

TOWN BOARD  
JUNE 25, 1997

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

PRESENT: Sheila Fuller, Supervisor  
George Lenhardt, Councilman  
Doris M. Davis, Councilman  
Robert C. Johnson, Councilman  
Bernard Kaplowitz, Esq., Town Attorney  
Catherine T. Picarazzi, Deputy Town Clerk

ABSENT: Freeman T. Putney, Councilman

Supervisor Fuller welcomed everyone to the regular Town Board meeting. She asked Councilman Johnson to lead the pledge of allegiance. Supervisor Fuller thanked Mr. Johnson.

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

Parks and  
Recreation  
approval for  
seasonal  
personnel

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the appointment of seasonal personnel as listed on the Memorandum from Administrator, David Austin, Department of Parks and Recreation, dated June 25, 1997 at the titles and rates indicated. The motion was passed by the following vote:

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

The next item was a request from Administrator, David Austin, Parks & Recreation Department, for authorization of Supervisor to sign an agreement with Bethlehem Bat N' Ball regarding construction of buildings and dugouts at the new playing fields at Elm Avenue Town Park. Supervisor Fuller noted Town Attorney Kaplowitz had reviewed the contract. The Supervisor asked who the representatives were for this contract. David Austin said the representatives are the Presidents of the Bethlehem Tomboys, Tri-Village Little League and Bethlehem Babe Ruth who are part of the committee. He said Joe Messina is representing them as their attorney. Supervisor Fuller asked if he will be signing the contract with the Town. Mr. Austin said he assumed so.

Parks and  
Recreation  
agreement with  
Bethlehem Bat  
Ball regarding  
construction of  
buildings and  
dugouts at new  
playing field

The motion was made by Mr. Johnson and seconded by Mr. Lenhardt to approve the authorization of the Supervisor to sign an agreement with the Bethlehem Bat N' Ball regarding construction of buildings and dugouts at the new playing fields at the Elm Avenue Town Park, Delmar, NY. The motion was passed by the following vote:

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

Supervisor Fuller asked Mr. Sagendorph if he was happy about this construction. Mr. Sagendorph indicated he was. Attorney Kaplowitz asked if they were going to build them or hire someone to build them. Mr. Austin said they may hire someone to do the work. He said they have received a \$15,000 grant from the State. Councilman Lenhardt asked if they are subject to building permits and things of that nature. Supervisor Fuller said they are, noting that is all part of the contract. Councilwoman Davis asked if Mr. Austin had any idea what the total amount will be. Mr. Austin said he is not sure. He said they might build one building -- combination snack bar/rest room facilities with storage -- and then they would like to build another building which will serve as storage and an announcer's

booth and then they would like to build dugouts in addition to those 2 buildings. He said he is not sure of the total cost.

Chief of  
Police to  
to accept  
donations  
to DARE  
Program

The following item was a request from Richard LaChappelle, Chief of Police for acceptance of donations to the DARE Program, in a total amount \$1,940.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to accept the following donations to the DARE program as requested by Chief of Police, Richard LaChappelle:

Delmar Service Contractors	\$100.00
Slingerlands P.T.A.	100.00
Capital Dist.Physicians Health Plan	1,500.00
Nancy Farr	15.00
Peter Blessing	35.00
J. Dana	50.00
M. Delacruz	40.00
Bethlehem Republican Club	<u>100.00</u>

TOTAL: \$1,940.00

The motion was passed by the following vote:

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

Supervisor Fuller noted she will send letters of thanks on behalf of the Town.

Highway Super-  
intendent  
approval to  
go to bid  
paving compost-  
ing area  
Resolution to  
advertise to  
for bids

The following item was a request from Gregg Sagendorph, Highway Superintendent, for approval to go to bid for paving of the composting area located on Route 32, Feura Bush. It could be advertised on July 2, 1997 and open bids at 2:00 p.m. on July 16, 1997. Supervisor Fuller explained this is the final grading of the sub-base that is being completed at this time for the access road.

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

WHEREAS, the Town desires to advertise for bids for the paving of the composting area located on Route 32, Feura Bush, Town of Bethlehem, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 2nd day of July, 1997 and that bids be received up to 2:00 p.m. on the 16th day of July, 1997 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. Johnson.  
Noes: None.  
Absent: Mr. Putney.

Highway Super-  
intendent  
permission  
to purchase  
road oil  
from State  
Contract  
Year 1997

The following item was a request from Highway Superintendent, Gregg Sagendorph, for permission to purchase road oil from State Contract and blacktop from Albany County contracts for the year 1997.

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to approve the purchase of road oil from State Contract and blacktop from Albany County Contracts for the year 1997. The motion was passed by the following vote:

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

-----  
 The following item was to approve the Town Board minutes of 5/14 and 5/28/97 as submitted.

Minutes  
 approved  
 5/14 and  
 5/28/97

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the Town Board minutes of May 14, 1997 and May 28, 1997 as submitted. The motion was passed by the following vote:

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

-----  
 The following item was a request from Douglas Hasbrouck, Chairman, Town Planning Board, to rescind the standing DEIS requirement regarding Meadowbrook Section 3. Supervisor Fuller said correspondence has been received from Jeffrey Lipnicky, Town Planner, also.

Request from  
 Town Planning  
 Board to rescind  
 the standing DEIS  
 requirement  
 regarding Meadow  
 brook Section 3.

Councilman Lenhardt questioned Mr. Lipnicky if as it seems, time and time again, the Planning Board and possibly his Department offered the opportunity for the applicant to withdraw his original proposal but he never read anything in the minutes where they even addressed it on their part. Mr. Lipnicky said when this first came back, they said they were revising the project and the Planning Department told them the DEIS requirement was still effective. He said basically the best way to get around that and to start over would be to withdraw the application. The Applicant had decided for various reasons not to withdraw the application. Mr. Lipnicky noted there had been a previous law suit regarding this matter and he felt the applicant did not want to put on record that they had withdrawn an application. He said the previous law suit regarded the Town not acting in a timely fashion.

Mr. Lipnicky said there are reasons the Planning Board thought the DEIS should go forward. He said the project has been down-sized, but there really isn't that much difference in the amount of land area that is affected by the project. Councilwoman Davis said inherently it still has some of the same problems as before. Mr. Lipnicky agreed. He did explain the impact on traffic and schools is less due to there being less units.

Councilman Lenhardt asked if the applicant had been informed that they would have to address these issues. Mr. Lipnicky said they had been, noting they suggested at the Planning Board meeting that some of the issues are inherently mitigated to some extent by the down-sizing, and suggested that when they are ready to proceed they meet with the Planning Department to discuss which issues do not have to be addressed in any degree of depth. He said they will proceed when the applicant contacts his department.

Supervisor Fuller asked if Mr. Lipnicky has heard from them. Mr. Lipnicky said he has not. He said he talked to Lynn Sipperly to let him know the item was on the agenda.

Councilwoman Davis said in reading the comments, the Planning Board reviewed this very carefully and she did not see where anything could be added to what they have done. Councilman Johnson noted Mr. Sipperly said the useable areas had not changed greatly, noting they agree. Mr. Lipnicky said to some extent they did move some of the development out of the flood plain but not all of it. He said it does lessen the impact but in his view it is the same issues as before.

Supervisor Fuller asked if they ever came back and corrected the layout of the street. Mr. Lipnicky said they did and that was why it was put back on the agenda. He said it took a long time to get it on the agenda because they had a revised layout that did not meet Town standards for street curvature so it was not on the agenda because of that and as soon as the plan was brought back that did meet those standards, it was placed back on the agenda. If it was noticed, there was quite a discussion in the minutes back and forth on that

Parks and Recreation authorize change order for fencing contract

The following item was a request from David Austin, Administrator, Parks & Recreation Department, to authorize the issuance of change order #1 for the Fencing Contract for the new playing fields. Supervisor Fuller explained this is an \$800 additional cost and it is for the Tomboys softball field. Supervisor Fuller said she believed there was a need for the fencing to be located out further. Mr. Austin said this was correct, noting the Tomboys had requested this.

