that at all.

COUNCILMAN DAVIS: And, you don't want it to.

MRS. POWERS: Actually, I hadn't considered it. I... that's a definition that's been accepted by New York Farm Bureau. In order to get it to be changed, I, of course, have to go back and join them in battle and see if they are willing to support it for less acreage. I left it out.

TOWN ATTORNEY ALESSI: Let me say this, if the Town Board wanted to have agricultural use as an as of right, there would be no need to address the 10 acre threshold because if it's an agricultural use because there is no limitation in the definition, it would be as of right no matter what size you are.

MRS. POWERS: Good.

TOWN ATTORNEY ALESSI: So, I think... if that's the Town Board's predilection, that's the easiest way to get at it.

MRS. POWERS: Okay, that's why I brought it up. Thank you very much.

COUNCILMAN MARCELLE: I was just going to say, Mrs. Powers, just so you know. I didn't want to dodge your question but I think I was about to say the same thing as our learned Counsel was going to say. And, I think I told you where I am on it. I want to make it as of right and include the definition as I would understand it – in our definition – or our permitted use...

MRS. POWERS: No mention of size.

COUNCILMAN MARCELLE: ...there is no mention of no limitation rather minimum or maximum size that would... there will be no floor or ceiling provisions as I understand it.

COUNCILMAN DAVIS: And, you don't want that.

MRS. POWERS: I don't want it, no. And, I think it was good intelligence on the part of SMART Growth not to put it in there. They also didn't have a size limitation on it.

TOWN ATTORNEY ALESSI: A quick historical footnote, agricultural use has never been defined in our Town Code, to the best of my recollection.

MRS. POWERS: That's why I'm lobbying so hard to get the agricultural overlay district because I really think in this Town where you have as many practitioners of agriculture as you do... you have more in Bethlehem than we have in the Town of Wright. And, the Town of Wright is about as far away from... even, you can't even begin to call it suburban... it's rural farmland. So, you know, I would say that a Town like Bethlehem should be very careful to see to it that those people that do that for a living, do that business on their land... should be enabled to do it. And, that's been our push, I think, from the very beginning.

MR. JASINSKI: My name is Robert Jasinski and I wish to call the Board's attention to a couple items. I wish to say I am not addressing with the Rural Landowners, as such, they have done an excellent job. They presented their case and I think it should be considered.

My concern is for the future of the Board meeting to address other businesses. Now, my daughter has addressed the Blue Diamond Septic for one, but my concern is also for the commercial businesses down in the unzoned area. Now, there's been no real mention or nobody has stood up, that I know of, that has mentioned the services that are promoted to the railroad. Now there's a couple businesses down there that supply the railroad in this unzoned area. You have a truck repair, you got all these commercial things and for the record I'd like to put it forward so it is considered and thought of because there are other businesses in unzoned area besides agriculture. Thank you.

SUPERVISOR FULLER: Thank you. Is there anyone else who would like to address the Board?

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to close the public hearing at 9:20 p.m. The motion was passed by the following vote:

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

Noes: None.

Town Clerk

Supervisor Fuller said the Board has an opportunity to vote on this and the Board can also not vote on this. She said if the Board does not take action tonight, consider Judge Benza's decision as what we will live by until the Board takes action. So, all the uses identified in the rural unzoned area do not have the local law passed this evening that would have put that all back in place.

Councilman Plummer said he was prepared to vote for it if the changes mentioned earlier can be made – by allowing agriculture to be as of right and also by incorporating the definition of agriculture into this. Councilman Lenhardt asked if this was his complete motion. Mr. Plummer said this is for the discussion right now, noting he did not know how the other Board Members felt. Councilman Lenhardt said he would certainly second a motion made in that manner.

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

Town Attorney Alessi suggested he point out an issue for the Town Board and then they could make their judgment accordingly. He said there is a very clear rule of law in New York State, that if you have a public hearing on a proposed local law and you make changes to that local law -- if those changes are deemed to be substantial and that is for the Board to decide -- then you need to have another public hearing on that local law. So, the threshold question would be, do you consider these changes to be substantial. If the Board does not, the changes can be made and the local law can be voted upon following the SEQR resolution adoption. If the changes are deemed substantial, the Board must have another public hearing on the changed law. He said this decision is one for the Board to make.

Mr. Alessi said that the Board has heard from some people this evening that they have all but said, if not said, that they will challenge the law. He, therefore, asked the Town Board to take this into consideration -- not that the Board should be driven by whether someone is going to sue the Town or not -- but please do take into consideration these factors in the decision as to whether the changes are deemed substantial. He said there is no legal definition of substantial, it is for each Board Member to make their own judgment as to whether the changes are substantial or not.

Councilman Plummer said the discussion is specifically agriculture right now and the outline for existing operations they can do whatever they want essentially. He said the fact that only new operations would be under a different section, this would be eliminated and allow all agriculture to now be as of right. He said he would argue that it is not that substantial, it is not an entirely different business. He said it is a business that is existing and it is being allowed to continue but what is being done differently, is that for anybody that wants to come into Town or start a new operation, they would be able to do what residents are doing now. So, he said he does not view this as too substantial.

Councilman Lenhardt said that he believes the amendment proposed is essentially in the original document that was being discussed at the public hearing. He said it is just further defined and, therefore, he does not see it as a substantial change.

Councilman Davis asked where the definition would be made or included.. Town Attorney Alessi said to effectuate what Councilman Plummer is speaking about it would not be easy to do this on the fly because there are some other farming references here. He said what you would probably do would be to take number 13 now, make that 14 and make a new 13 that says agricultural uses meaning and include the definition. He said it would be included as a permitted use and make 13 number 14 and you would pull out 'a' and reletter them because you would not need 'any other agricultural use'. He said you would pull out from section 3c, number 'a' and that is how this would be effectuated.

Supervisor Fuller said she is concerned about what has transpired from start to finish. She said she thought she heard that the Board is hurrying up, it is a band aide approach, and it is a quick fix. She said with the concern expressed during the public hearing she does not think the Board should take action on the proposed local law. She

said she thinks a public hearing should be scheduled and start over and have the public hearing include some of the concerns raised at the meeting so that the entire community knows exactly what the proposed local law will cover. She said she had fully expected that this was addressing the concerns of the farmers. She was certainly surprised to find out that this was an issue that she heard about starting last week and she thought with the doubt out there and the people in attendance that feel it is a quick fix, she does not want anyone to leave thinking she is in the business of quick fixes. She said for that reason she will not support voting on the proposed local law.

Councilman Marcelle said he wanted to explain about substantial and not substantial. He said he guesses he would concur that making agriculture use as of right as opposed to the current wording under the new uses is probably insubstantial, however, he thinks for the first time in the history of the Town's zoning code, the Board is about to define what agriculture is. And, he said he thinks any time such an undertaking is done, he is not sure it can be characterized or fairly characterized as unsubstantial or insubstantial. He said this is his hesitation and he thinks everyone realizes something has to be done and called this a stop-gap thing. He said there is a reason for calling it a stop-gap because there is a gap and there are problems with the gap and there needs to be something done. He said his concern was – as a duty as a Town Board Member – that he worries if something is done and he can see the arguments in black and white, that this was not insubstantial. He said he would view the argument as a practicing attorney and believes that caution is the better part of wisdom here. He said it is a better part of trying to accomplish something where there is not an injunction and the Board is spinning its wheels. He said this is his concern and, therefore, he would agree with the Supervisor.

Councilman Davis said when this was proposed, it was not supposed to be this complicated. It was supposed to be a very simple, very quick and easy means of addressing a major problem for a lot of people in Town, she said. It was not intended, according to Mrs. Davis, in any way to affect negatively anyone. She said it was to help as many people as possible. She wanted to assure everyone that when she proposed the amendment, it was to do good. She said it was not to hurt anyone and she thinks anyone who knows her well, knows that that was the truth. She said she was not comfortable, all of a sudden, making a major change and she does consider this substantial because it has never been defined, never been put on paper what has been suggested. She said she was not comfortable voting on this -- just slapping a definition down or in a particular place and numbering it. She noted she appreciated Town Attorney Alessi's suggestions but she was not comfortable with doing that. She said if it means this is on hold, it will be on hold. She said her intentions were only positive and she does not want to in any way negatively affect anyone by not voting but she was not comfortable doing that.