The motion was made by Mr. Putney and seconded by Mr. Johnson to approve change order #1 for the Fencing Contract for the new playing fields at the Elm Avenue Town Park to provide a relocation of the fencing to a point farther than originally designated. The motion was passed by the following vote:

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

Chief of Police hold a bicycle auction with funds donated DARE program

The next item was a request from Richard LaChappelle, Chief of Police, to hold a bicycle auction on August 9, 1997 with the funds to be donated to the DARE program. Supervisor Fuller said the public notice will be in the July 30, 1997 issue of the Spotlight.

The following resolution was presented:

Resolution to authorize bicycle auction

WHEREAS, the Town Board of the Town of Bethlehem is authorizing a bicycle auction to be conducted by the Bethlehem Police Department, Youth Bureau, as permitted under Section 253, Duties of police, and Section 254, Item 3, Disposition of lost property, according to law, WHEREAS, proceeds from the auction will be donated to the D.A.R.E. program of the Town of Bethlehem Police Department.

NOW, THEREFORE, BE IT RESOLVED, that the Notice of Auction be published in THE SPOTLIGHT, a newspaper published in the County of Albany and having a circulation in the Town of Bethlehem on the 30th day of July, 1997; and

BE IT FURTHER RESOLVED, that said bicycle auction be held on August 9, 1997 from 10 a.m. through 12 noon at 445 Delaware Avenue, Delmar, New York.

The foregoing resolution was presented for adoption by Mr. Putney, was seconded by Mrs. Davis and was duly adopted by the following vote:

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

Councilman Lenhardt asked how many bicycles are auctioned. Supervisor Fuller said probably about 30 to 40. She said these are bikes that have been here and not claimed. Town Clerk Newkirk indicated there was a bicycle auction a couple of years ago, so there will not be as many as last time. Councilman Lenhardt thanked Supervisor Fuller.

Resident George Harder asked if these are bicycles from this community. Supervisor Fuller said they can be from this community, noting she is not sure. She said most people have the inspection stickers on them or the engraving and the Police Department attempts to contact owners and they have not come in to pick them up. Mr. Harder further asked if there is any notice given to other communities. Supervisor Fuller said there was not, believing that all communities have their own program.

Approve board minutes June 11, 1997

The next item was to approve the Town Board minutes of June 11, 1997 as submitted.

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

-----  
The next item was a request from Peter Bishko, Town Justice, to accept a donation to the Town of a 113 volume set of New York Jur 2d as a reference resource.

Request from  
Peter Bishko  
accept donation  
to town of  
113 volume set  
New York Jur 2d  
as a reference  
resource

The motion was made by Mr. Putney and seconded by Mr. Lenhardt to accept the donation of a 113 volume set of New York Jur 2d as a reference resource from Town Justice, Peter Bishko with thanks. The motion was passed by the following vote:

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

-----  
The next item was a request from Michael Cirillo, Engineering Services Administrator, for approval of resolutions and authorization for Supervisor to sign master and maintenance agreement for the traffic signal to be located at the Town Park entrance.

Engineering  
request for  
approval for  
Supervisor to  
sign Master  
and maintenance  
agreement of  
traffic signal  
at entrance of  
Town Park and  
resolution

WHEREAS, the State of New York, through its Commissioner of Transportation, has submitted to the Town Supervisor of the Town of Bethlehem a proposed agreement relating to maintenance of Federally-Aided Off-System and Traffic Operational Improvements within the Town of Bethlehem, and

WHEREAS, THE Town Board approved of such improvements being constructed in the Town as included in the plans for NYSDOT PIN 1805.19.

WHEREAS, the execution of such agreement is in the best interest of the Town of Bethlehem.

NOW, THEREFORE, BE IT RESOLVED, that the Board authorizes the Town Supervisor to execute such agreement on behalf of the Town,

BE IT FURTHER RESOLVED: that the Town Clerk of Bethlehem is hereby directed to transmit five (5) certified copies of the foregoing resolution to the State Department of Transportation.

The foregoing resolution was presented for adoption by Mr. Johnson, was seconded by Mrs. Davis and was duly adopted by the following vote:

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

---  
RESOLUTION

Authorizing the implementation, and funding of the federal aid-eligible costs, of a transportation federal-aid project, to fully fund the local share of federal-aid eligible and ineligible project costs, and appropriating funds therefor.

WHEREAS, a Project for the Elm Avenue Traffic Signal Installation, P.I.N. 1805.19 (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80 percent Federal funds and 20 percent non-federal funds; and

WHEREAS, the Town of Bethlehem desires to advance the above project by making a commitment of 100 percent of the non-federal share of the costs of Construction.

NOW, THEREFORE, the Town Board duly convened does hereby RESOLVE, that the Town Board hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Town Board hereby authorizes the Town of Bethlehem to pay the non-federal share of the cost of construction work for the Project or portions thereof, with the federal share of such costs to be applied directly by the New York State Department of Transportation ("NYSDOT") pursuant to Agreement; and it is further

PPS  
300

RESOLVED, that the sum of \$15,000.00 is hereby appropriated from HP5680.249 of, and made available to cover the cost of participation in the above phase of the Project; and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Town Board of the Town of Bethlehem shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the NYS Department of Transportation thereof, and it is further

RESOLVED, that the Town Supervisor of the Town of Bethlehem be and she is hereby authorized to execute all necessary Agreements, certifications or reimbursement request for Federal Aid on behalf of the Town of Bethlehem with NYSDOT in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's funding of the local share of federal-aid-eligible Project costs and all Project costs within appropriations therefor that are not so eligible, and it is further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project and it is further

RESOLVED, this Resolution shall take effect immediately.

The foregoing resolution was presented for adoption by Mr. Johnson and seconded by Mrs. Davis. The resolution was passed by the following vote:

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

- - -

Resident George Harder asked for an explanation of this item. Supervisor Fuller said it is for a traffic signal at the Elm Avenue Town Park. Mr. Harder asked how this evolved. Supervisor Fuller said this a signal light that has been requested for years. She explained the Town has been trying to get the County to come in for this location because it is a County road. She said the Town has been trying to get the traffic light and this is in conjunction with the bike path. She said this was all part of that procedure. She further explained the Town pays and the Federal Government pays some of the cost. She said it is mainly requested because the community has been asking for this for a number of years. She said the County requires the Town to take the ownership of this traffic signal.

Councilman Lenhardt said just for point of information, the Town pays 20 percent and the Federal Government pays 80 percent of this cost. Comptroller Kehoe explained 15 percent comes back to the Town from New York State. She said it is only a net cost of 5 percent to the Town. Supervisor Fuller said what we need is for the State budget to pass and this is being acted upon to be ahead of the projects. Councilman Davis said we are way ahead of them, as far as, passing the budget.

-----

Public Works  
request services  
of O'Brien &  
Gere for  
review of  
Schermerhorn  
Island  
infiltration  
system

The following item was a request from Bruce Secor, Commissioner of Public Works, to retain the services of O'Brien & Gere for review of Schermerhorn Island Infiltration System. Supervisor Fuller said she knows some of the residents in the audience have followed this project very closely but for others, she reviewed some of the highlights of the events that have occurred since January 2, 1996 when the plant went on line. She said it went into service on January 2, 1996 and on January 19 and 20, 1996 -- less than a month after beginning operation of the new water system -- the heavy rains and unusually warm winter temperatures caused severe flooding in the Hudson River valley. She said the Town filed a claim, actually 31 claims, to FEMA because it was determined that there was serious damage, silt build up, down along the river by the wells. After the dredging was done in March, it seemed to provide an increase in the water coming back and the blockage was no longer there. This prompted the Town to have to do the dredging, according to the Supervisor. Once again in April and May, Supervisor Fuller said there was siltation again. In consulting with Mr. Fraser, she said

he insists that the silt mud layer is present. She said we may have to look at dredging again. She said whatever the problem is, as the Town Supervisor and Town Board, they have made the decision that there is a need for an independent consultant to take a look at this. It is to be looked at entirely and she thinks the most important concern here is quantity, not quality. She asked that everyone keep in mind that this is not the taxpayers that are paying for this. She said they are going to get to the bottom of this all. She said they will have O'Brien and Gere here probably the first meeting in August to give a report. She said she is sure there are many questions and they want answers but she is not an engineer nor a lawyer but she is a Town Supervisor and everyone will be held accountable and they will continue. This plant is working fine, according to Supervisor Fuller. She said there is a snag, be it an act of God -- which she is not in control of at this point -- and O'Brien and Gere will be present to discuss this further in August.

The motion was made by Mr. Putney and seconded by Mr. Johnson to approve the hiring of O'Brien and Gere, Syracuse, New York to provide an independent review of the infiltration system, check the original geotechnical design assumptions, evaluate the impact of flood and storm damage and provide recommendations to the Town Board. The motion was passed by the following vote:

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

Supervisor Fuller said the next item was to retain the services of LeBoeuf, Lamb, Greene & MacRae law firm for \$250. per hour, if and when needed.

Supervisor Fuller retain services of Leboeuf, Lamb Greene & MacR law firm for \$250 per hour if and when needed

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to approve the retaining of the law firm of LeBoeuf, Lamb, Greene & MacRae, Esqs., Albany, NY at a rate of \$250. per hour on an as and when needed basis. The motion was passed by the following vote:

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

Resident George Harder asked what the purpose was of hiring them. Supervisor Fuller said if and when they are needed as counsel. Resident Linda Burtis asked if this was in order to sue somebody. Supervisor Fuller said this was a possibility, they do not know. She said the results of the recommendations of O'Brien and Gere are necessary at this point. Resident Jim Kelly asked if a request for proposal was sent out. Supervisor Fuller said there was not. Attorney Kaplowitz noted they are the bond counsel on the project so they are familiar with the project, more than anyone else would be at this point. Mr. Kaplowitz said the \$250. may sound high to us in Albany, but that took some negotiation. He said this partner's fee in New York City is \$395. per hour. Mr. Kelly further asked if it was determined that there was nobody in the Albany community that basically could do this kind of work. Attorney Kaplowitz said no. Mr. Kelly further asked if this investigation was not done. Mr. Kaplowitz said no.

Resident Margaret Shirk said it is the taxpayers who are going to pay for it. Supervisor Fuller said the taxpayers will not be paying. Mrs. Shirk asked who will, taxpayers contribute to FEMA funds too -- she further asked who is paying if the taxpayers aren't paying. Supervisor Fuller said they will determine who is paying when there are answers to the questions. Resident Linda Burtis said it is possible the taxpayers will be paying. Mrs. Shirk asked who is paying the consultant. Supervisor Fuller said the taxpayers are paying the consultants right now. Mrs. Fuller asked who saved a million dollars with a contract with the City of Albany by not buying Albany water. Mr. Harder said it seems that the million dollars is being eaten up fast by what will probably be continuing -- dredging costs, attorney's fees. Supervisor Fuller said the decision has not

been made to have continuous dredging fees and the dredging that was done is covered by FEMA. She said they have the letters from FEMA. Mr. Harder further commented FEMA is not going to buy it every 4 months. He said they are not going to do that. Supervisor Fuller said they have not made the decision that dredging will be done every 4 months. After O'Brien and Gere have taken a look at this whole thing, Supervisor Fuller said we will hear what they have to say about the silt.

Resident Robert Samsel asked that the speakers use the microphone.

Following requested to be verbatim by Mrs. Linda Burtis:

MRS. BURTIS: So, Kathy, could you do this verbatim? This is kind of an important meeting. I don't understand why you are laughing, Mr. Kaplowitz?

ATTORNEY KAPLOWITZ: Nothing, Mrs. Burtis, I was laughing. I am allowed to when I want to.

MRS. BURTIS: I know but I somehow get the feeling that I come up here and I ask it to be verbatim and it sounds... it feels to me like you are laughing at that request.

ATTORNEY KAPLOWITZ: No, I wasn't laughing at your request, perhaps you are paranoid or something. Feel free to address the Board.

MR. KELLY: He is laughing at me Linda, he can't believe I am here.

MRS. BURTIS: Okay. Let's see, one thing that bothers me is that we have been saying since we learned about the water project that it is being done secretly and behind closed doors, that was the time that back in 1991 and people were just discussing proposals and then suddenly 14 months later it was a fait accompli and it was December 11th and everybody was busy with the holidays and the Christmas day notice and all that.

SUPERVISOR FULLER: Linda, I would ask that we not reinvent the wheel. This is a problem that we are facing here tonight.

MRS. BURTIS: I am just making a point about discussion. I am watching tonight a very major problem. Supervisor Fuller you called the water system your major accomplishment.

SUPERVISOR FULLER: And, I still will today.

MRS. BURTIS: Okay. So, your major accomplishment is in trouble. It was in trouble in March when you had to request emergency dredging and there was no Town Board meeting even after you requested the dredging in March, April, May or June, until tonight to discuss this. And, not one of you is asking the Town Engineer, who is responsible, for this problem any questions. So, here I have questions... I am sure people here have questions and I am saying that it looks, again, as though you folks must be discussing this behind closed doors. At least that is the feeling that it gives me. I am very big on open government and you didn't have any meetings... when I heard about the dredging, I as a tennis pro and a totally untrained engineer person, began to think is this some kind of a signal for a problem. I would think you would have those same questions and good government says you should ask those questions openly at a Town Board meeting. So, I am just kind of stunned that tonight you are acknowledging that there is major problem and I don't hear anyone of you worried about the taxpayers and what the ramifications of this are. I don't hear... I mean Mr. Secor, the engineer, must be in the hot seat. The Fraser engineers are in the hot seat. You folks are in the hot seat and I don't hear anybody asking any hard questions. If this happened in your jobs, you know what would be going on. There would be heads that would be rolling. So, that is why I'm... that's not what I wanted... I wanted to ask some other questions but I just wanted to make the point that this is of concern to the people when we don't see our public servants questioning the Town Engineer in public about major trouble. I mean I am just surprised there isn't a dialogue going on among you to the Town Engineer about why this is happening.

SUPERVISOR FULLER: The Town Engineer has sent the Board a 4 page outline of the steps that have gone on from the time the plant went on line, Linda. The dredging was done because it was needed. They were attempting to do the pump testing when the silt was discovered.

MRS. BURTIS: Right, well here is a question -- what are you going to do if DEC and the Army Corps says to you you are not allowed to dredge any more? You just had in the paper a few weeks ago, Carl Johnson -- who approved... who is the high level DEC person who approved your emergency authorization dredging thanking you. We can use dredging for routine maintenance every 20 to 30 years and here we are 3 months later. I mean, I would be sweating bullets if I were in your seats about that. What are you going to do? You have a 28 million dollar system that may be failing. You have a Cadillac that may be turning into an Edsel. And, I don't get a sense from the Board, that that... you know... shagrin here... there's... I am sure there is but it is happening behind closed doors. I don't see why as you... you all unanimously vote every thing the same. Vote to have the firm come, vote to have the lawyers come in. There is no discussion so I am just making that point.

Who's responsibility... the system is not working now, who's responsibility is that?

SUPERVISOR FULLER: The system is working now. The system has provided water to the industrial users. That is the system we are talking about, not the residential water.

MRS. BURTIS: I understand.

SUPERVISOR FULLER: The system is producing 2.4 million gallons of water on a daily basis.

MRS. BURTIS: And, it was designed to produce 6 million gallons of water. So, the system is not working. It is not... you are not getting what you were designed...