Councilman Plummer asked the Town Attorney what a no vote would do to the status of the residences at this time or until the next scheduled meeting. Town Attorney Alessi said the status of the residences would be as it has continued to be since Judge Benza issued his decision. He noted he could elaborate but he thought the Board knew what he meant. Councilman Plummer asked about someone wanting to sell their house. Town Attorney Alessi said he believes they would still have significant issues with

regard to selling their home or building a home, refinancing, etc. or any other use that is not listed. He further noted that this was a specific decision by a specific bank and a specific person. He said his legal judgment is that he would not want to be in their position in relying about getting financing or building with this cloud over it. He said some banks may agree to do it, some people may agree to buy but others may not. He said some people may use it to try to take advantage and try to reduce the price or the value of the sale because of the cloud. He said those are the affects. Supervisor Fuller said it could be as simple as putting a deck on the home. She said you cannot get the building permit and there are some simple aggravations that become major problems here for people that own their home and want to make improvements. She said this was summer and it is construction season.

Councilman Davis asked if there was some way for the Board to consider the amendment that was presented, as it is worded, vote on that or at least consider voting on it and ... hypothetically say that one of the Board Members make a motion, it is seconded and a vote taken, it is approved. She asked if the Board would be able to revisit the local law and then if the Board feels it is appropriate, modify the language that would be appropriate to agricultural use. She said in that way, the Board accomplishes something to fix what needs to be fixed and then come back and have the public hearing that would be required to address the changes in the language for agricultural use. She asked if that was possible. Town Attorney Alessi reviewed Mrs. Davis's proposal for clarification and noted there is no doubt that because the law which has been publicly noticed the proper amount of time... that the Board could pass the proposed local law, following SEQR determination, and commit to come back to address whenever it is deemed appropriate the rest of the issues and he understands the purpose for that would be to stem the prejudice that has been discussed to cure that tonight and then to address the other issues in a future Town Board meeting. Mrs. Davis said this should be done in a reasonable manner where there is not just words put on paper that have not been thought about for a reasonable time. Mr. Alessi said legally this can be done, it is the Town Board's policy decision whether the Board wishes to do that.

Councilman Davis moved that the Board adopt the amendment as proposed this evening. Town Attorney noted the SEQR resolution must be done first.

Supervisor Fuller said that Mrs. Davis's suggestion was not something she was sure she could support either because the public hearing was advertised. She said it brought everyone to the meeting. She said this public hearing has had many opinions expressed at it and she knows the people are not happy with what is proposed. She said despite trying to think we were going in the right direction in trying to help the property owners, like Mrs. Davis, this was a surprise to her also. She said she cannot support any action on this public hearing.

Councilman Lenhardt said he concurs with Supervisor Fuller. He commended Mrs. Davis for an attempt to fix a problem and he would support a motion as long as that motion included that the Board would come back at a specific time within the legal parameters of holding another public hearing to add what was discussed. He said without

that, he cannot support just passing what was presented.

Councilman Davis said she would be glad to do that if Councilman Lenhardt put the language in the motion. She said she would be willing to support that because she thinks that that was what the entire purpose was. She said it was to move forward and to solve problems for this community.

Supervisor Fuller asked if it was possible to suggest that the Board bring this back for Town Board discussion at the next meeting and then set it for a public hearing. She said that would give the Board 2 weeks to decide where this is headed and then put the wording together at the meeting. Councilman Davis said this would not work because the Board would not have the wording to set the public hearing. Supervisor Fuller said the Board could put the language together as a Board in 2 weeks at the next meeting. Councilman Plummer agreed but Councilman Lenhardt said the language goes in and then there is another 2 weeks before the hearing could be scheduled. He said there is a minimum of a month's delay. Supervisor Fuller noted it would be longer than that, noting it would probably be into August.