SUPERVISOR FULLER: Right now, we have been led to believe that it is the silt formation that is causing the problem. We are taking a step out in front in a public meeting...

MRS. BURTIS: I appreciate that.

SUPERVISOR FULLER: ... where everything is done, Linda, O'Brien and Gere. And, we are going to ask them to take a look at it.

MRS. BURTIS: But, who... at this point, who would you say... who's responsibility? Is it your responsibility, Supervisor Fuller? Is it the Town Engineer's responsibility? Is it Fraser's responsibility? We have a problem... or is it, it sounds to me like you are saying it's God's responsibility. God caused this flood and we will just say...

SUPERVISOR FULLER: Well, God pretty much did. I don't think we set out to do it.

ATTORNEY KAPLOWITZ: Linda, that is why we are hiring an engineering firm to tell us who is responsible. What is... we don't know the answer to what is causing it not to work properly the way it was designed. O'Brien and Gere said that in a month's time they will tell us.

MRS. BURTIS: Okay, so, in a month's time we should know who is responsible for the problem.

ATTORNEY KAPLOWITZ: Sure. But, the problem is we don't have the answers any more than you do.

SUPERVISOR FULLER: We don't have the answers now.

MRS. BURTIS: Yes, but I wish I was hearing you ask the questions. I mean, I was thinking of these questions back in March and they weren't... there wasn't even discussion at a Town Board meeting. So, I am just disappointed in that. What... my second question, what are

you going to do if the system doesn't give you the 6 million gallon yield that it was designed to give... that Fraser and Fraser is on record over and over again -- I went to the library last night and reread the July 13, 1994 public hearing transcript and over and over he says this is a 50 year down the road system that we have. I don't hear any concern here. What are you going to do if that system doesn't give you 6 million gallons?

ATTORNEY KAPLOWITZ: That also depends upon what the engineers tell us. If they say that this is an act of God -- the silt, and the flood and everything -- we might be very limited in what we can do. If they say it was designed wrong and somebody is responsible, then there is all the usual remedies or whatever.

MRS. BURTIS: Well, what do you think about building wells in a flood plain. You have a flood 18 days later, how long can you keep on blaming God?

ATTORNEY KAPLOWITZ: Some places are still blaming him for a lot of things.

MRS. BURTIS: I know but you know, you don't...

SUPERVISOR FULLER: Linda, this was...

MRS. BURTIS: You as an attorney, Mr. Kaplowitz, know you don't get away with that. I mean people get sued.

ATTORNEY KAPLOWITZ: I didn't come here to argue with you. The dredging was done and it worked very well for a week or two and then something -- and we don't even know what -- caused it not to work again.

MRS. BURTIS: Right.

ATTORNEY KAPLOWITZ: We have got to wait for an engineer or somebody reputable to tell us what's wrong.

MRS. BURTIS: But, what... just give me a scenario. If you have... we paid 28 million dollars, the taxpayers, for a 6 million gallon a day system and if we don't get that, what are you going to do?

ATTORNEY KAPLOWITZ: That's what we will have to decide when we know what...

MRS. BURTIS: Well, what are the options?

ATTORNEY KAPLOWITZ: You can sue whoever is responsible.

MRS. BURTIS: Okay, so that would be for example... that would be for example, the Frasers.

MR. KELLY: Can I get in for a second?

MRS. BURTIS: No, let me just finish what I am saying. Okay, so that would be one thing, you could sue the engineers who designed the system. And, then what would happen? The people recover the 28 million dollars if that system...

ATTORNEY KAPLOWITZ: Hopefully. I assume...

MRS. BURTIS: I mean this was a system that the engineer said was brilliant.

ATTORNEY KAPLOWITZ: That is the reason for suing, is to recover what you lost. I can't promise you... guarantee you what the future will bring.

MRS. BURTIS: Okay. And... I just wanted to make one other point about...

SUPERVISOR FULLER: The plant was 13.7 million by the way. 28 million you are quoting.

MRS. BURTIS: The 13.9 million was the cost of the water plant and then when you amortize the debt it comes out to 28 million and that's where the 28 million comes from.

ATTORNEY KAPLOWITZ: That's payable over how many years?

MRS. BURTIS: You tell me, I mean...

MR. DAVIES: 28.

ATTORNEY KAPLOWITZ: How many, Sherwood?

MR. DAVIES: 27 and 1/2.

ATTORNEY KAPLOWITZ: I think that is right.

MRS. BURTIS: Now, just another question that is near and dear to my heart. The Hudson River where this water is coming from questions. When I talked to DEC at the time of the dredging, Art Hennison who is the person who signed the permit that gave you the emergency authorization to dredge, said that DEC is rethinking the question of how long you can continue to say this water is not coming from the Hudson River. If you have to dredge and the week after you dredge you suddenly have a system that's working and you are constantly juggling parameters in the Hudson River, it is going to look very foolish in the community of you continue to say this is not Hudson River water. So, what DEC is doing, is assigning staff to this question, looking at whether or not they are going to have to reclassify the river because if this continues to go on, what we have here, clearly, is an answer to that controversial question in the community -- where is this water coming from? It is coming from the Hudson River and if you... and DEC is now saying we are going to rethink the spirit of the law, the letter of the law, how long you can continue to draw these lines and say where is this water coming from. That is more of a point I just wanted to... and perhaps you are more aware of that but if you are not, I wanted to make you aware of that.

SUPERVISOR FULLER: Linda, the water is going to the industrial area only so the question of the Hudson River water issue and the scare tactics in this community will not happen this time.

MRS. BURTIS: Well, I'm... let's see... I have been called... I have been laughed at, I have been called paranoid, and now I have been accused of scare tactics. But, I suppose that comes with the territory.

SUPERVISOR FULLER: Linda, we are here to say we are hiring an independent consultant.

MRS. BURTIS: There are some communities that there are some people in this community that are on this water, isn't that correct?

SUPERVISOR FULLER: Six (6) that requested to be on that water.

MRS. BURTIS: Okay. There are six families that are on that water...

SUPERVISOR FULLER: At their request.

MRS. BURTIS: And, also there are the workers in the plants that are on that water. So, there is... whatever the employees size is at Selkirk Cogen, at GE which is quite large and at Owens Corning. So, we are adding... I mean, it is not quite... I appreciate that you split the system. I am very disappointed that you didn't split it after July 13, 1994 and you gave Fraser another 3 million dollars to go ahead with it. Because, really it is the residential piece that is sinking you now. All you need to do is stick a pipe in the Hudson River, have a water treatment plant, purify the water to industrial standards and you wouldn't be having these problems. So, it is odd that you split the system and now the residential piece that we are not getting is what's really sinking the system.

SUPERVISOR FULLER: Jim.

MRS. CAPONE: Excuse me, Linda, you said it was started in 1990 behind closed door could you be more specific?

MRS. BURTIS: Yes, yes. Which one is this, in August of 1990 Albany wrote a letter to Supervisor Ken Ringler... well, City of Albany -- came out of their law department and said a very alarming thing, we are not going to sell Bethlehem water any more. A month and... there was an emergency meeting that was had a Town Board meeting and there was a discussion of what to do. A month later September 1990, Ken Ringler and all the people who were on the Town Board then -- which I don't think is anybody here -- knew...

MRS CAPONE: It wasn't like that.

MRS. BURTIS: It is in the minutes. This is exact quotes from the minutes.

MRS. CAPONE: It did not, I was there. It was in August, Room 106 and they had the Supervisor from the Town of New Scotland, they had a whole bunch of people that were involved in this. It was never behind closed doors and I was always there.

MRS. BURTIS: Those aren't the closed doors that I am talking about. I am talking about the 14 months from September 1990 until December 11, 1992 -- the meeting that you were at was just a discussion. It wasn't this water system. It was all sorts of things. It was regionalized supplies, going to New Scotland drilling more wells, and talking about the Hudson directly into the Hudson not the aquifer that we have now. Then a month later it is right in the minutes, we knew that Albany had made a mistake, they apologized and they were happy to sell us water and then there was not a word about water -- and this is what really burns me -- also in the Bethlehem Report for that 14 months there was not a word about... this was a huge big ticket item and the Bethlehem Report didn't talk about it. This was before it was a controversy, wasn't in there. That's what I mean behind closed doors.