Councilman Marcelle added that he has some reservations about this and commended Mrs. Davis also on her attempts to solve a problem that needs to be solved. He said he has some problems doing this piece meal by passing it with the promise to the farm community of a return in the future to amend it. He said he was not sure if he was in their position -- having responded to the call for a public hearing, having moved the Board, he thinks, to favorably look upon the information presented and then tell them come back later -- that he would be happy. He said he is not sure that is the best way to go about legislating.

Councilman Davis said this was what was being done. She said the Board has to come back and revisit it. Councilman Marcelle said it would be passing a law that there is public objection to as written. Mrs. Davis said there is going to be objections to this no matter what. Mr. Marcelle said he is not so sure. He thinks there has been a long move toward eliminating the objections at this meeting.

Supervisor Fuller said the bottom line is that 3 people out of 5 must agree to do something. She noted there was a full agenda to be completed yet. She said she would move that the proposed local law come back for further discussion at the next Board meeting and at that meeting be prepared to set a public hearing. She said in the mean time, she would ask Town Attorney Alessi to amend the law but then noted she could not do that either. She said the Board can decide how this should proceed but she feels the discussion of where this should go for the public hearing has to be gotten out to the public. She said if the Board does not know where they are going other than the 2 suggestions made at the meeting -- that was about the agricultural question only -- this cannot go forward. She said there has been other issues raised as well. She thinks Mr. Jasinski raised a very legitimate point and that is that nothing has been mentioned about commercial business.

Supervisor Fuller said she has heard a lot of concerns above and beyond the agricultural concerns. She said the bottom line is she does not believe action can be taken to do anything on this topic. She noted if someone can figure out a way to try again in 2 weeks it could be considered. Mr. Stockli asked to speak and Supervisor Fuller told him she did not think she wanted to hear any more.

Mr. John Stockli said he had a suggestion. Supervisor Fuller said the concern that she has is not having to do with the Waste Management decision but has to do with what the people are saying. She said this has created a whole issue here for the Town Board. Mr. Stockli said he thinks his suggestion might give a way to solve this and give time to deliberate. He said his thought is that the litigation is what brought this on and offered to go and attempt to get a stay on the decision so that things are held in abeyance in the interim so there is no rush. He asked if the Board would be willing to agree to their going to the Appellate Division and attempting to get the stay because this has caused a dilemma for the Town.

Supervisor Fuller asked Attorney Alessi if he wished to go to Executive Session with the Board. Town Attorney Alessi said if the Board would like to go to Executive Session to discuss pending litigation, he would be prepared to do that. Councilman Davis said she would be willing to do anything that would move this item forward. Town Attorney Alessi cautioned the Board that there is a pending litigation issue that Town Board's go into Executive Session to discuss. He said they are not required to, it is their prerogative to discuss it. He further noted Mr. Stockli's suggestion taken as he thinks it is intended on good faith to try to address an issue has a number of consequences and issues that should not be discussed publicly because they could affect the course of litigation. Supervisor Fuller asked if there are 3 people who wish to go to Executive Session. Councilman Lenhardt said he did not see any need to.

The motion was made by Mr. Marcelle to meet in Executive Session to discuss pending litigation. The motion was seconded by Mrs. Davis and passed by the following vote:

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

Noes: None.

Abstain: Mr. Lenhardt.

Town Board meeting resumed at 10:28 p.m.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to resume the regular Town Board meeting following the Executive Session. The motion was passed by the following vote:

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

Noes: None.

Supervisor Fuller opened the floor to Councilman Marcelle.

The motion was made by Mr. Marcelle that the local law be amended by inserting a new paragraph 13, which will read “agriculture”, with the definition inserted that was before the Board; changing the current paragraph 13 and number it paragraph 14, striking subparagraph A and reordering the other subparagraphs to be in sequence; striking section 3, paragraph C, subparagraph A and reordering the remaining paragraphs in proper sequence; also striking the current section 3, paragraph C subsection D and moving the remaining paragraph E in the proper sequence order; and set a public hearing on the amended version of the local law (this is basically the amendment expressed by Mr. Plummer and articulated by Town Attorney Alessi) for August 13, 2003 at 7:30 p.m. The motion was seconded by Mr. Plummer and passed by the following vote:

Ayes: Mr. Lenhardt, Mr. Plummer, Mr. Marcelle.