MRS. CAPONE: Linda... to you but listen there is something I resent very much. When you talk about being in the Spotlight in December at Christmas time, you...

MRS. BURTIS: It was, December 25.

MRS. CAPONE: You are right, okay. You have 7 days to read the Spotlight, okay, you couldn't read it in 7 days. Let me tell you something...

SUPERVISOR FULLER: Marie and Linda, I would like to go to Jim Kelly, please, Marie.

MRS. CAPONE: Times Union and Spotlight...

MR. KELLY: I just have a question... Can I just interrupt for a second.

SUPERVISOR FULLER: This is questions from the audience. Let's not get into debating...

MRS. CAPONE: I like... why can't I finish? Is there a reason? It's the public hearing. Okay...

SUPERVISOR FULLER: It is not a public hearing actually, its...

MRS. CAPONE: Okay. It is time to do it then...

MR. KELLY: Do you want to take over?

MRS. CAPONE: Yes I want to.

MR. KELLY: Okay.

MRS. CAPONE: Times Union is published on Sunday, the large edition, once a week. They publish one large edition on Thanksgiving Day. I

never heard anybody complain about it and it's Thanksgiving. They eat turkey but they find the time to read Times Union too.

SUPERVISOR FULLER: Jim.

MR. KELLY: Two points, first, Bernie is there a cap on the fees you are going to pay these attorneys?

ATTORNEY KAPLOWITZ: We haven't discussed it yet. No.

MR. KELLY: The motion that you passed authorizes them to be hired, is that right?

ATTORNEY KAPLOWITZ: Yes, if necessary.

SUPERVISOR FULLER: To retain the services of them.

MR. KELLY: Is it necessary to take another vote of the Town Board at a public meeting?

ATTORNEY KAPLOWITZ: You mean to hire them when we need them?

MR. KELLY: Right.

ATTORNEY KAPLOWITZ: No.

MR. KELLY: You have hired them and then you are authorized to put them to work if and when you...

ATTORNEY KAPLOWITZ: The Board is, they didn't specifically authorize me but somebody.

MR. KELLY: Without...

ATTORNEY KAPLOWITZ: I would like them to come up and spend a few hours looking around very quickly and then sit tight until we have an engineering report.

MR. KELLY: So... all right, but there is no cap on what they could...

ATTORNEY KAPLOWITZ: No.

MR. KELLY: Okay. The other question is...

ATTORNEY KAPLOWITZ: We can tell them to stop any time we want.

MR. KELLY: Okay.

ATTORNEY KAPLOWITZ: That is always true, right. We can fire them too.

MR. KELLY: Sure. With regards to Fraser, that's the original engineer, is that right?

SUPERVISOR FULLER: That is correct.

MR. KELLY: Have you lost confidence in them?

SUPERVISOR FULLER: No, not at all.

MR. KELLY: You still have confidence in them?

SUPERVISOR FULLER: Yes, I have.

MR. KELLY: Have you asked them for an independent report as to why this is happening and have they given it to you?

SUPERVISOR FULLER: I have asked them, they have said it is the silt build-up. They are continuing to look to find the cause themselves. It is Dunn Geoscience, John Haylon, that is now with RUST.

MR. KELLY: And, have you asked him?

SUPERVISOR FULLER: Correct.

208

MR. KELLY: And, has he told you the same thing?

SUPERVISOR FULLER: Yes, that's what it appears.

MR. KELLY: And, so why is it that you are going to spend another \$5,000 to get these people from Syracuse?

SUPERVISOR FULLER: To have an independent opinion which is why I said that in the beginning.

MR. KELLY: And, if you trust the first 2 guys, why do you need a third one? If you don't trust the first 2 guys, there is a good reason to have a third one but if you trust the first 2 guys...

SUPERVISOR FULLER: I would like to see what the third opinion is, if you don't mind.

MR. KELLY: No.

SUPERVISOR FULLER: O'Brien and Gere are specialist in geohydrological. They can inspect it all and let us know.

MR. KELLY: Question I raise, that if you trust the first 2 guys why spend \$5,000? If you don't trust them then there is...

ATTORNEY KAPLOWITZ: Would you go in... how often have you been into a court room without an expert witness and trusted the other side's expert. That's crazy.

MR. KELLY: Well, no.

ATTORNEY KAPLOWITZ: You wouldn't do that.

MR. KELLY: Is Fraser's your expert or he's not your expert?

ATTORNEY KAPLOWITZ: He is our engineer, he is an expert, a professional.

MR. KELLY: Okay. Right, and if he told me it was a problem then if I have 1 expert, that's all I need usually.

ATTORNEY KAPLOWITZ: Well, I am not so sure. He has a vested interest in it at this point.

MR. KELLY: Yes.

ATTORNEY KAPLOWITZ: He is a party to the action, it is a little different and you have some...

MR. KELLY: So, in other words, has he been put on notice of a potential claim?

ATTORNEY KAPLOWITZ: He knows that we are hiring another... a consulting engineer, yes.

SUPERVISOR FULLER: Yes.

MR. KELLY: Okay.

ATTORNEY KAPLOWITZ: He knows that much as much as any of us knows at this point.

MR. KELLY: And, is there any guarantee in this contract for the work that Fraser did or no?

ATTORNEY KAPLOWITZ: No. Well, guarantees, we had specifications that says it will do the following and it's not doing it.

MR. KELLY: Yes.

ATTORNEY KAPLOWITZ: That's enough guarantee.

MR. KELLY: All right. And, is there any money held back from Fraser or have they been paid in full?

ATTORNEY KAPLOWITZ: I don't know the answer to that. Bruce, do you know off hand?

MR. SECOR: We haven't paid them anything in over a year and a half.

MR. KELLY: Are they owed any money now?

MR. SECOR: There is about \$50,000 outstanding in billings that we have not processed.

MR. KELLY: And, have you put a hold on that and told them that?

MR. SECOR: Yes.

ATTORNEY KAPLOWITZ: Well, they know it.

SUPERVISOR FULLER: They haven't been paid in a year and a half, I think they know.

MR. KELLY: Yea, well usually a year and a half someone gets itchy for the money so. All right, thanks very much.

COUNCILWOMAN DAVIS: Sherwood, you're not going to throw that are you?

MR. DAVIES: Pardon?

COUNCILWOMAN DAVIS: You are not going to throw it, are you?

MR. DAVIES: Oh, I wouldn't do that. I have prepared some comments that I would like to make and I thought I might have made them prior to the Board's action. But, I will make these comments in light of the Board's action.

(See comments following minutes)

(added between comments by Mr. Davies:

In the last 5 months, January through May of this year, the new plant produced \$260,000,000 at a cost of \$2.40 per thousand gallons. In May 1997, the Town of Bethlehem paid the City of Albany over \$17,000 for water purchased. Mr. Secor's records which I have reviewed and I am trying to get clarification on some of them which they don't add up, shows that since last October that's 1996, the Town purchased 11.2 million gallons of water from Albany. The City of Albany has charged us for 20.8 million gallons. I think somebody ought to be accountable.)

Thank you.

SUPERVISOR FULLER: Thank you, Sherwood. Is there anyone else?

MR. KELLEHER: I am Bill Kelleher. I think everybody here knows me. I am very glad to hear that you are finally employing an engineer to look at this. And, I am also glad to hear that you have retained an attorney. Both are necessary.

What I would like to do right now is explain to you why the dredging would never work in the first place. Now, I have a very good background in silt in the Hudson River because I worked in DEC and the State Health Department on the Hudson River for Governor Rockefeller when he wanted to build 4 nuclear power plants in addition to the 2 there are already on there.