Noes: Mrs. Fuller, Mrs. Davis.

- - -

Supervisor Fuller noted the public hearing will be held August 13, 2003 at 7:30 p.m.

The next item was a request from Engineering Services Administrator, Michael Cirillo, for approval of acceptance of deeds for Orchard Estates Subdivision.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to approve the acceptance of deeds for Orchard Estates Subdivision from Orchard Street Associates, Clifton Park, NY as requested by Engineering Services Administrator, Michael Cirillo. The motion was passed by the following vote:

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

Noes: None.

The following item was a request from Highway Superintendent, Gregg Sagendorph, to set public hearings regarding installation of stop signs on Berwick Road at intersection of Greenock Road and Hasgate Drive at intersection of Egmont Court. Could advertise June 25, 2003 and hold public hearing July 9, 2003 at 7:30 and 7:45 p.m.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve setting public hearings for July 9, 2003 at 7:30 and 7:45 p.m. as requested by Gregg Sagendorph, Highway Superintendent, to consider proposed local laws amending the Code of the Town of Bethlehem, Stop Intersections on Berwick Road at intersection of Greenock Road and Hasgate Drive at intersection of Egmont Court. The motion was passed by the following vote:

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

Noes: None.

The next item was a request from Commissioner of Public Works, Bruce Secor, for acceptance of Engineer's map, plan and report for Carriage Hill Subdivision and consider setting public hearing on July 9, 2003 at 8:00 p.m. pertaining to an Extension of the Sewer District. Supervisor Fuller noted Mr. Johannessen and Commissioner of Public Works, Bruce Secor, were in attendance.

IN THE MATTER OF
EXTENDING THE BETHLEHEM SEWER DISTRICT
OF THE TOWN OF BETHLEHEM,
ALBANY COUNTY, NEW YORK
PURSUANT TO ARTICLE 12-A OF
THE TOWN LAW

ORDER – SET HEARING
PROPOSED SEWER
DISTRICT EXTENSION
NO. 29
CARRIAGE HILL
SUBDIVISION

WHEREAS, a map and report have been prepared by J. Kenneth Fraser and Associates, PE, LS, LA, P.C., engineers, duly licensed by the State of New York, and filed in the Office of the Town Clerk of the Town of Bethlehem in such manner and detail as is hereby approved by the Town Board, relating to a proposed extension of the Bethlehem Sewer District of said Town, and showing the boundaries of the proposed extension, with a general plan of the proposed sewer system and a report of the proposed method of operations, and

WHEREAS, the boundaries of the proposed extension to the district are as described in Exhibit "A" attached hereto and made part hereof, containing 52.73 Acres more or less; and

The above described area being more fully shown on a map entitled "Bethlehem Sewer District, Town of Bethlehem, Albany County, New York, Proposed Sewer Extension No. 29, Carriage Hill Subdivision" dated July 15, 2002, and made by J. Kenneth Fraser and Associates, PE, LS, LA, P.C. Consulting Engineers, Rensselaer, New York, and

WHEREAS, the total costs of all said improvements and the maximum amount proposed to be expended therefore is \$510,000, which will be borne by the developer of the Carriage Hill Subdivision within said proposed extension, and

WHEREAS, the improvements proposed to be made consist of the construction of a new sewage collection system, and which will be paid for by the developer and, therefore no bonds will be issued by the Town of Bethlehem, and

WHEREAS, it is proposed that the cost of making such improvements shall be paid for by the developer and shall not be assessed, levied and collected by the Town Board from the several lots and parcels of land within the extension in the same manner and at the same time as other charges, and

WHEREAS, said map, plan and report describing said improvements is on file in the Bethlehem Town Clerk's office for public inspection.

NOW, on motion of Mrs. Davis

And seconded by Mr. Lenhardt

It is hereby ORDERED, that the Town Board of the Town of Bethlehem shall meet and hold a public hearing at the Town Hall, 445 Delaware Avenue, Delmar, New York, on the 9th day of July, 2003 at 8:00 p.m. on that day to consider said

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

map, plan and report and to hear all persons interested in the subject thereof concerning the same, and to take such action thereon as is required or authorized by law, and it is further ORDERED, that the Town Clerk be and she hereby is directed to publish and post certified copies of this order at the time and in the manner provided by law.

The adoption of the foregoing order was put to a vote and upon roll call, the vote was as follows:

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

NOES: None.

ABSENT: None.

The next item was a request from Bruce Secor, Commissioner of Public Works, for approval of going to bid for one air conditioning unit for the Town Hall and adoption of resolution regarding expenditure of General Fund Capital Reserve Funds. Could open bids on July 15, 2003 at 2:00 p.m.

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

WHEREAS, the Town desires to advertise for bids for the purchase of one (1) Roof Mounted Air Conditioning Unit for the Town Hall building, pursuant to law,
NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 18th day of June, 2003 and that bids be received up to 2:00 p.m. on the 15th day of July, 2003 at which time the bids will be publicly opened and read.

The resolution was adopted by the following vote:

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

Noes: None.

- - -

The following resolution was presented for adoption regarding the permissive referendum for expenditure of General Fund Capital Reserve funds for the purchase of one (1) replacement air conditioning unit for the Town Hall.

RESOLUTION AND PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem in the County of Albany, State of New York has on the 11th day of June 2003, duly adopted, subject to a permissive referendum, a resolution as follows:

WHEREAS, the Town Board of the Town of Bethlehem has determined that it is necessary to fund the replacement of the Town Hall air conditioning unit, and
WHEREAS, it is estimated that the costs of said work will not exceed \$40,000; and

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

WHEREAS, in recognition of these needs, funds for such purpose are in the General Fund Capital Reserve Fund; and,
NOW, THEREFORE, BE IT RESOLVED that it is in the public interest to complete the replacement of the air conditioning unit; and
BE IT FURTHER RESOLVED, that the Town Board authorizes the expenditure of the reserve moneys to fund this project up to a maximum amount of \$40,000 and,
BE IT FURTHER RESOLVED, that the Town Comptroller is authorized to expend from the General Fund Capital Reserve Fund the funds necessary up to \$40,000 in said reserve fund; and
This resolution shall be subject to a permissive referendum, as permitted by law.

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

AYES: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer, Mr. Marcelle
NOES: None.
ABSENT: None.

The following item was a request from Chief of Police, Louis G. Corsi, to accept the resignation of Telecommunicator, effective June 11, 2003.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to accept the resignation of Jenny M. Colavito from the position of Telecommunicator effective June 11, 2003. The motion was passed by the following vote:

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

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

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the appointment of seasonal personnel as requested by Nan Lanahan, Administrator, Parks and Recreation Department, as listed in her Memorandum dated June 11, 2003 at the titles and salaries listed. The motion was passed by the following vote:

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

The next item was a request from Nan Lanahan, Administrator, Parks and Recreation Department, for adoption of resolution to apply for a grant from the New York State Department of Environmental Conservation pertaining to repair and replacement of bulkhead at Henry Hudson Park. Supervisor Fuller noted this was a grant for \$40,000.

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

TOWN OF BETHLEHEM
RESOLUTION FOR JUNE 11, 2003 BOARD MEETING
RESOLUTION

Authorizing the submission of a grant application for funds from the Hudson River Estuary Program in accordance with the provisions of the Hudson River Estuary Management Act (ECL 1100306) of the NYS Department of Environmental Conservation in an amount not to exceed \$40,000, and upon approval of said request to enter into and execute a project agreement with the Hudson River Estuary program for such financial assistance to the Town of Bethlehem for shoreline stabilization and improved public fishing access at the Henry Hudson Park.

WHEREAS, the Town Board has learned the timber pilings holding back the rip rap are rotting away and the concrete bulkhead is deteriorating. The shoreline continues to erode more each year which will ultimately impact the handicap accessible fishing area along the west shore of the Hudson River.

WHEREAS, the Town Board of the Town of Bethlehem has determined that it is in the best interest of the Town to develop a plan to repair and replace a portion of the bulkhead directly adjacent to the fishing access area and existing boat launch.