But, let me explain something. How many people go fishing in the Hudson River? Anybody here on the Town Board? Yes. Have you thrown your bobber in the water at the Town Park? Your bobber, your fishing bobber, when your fishing shoreline, maybe you have a boat. Okay. Well, let me tell you something and this time of the year, very low flow in the Hudson River, when the tide is coming in, you throw your bobber in the water and it may even flow up stream not down stream. Now, when the tide is going out, that bobber travels about 50 feet per minute and that is near shore line. The velocity is out in the river are much greater. Now, what happens to the silt and the iron hydroxide and the clay and the fine sands that are being

continuously flowing down the Hudson River, what happens to these? They settle out in an area and what happens when the tide goes out, those materials get washed out again. So, you will have no evidence of siltation and that's exactly what happened up until the time we put the well in. Now, how do I know that? That there's no evidence of siltation, the Corps of Engineers will tell you that this is not an area in the Hudson River that silts up. The ... channel is only 20 feet deep down to bedrock. That sea wall was designed to prevent any siltation from occurring and it doesn't occur and how do I know? The eleven borings that were taken by Dunn back in 1992 showed no evidence of any significant amount of silt in the borings and that is very close to the surface. I agree with Mr. Secor and Dr. Jonathan Howland that that is true. But, there is one great big difference, we put a well in there and we are sucking water down through the bottom of the Hudson River. We have put a negative head on that water. It is just like a vacuum cleaner. Now, it isn't just the 2 million gallons of water that you are pulling down through the sand, the fine sand that is on the surface, you know what it is? The whole column of water where you have zero velocity when the tide is coming in, all of that material is settling down to the bottom of the river and the negative head sucks that material into the sand and holds it there and when the tide goes out, that material is not washed out or scoured out as we engineers call it. So, that is why you have the build up of silt. You can call it silt, it is actually silt, iron hydroxide and clay. Has anybody made an analysis of this, Mr. Secor? Have you made a chemical analysis? A physical analysis and classified the amount of silt, clay, fine sand, carbonates, iron hydroxide in that water in that soil?

MR. SECOR: That is why we hire an engineer.

MR. KELLEHER: You don't have to... you didn't have to hire an engineer to prove that this wouldn't work. Anybody has experience knows this dredging wouldn't work. Why? I called up the Corps of Engineers, yes there is quite a bit of siltation in the Port of Albany, that is a great big lake. You know, in order to turn boats around, they have to dredge that out constantly and it is a wide area too. It is deep and wide and you do get siltation and they had a large amount of siltation from the '96 flood, no question about it. But, every time the Hudson River water rises up and goes down, it is going to be flushing this silt down into our well and the area where the well is recharged.

MRS. BURTIS: Inaudible -- did not come to the microphone.

MR. KELLEHER: I mean you are going to have to dredge the entire Hudson River from here to Glens Falls. You are going to have to dredge the entire Mohawk River from here to Amsterdam. I mean this is ridiculous.

SUPERVISOR FULLER: No, we are not.

ATTORNEY KAPLOWITZ: We will never get a permit for it.

SUPERVISOR FULLER: We are going to have O'Brien and Gere take a look at it and be here for the public meeting.

MRS. SAPIRO: Inaudible, did not come to the microphone.

MR. KELLEHER: Let me ask...

SUPERVISOR FULLER: No, not at this point.

MR. KELLEHER: Let me finish with my statement. Okay.

MRS. BURTIS: Inaudible, did not come to the microphone. He is an engineer, he can.... is on the record, that the well is going to fail in 2 years and when.... I was astonished. It happened, so here we are here....

SUPERVISOR FULLER: We have all determined in this room here tonight that it is failing. But, we have not made that decision.

MR. KELLEHER: Let me finish... can I finish, Linda, please?

MRS. BURTIS: We have determined... inaudible.

SUPERVISOR FULLER: No, we have not.

MR. KELLEHER: Let me finish now. I guarantee you... I could have guaranteed you ahead of time that dredging would completely fail. I knew that the hole that you created in that sludge, would immediately fill in again from all the sludge that's coming from up stream. It was bound to fail. Now, according to Mr. Secor's allegation, that there was a significant improvement, hey, there was a significant improvement in the past. You know why, whenever there is a high flow in the Hudson River, the material gets scoured out, the filtering area. And, guess what happened, during the period just after the dredging, what happened -- you had a very significant increase in the flow of the Hudson River but not right after the dredging was completed. They pumped for 2 or 3 days, they only pumped at a very low rate compared to the rate that they pumped later when the river rose up, scoured off the filtering area. You got a temporary increase in the well yield. It wasn't 6 million gallons a day, I guarantee you. It wasn't that at all. For a couple of days that 3 million gallons a day, then by the end of June you are back down below 1.7 million gallons a day. You know darn well it was going to happen. Any engineer who knows anything about siltation in the river would know it was going to happen.

SUPERVISOR FULLER: It is 2.4 million gallons a day.

MR. KELLEHER: No, I want to ask you that question. That doesn't agree with the reports by Mr. Secor that were sent to Albany County Health Department. I believe the amount of water pumped in May was 1.68, wasn't it Sherwood?

MR. DAVIES: Yes.

MR. KELLEHER: Now, how can you justify 2.4 versus 1.68 -- I beg your pardon, Mrs. Fuller, I thought you said that they were making up the additional water by taking it from the Vly Creek side. Am I correct, Mr. Secor?

SUPERVISOR FULLER: The Vly reservoir to supply the industrial area with 3 million gallons a day, Mr. Kelleher, is what I said.

MR. KELLEHER: Please repeat that, what did you say?

SUPERVISOR FULLER: What was the question you just asked me? I am answering your question.

MR. KELLEHER: You said it was 2.4 million gallons a day that were coming from the wells and I am telling you it was not. Now, let Mr. Secor answer that question?

MR. SECOR: During that month, COGEN shut down, so we didn't have a customer to pump to. We pumped to the industrial demand. The next month during June, we averaged about 2.4 million gallons a day which is what they were using. We are only pumping to 2 customers, if 1 customer shuts down, you have to cut back on the pumping. That's what happened. That's... the Albany County report that you are looking at is the treated water put out of the system. That's absolutely correct, it was sold. We can't sell to the customer if the customer shuts down. It is that simple.

MR. KELLEHER: Now, wait a minute, Mr. Secor, the data I was looking at was the amount of water pumped from the well.

MR. SECOR: Right and we pump it and we purify it and then sell it.

MR. KELLEHER: You mean to say that the reservoir went down about 10 feet.

MR. SECOR: The reservoir never went down 10 feet. The reservoir is full at 19 1/2, it went down to 15 and went back up to 18 1/2 or 19 right now.

COUNCILMAN PUTNEY: This is the Clapper Road?

312

SUPERVISOR FULLER: Yes, Clapper Road is what we are talking about.

MR. KELLEHER: Well, what's the well yield right now then?

MR. SECOR: About 2 and 1/2.

MR. KELLEHER: It is, you can get 2 and 1/2.

MR. SECOR: Right now we are pumping about 18 or 1900 gallons a minute which is almost 3.

MR. KELLEHER: You admit it is not 6 million gallons a day.

MR. SECOR: Correct. We admitted that when we went to the Corps of Engineers to try to do the dredging. We admitted that when, you know, we...

MR. KELLEHER: Are you blaming the siltation of '96? Are you blaming that for the difference between the 6 and the 2.5 that you claim? Incidentally, I never saw a figure 2.5 pumped from those wells except when there is high flow in the Hudson River, never.

MR. SECOR: It is being pumped right now. And, the answer to your other question is we don't know and that is why we are hiring O'Brien and Gere.

MR. KELLEHER: Mr. Secor, you've always got some excuse. Let me go through it. Let me go through why you should be hiring an engineer and what that engineer should be looking at.

ATTORNEY KAPLOWITZ: We should be did you say?

MR. KELLEHER: Should be looking at. I agree with your hiring an engineer, I just thought it was too soon.

ATTORNEY KAPLOWITZ: I just wasn't sure if you said should or shouldn't. I missed...

MR. KELLEHER: No, why we should be hiring an engineer. All the reasons why the well yield is 1.7 million gallons per day instead of the 6 million gallons per day promised by the consultants. Now, I can change that to 2.5. I am not a mind reader. I have asked Mr. Secor for this data even using foil requests and he refuses to give it to me.

But, the second area of concern, why the 3 day pump test at 6 million gallons per day promised by the design engineer was never made. Now, Mr. Secor came up with 3 different excuses. The first excuse was, oh, there is going to be an electric surcharge. I agreed with Mr. Secor that there is going to be an extra cost of electricity that we better go to Niagara Mohawk and get a variance to that. But, after 6 months, I checked with Mr. Secor and he still hadn't gotten the variance. He still was giving that excuse. So, I contacted Niagara Mohawk. We can't talk to you, Mr. Kelleher, at all about anything. So, I went to the Public Service Commission and they said well, you will have to write Niagara Mohawk and support Mr. Secor's request. And, he did make a good request and he did have a letter saying they were going to make that pump test as soon as they got the variance. Well, you know what the people of the Public Service Commission said, you better check the electric bills first. So, I did and guess what I found, the variance doesn't apply, it never did.

So, that knocked holes into Mr. Secor's excuse for not making the 6 million gallons per day pump test. Now, recently, I read in the Spotlight the fantastic idea that I have got to find some place to put the water. That's why we can't make the 6 million gallon per day pump test. That's just another excuse. You have an overflow. That reservoir is way down, they could have pumped 6 million gallons per day without even using the overflow, if they are serving industry with 2 million gallons a day. It is just another excuse.

But, the most fantastic excuse I find -- did anybody know this -- that they took the pumps out and machined them. I didn't know it. Mr. Secor never told me. I have been trying to get that data from

him since October of '95. He said he was going to give it to me. He never gave me anything.

SUPERVISOR FULLER: Mr. Kelleher, you have been here repeatedly requesting information, foil requests have been given to you in the Clerk's office.

MR. KELLEHER: No, they haven't. I have 2 foil requests that you never honored, Mrs. Fuller.

SUPERVISOR FULLER: I have answered them. You have appealed them.

MR. KELLEHER: I have 2 foil requests. I have 3 or 4, I gave up trying to do it. And, Mr. Secor, knows what they are. I finally gave up. I decided I was going to wait for this well to fail because I knew with absolute certainty it was going to fail. I just waited. I checked with DEC about once every 3 months. On last check I found that all of a sudden the well had failed, they had to dredge it. And, if you don't call dredging an indication of well failure, I don't know what it is.

Well, let me get on with what this engineer should be doing. The reasons why the \$650,000 ozone equipment can't be used. It can't be used, you know why, it will make the water a lot worse than what it is already. It will make it exceed all of the State standards. It will make it produce chloral picturin which will be discharged from the cooling tower, that's if COGEN uses the cooling tower. They can't use the ozone equipment and you don't want to do anything about it? \$650,000 that is a waste of money.

Now, the 4th reason. The reasons why no one recognized that this water has very high concentrations of ... nitrogen compounds that cause an extremely poor quality drinking water. You wouldn't want to drink this water, you wouldn't be able to stand the taste and odor from this water.

COUNCILMAN LENHARDT: I have drunk this water.

COUNCILMAN PUTNEY: So, have I.

SUPERVISOR FULLER: So have I.

MR. KELLEHER: Yes, okay. Would you be willing to drink this the rest of your life?

COUNCILMAN LENHARDT: I would be.

SUPERVISOR FULLER: Yes.

COUNCILMAN PUTNEY: I would too.

MR. KELLEHER: You would.

COUNCILMAN LENHARDT: Yes.

COUNCILMAN PUTNEY: Yes.

MR. KELLEHER: Well, you are not too smart. And, let me ask you a 5th question. The reasons why the Town had no financial protection whatsoever and this is what Mr. Kelly was referring to -- we had no financial protection whatsoever against the failure of the well and the failure of the ozone to improve the water quality. Now, let me tell you something. I know of no city, town or village that I ever came in contact with that as soon as the well was completed, that the town engineer, the city engineer, village engineer didn't immediately -- before that well was connected up demand a pump test on that well and a measurement of water level in the well to confirm what that well yield will be in the future, what the well yield is now and what it will be in the future. We didn't have anything like that. Mr. Secor has set back and protected the incompetent design that has occurred here.

Now, I recommend that the Board not vote in haste -- you already did -- but have you told O'Brien and Gere -- are they familiar with the

fact... you have indicated that you are going to hire a lawyer if things don't turn out right. Is that correct?

ATTORNEY KAPLOWITZ: That's the purpose of...

MR. KELLEHER: You are going to take legal action, that's the implication here.

SUPERVISOR FULLER: Yes.

ATTORNEY KAPLOWITZ: If the engineers tell us that's the proper course to take.

MR. KELLEHER: Yes, all right. Have you told them that Mr. Fraser -- who according to the Spotlight has an award from the PE society -- may be one of the engineers that will be sued for malpractice? Have you told him that?

ATTORNEY KAPLOWITZ: I certainly haven't because I don't think...

MR. KELLEHER: I am just wondering. Have you, Mr. Secor? There's a lot of engineers who would not want to take this project if they knew there was malpractice involved. I think you have to be on to something... this engineer has to... O'Brien and Gere has to represent us, the Town, they don't represent Mr. Secor. They don't represent Mr. Fraser. They represent us as a Town.

ATTORNEY KAPLOWITZ: That is why we are not using Fraser or Rust or anybody who otherwise was involved in this.

MR. KELLEHER: Oh, look it, I have no...

ATTORNEY KAPLOWITZ: They are not independent otherwise.

MR. KELLEHER: You know my feeling from the very beginning on this...

ATTORNEY KAPLOWITZ: Bill, they know that they are reviewing somebody else's work and they know why, I am sure. They don't have to sit down and think about it for very long.

MR. KELLEHER: Well...

ATTORNEY KAPLOWITZ: We have asked them to come in and take a look and tell us why it doesn't work.

MR. KELLEHER: I know they have a very good reputation and I am not knocking them at all. And, again, when I finish here, I'd like to say again I am very pleased that you have taken steps to try to solve this problem. Thank you.

SUPERVISOR FULLER: Thank you, Mr. Kelleher. Is there anyone else who would like to address the Board this evening?

MR. HARDER: My name is George Harder. Is it not true that there are approximately 30 residents homes attached to the Hudson River system and some without their consent?

SUPERVISOR FULLER: Not that I am aware of, Mr. Harder. We know of 6 that have requested it. Are there 30 that were made?

COUNCILMAN DAVIS: Do you have names? Do you have 30?

MR. HARDER: I know somebody that did not give their consent and they are connected to the system.

SUPERVISOR FULLER: Is that one person or...?

ATTORNEY KAPLOWITZ: Everybody on there was given the option of continuing to use their own well or hook up, it was their choice. You ought to bring them in here, he or she or whoever it is so we can all talk to the person.

COUNCILMAN DAVIS: We would like to talk to them, Mr. Harder.

SUPERVISOR FULLER: Yes. Mr. Samsel.

MR. SAMSEL: The whole purpose of this last hour has been the fact that an election is being held next November, no other reason.

ATTORNEY KAPLOWITZ: Thank you, Mr. Samsel.