WHEREAS, the Town Board recognizes that the Henry Hudson Park is a valuable asset to the Town as a popular fishing, boating, and picnic area and they are dedicated to providing a safe environment for said activities.

WHEREAS, the Town of Bethlehem is applying to the NYS Department of Environmental Conservation 2003 Hudson River Estuary Grants Program to design and construct the necessary repairs to said bulkhead and fishing access area.

WHEREAS, this improvement project may present an opportunity to enhance shoreline fishing and improve barrier free access to all.

WHEREAS, the amount of the grant is not to exceed \$40,000 with State Assistance representing up to 75 percent of the approved project's cost. The matching share of up to 25 percent shall be provided by the Town.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Bethlehem that the Supervisor is authorized to submit a grant application to the New York State Department of Environmental Conservation requesting up to \$40,000 for design and construction of the necessary bulkhead repairs and improvements to the fishing access area at the Henry Hudson Park.

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

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

NOES: None.

ABSENT: None.

The following item was a request from Comptroller, Judith Kehoe, for approval of appointment of bond counsel for municipal bond issue regarding the long-range water

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

study work. Supervisor Fuller said a Memorandum was distributed to the Board along with a recommendation from Town Attorney Alessi regarding this appointment.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the appointment of Segel, Goldman, Mazzotta & Siegel, PC, Albany, New York as Bond Counsel as requested by Comptroller, Judith Kehoe and recommended by Town Attorney Alessi. The motion was passed by the following vote:

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

Noes: None.

The next item was a request from Deputy Comptroller, Richard Webster, for authorization of standardization of two-way radio equipment used by Town departments.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the standardization of two-way radio equipment used by Town departments as requested by Richard Webster, Deputy Comptroller. The motion was passed by the following vote:

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

Noes: None.

The following item was a request from Michael Cirillo, Engineering Services Administrator, for approval of Federal-Aid Urban Area Boundary for Ravena, NY. Supervisor Fuller noted there is a need for authorization of her to sign the map that was sent in by the New York State Department of Transportation. She said this is as a result of the 2000 census and noted it has been reviewed by Mr. Cirillo.

The motion was made by Mrs. Davis and seconded by Mr. Marcelle to authorize the Supervisor to sign a map received from New York State Department of Transportation for approval of the Federal Aid Urban Area Boundary for Ravena, New York as requested by Michael Cirillo, Engineering Services Administrator. The motion was passed by the following vote:

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

Noes: None.

The following item was a request from Kathleen Newkirk, Town Clerk, for approval of relocation of Election District 9 Polling Location for 2003.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the relocation of Election District 9 Polling Location for Elections in the year 2003 from the Bethlehem Public Library to the Bethlehem Town Hall due to renovations at the Library as requested by Town Clerk, Kathleen Newkirk. The motion was passed by the

following vote:

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

Noes: None.

- - -

Councilman Marcelle noted that today with regard to the Federal Redistricting case, he suspects in about 2 weeks the Town Clerk may be moving a lot of election districts around in Town. He said the notification should come out in about 10 days.

The next item was a request from Town Supervisor, Sheila Fuller, for approval of appointment of Assistant Town Attorney. Supervisor Fuller noted the request is actually from Town Attorney Alessi who has interviewed several assistant Town Attorneys to fill the vacancy created when Judge Dwyer was appointed.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the appointment of Christopher J. Hanifin, Delmar, New York to serve as Counsel at the pleasure of the Town Board, subject to the direction of the Town Attorney who may assign him to any additional subject matter or capacity, including pursuant to the Judiciary Law to appear on behalf of the Town as Assistant Town Attorney in Town Court, as and where needed. The motion was passed by the following vote:

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

Noes: None.

The next item was to approve the Town Board minutes of April 23, 2003 and May 14, 2003.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the Town Board minutes of April 23, 2003 with correction. The motion was passed by the following vote:

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

Noes: None.

Abstain: Mrs. Fuller.

- - -

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the Town Board minutes of May 14, 2003 as submitted. The motion was passed by the following vote:

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

Noes: None.

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

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

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to adjourn the regular Town Board meeting at 10:38 p.m. The motion was carried by the following vote:

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

Noes: None.

Town Clerk