SUPERVISOR FULLER: Before we adjourn here this evening, I think there is some important messages that I am sure are out in this community and that is from the start of this, we know, you in the audience know and I know how controversial this has been. I would hope that we would all sit back and understand that we are here to protect our interests in the Town of Bethlehem. Speaking for myself only, I can tell you I have been a long time resident, have raised 5 children here and the rest of the Board Members have lived here also. We all have an interest in the Town. We are not here to bring this news as great news to each and every one of you but what we are here to tell you is, we are hiring the independent consultant. He will be brought in here, he or she. We will have him at a meeting, I believe it will be August 13th which is our first meeting in August. You are all welcome to attend. There will be a time for questions and answers. And, above all else, this Town has always been open and above board, Town government. And, if there is one thing that bothers me, is the accusations that it is closed government. Nothing is closed here and never has been. All of these meetings and all the public hearings have been right here. I appreciate... pardon me.

MRS. BURTIS: When you have them. The problem is that most is that you don't discuss it at these meetings. You don't... there was the months and months of silence you had the dredging, there was no discussion. So, I am not saying that at the meeting itself it is closed, I am saying all the silence in between. (inaudible -- did not come to microphone)

SUPERVISOR FULLER: Well, I have to tell you, Linda, running a Town is not as simple as you may think it is, you know. I can't be scheduling press conferences every time we need to do something.

MRS. BURTIS: You don't have to have a press conference but when you spend \$75,000 to dredge the river back in March and you don't have a Town Board meeting in March, April, May or June until now to discuss this situation, you must have questions yourself. Maybe you have these questions, it must be behind closed doors.

SUPERVISOR FULLER: George Harder was here asking questions. It has been discussed here at meetings.

MRS. BURTIS: If you had not had this on the agenda, you dredged the river... and spent \$75,000.

SUPERVISOR FULLER: That is correct. A lot of other communities dredge the river too.

MRS. BURTIS: Now, I appreciate... I don't think it was an emergency but...

SUPERVISOR FULLER: It was an emergency.

MRS. BURTIS: Given the fact, just for the sake of argument, that you had to do that quickly, you could have discussed what does this mean, Mr. Secor... you are not engineers... what does this mean. Is this a signal? Is this the red flag that we are having trouble with the system? And get yourselves educated. That should be done publicly at Town Board meeting. So, I am not talking about the meetings that you have... that Town Board meetings that you don't have this important issue on the agenda. And, you didn't in the 14 months between when this was first proposed and when it was a fait accompli. It was never discussed at a Town Board meeting. It was never put in the Bethlehem Report until it became a controversial issue in Town.

SUPERVISOR FULLER: No, I believe it was in the media immediately.

MRS. BURTIS: But, it wasn't in the Bethlehem Report, Sheila. The Bethlehem Report is... excellent information...

SUPERVISOR FULLER: The Bethlehem Report that comes out 3 times a year?

MRS. BURTIS: Yes. You had the pooper scooper law, you had the town pool regulations and here you had this big ticket item between 1992 and 1994 that... I researched all of this so you can trust me that it is valid, there was not one mention that you... you talk in the Bethlehem Report that stands to blow the horn of projects in the Town and this was before anybody knew what was happening. It wasn't a controversial issue. It was not once... there's not one line in it that you were building this new water project. That's what I am talking about behind closed doors. I am talking about the 14 months, the 4 months just now. I mean, you must be thinking about it and that thinking and I am sure you all believe in good government, should be done openly at Town Board meetings.

SUPERVISOR FULLER: Well, we can't do anything without doing it at the Town Board meetings.

COUNCILMAN LENHARDT: Sheila, may I say something?

SUPERVISOR FULLER: Sure, George.

COUNCILMAN LENHARDT: I would like... can I... I would like to address the issue of emergencies. Back on April 1st of this year, we had a snow storm. I believe our Town Highway Department incurred a bill of about approximately \$300,000. We as a Town Board did not discuss the need for that emergency to be addressed.

MRS. BURTIS: I understand that.

COUNCILMAN LENHARDT: This dredging issue brought, to my understanding and I have talked to Bruce on the telephone, brought the yield of the well down below 1 million gallons of water and that was an emergency situation. We had a short time period before they would not allow any activity in the river until after the fish spawning season. And, it was addressed.

MRS. BURTIS: But, it wasn't talked about even after it was approved. The emergency authorization to dredge the river is a highly unusual thing.

COUNCILMAN LENHARDT: Definitely it's unusual.

MRS. BURTIS: And, it also, you know it's a controversial project -- the water system -- and it just boggles my mind that you talking... having it on the agenda tonight and in March, April, May and June and it actually never would have been in the newspapers and the Spotlight except for Clearwater for Bethlehem. There was never any discussion. What does the dredging mean? Are we in trouble here? Let's start looking at this.

COUNCILMAN LENHARDT: We are trying to find out but my gut feel and what I have heard from Bruce, that dredging action brought the well yield... the well yield back up and it seems to have leveled out at 2.4 million gallons of water per day which is significantly below what we paid engineers to build for us and we are addressing that.

MR. KELLEHER: I got a... the dredging did not increase the well yield. Mr. Secor, you can prove it to me by giving me the draw down data.

MR. SECOR: That was submitted to the Corps of Engineers. You got foil copies of it. It's on file with the Town Clerk.

MR. KELLEHER: I don't... you... you didn't give any drawn down data... just say the draw down increased by a factor of 1/3... I want water elevations and actually draw down in the wells for your pumping rates. You've never given it to me.

SUPERVISOR FULLER: Thank you all.

MR. DAVIES: I have asked under foil requests for information on pump yield, pump tests and draw down. Mr. Secor said it is not available. Now, if you have it, George, I would like to go to you and get it. Do you have it?

COUNCILMAN LENHARDT: I don't have it.

MR. DAVIES: Well, how did you get it?

COUNCILMAN LENHARDT: I asked him for what the well yield was at a particular point in time.

MR. DAVIES: Well, does he have the data then?

COUNCILMAN LENHARDT: I would assume he has it. How would he be able to provide it.

MR. DAVIES: Could we get that, Mr. Secor?

MR. SECOR: It is published monthly. It's in the Albany... in the operating reports...

MR. DAVIES: No, no, no, no.

MR. KELLEHER: Now wait a minute...

MR. SECOR: We file those every month. Everything you have asked for we have given you.

MR. DAVIES: You have not.

MR. SECOR: After the dredging, I prepared a letter to the Board which showed draw down before, draw down after. It is in the Town Clerk's office. If you had requested, and you didn't get it, I apologize because I'm trying to give you every answer... I know you are upset with me and I don't... I can't spend every day on the phone with you...

COUNCILWOMAN DAVIS: That is right.

MR. SECOR: But, if you fill out the foil request I think we have responded to every one you have given us.

MR. KELLEHER: Mr. Secor, I called you 3 times. I went up to your office to see you about this dredging when I found out about it, you never returned my phone call. You sat in the office and said nothing.

SUPERVISOR FULLER: Mr. Kelleher, this is not the item on tonight's agenda.

MR. DAVIES: Sheila, this is a very interesting comment from Mr. Secor. I have raised... made numerous foil requests. I have had to appeal because Mr. Secor would not reply, in effect, denying my request. I have appealed to you at least on 3 occasions. I have eventually gotten some of the data, not all of it. Now, Mr. Lenhardt says he gets from Mr. Secor some data on the pump yield and draw down. We have been looking for that. Now, if Mr. Secor has it, can I stop in tomorrow morning and look at your records?

MR. SECOR: It's right, xeroxed, it's in the correspondence with ... which I am sure you got a copy of it.

MR. DAVIES: It is not. You don't understand what we are asking for.

MR. SECOR: I gave that... because, you foiled the DEC, DEC told me they gave you a copy of everything they had. That was part of the stuff that was copied to them.

MR. DAVIES: Incidentally, the DEC had requested on May 30th from Mr. Secor this data on pump yield and draw down and any other information he had.

MR. SECOR: They requested flow data.

3/8

MR. DAVIES: They wanted it within 2 weeks. It was never provided as of a week ago.

MR. SECOR: It just went out in today's mail.

MR. DAVIES: Oh, my God. Then, could I get a copy of that? Do I need to make a foil request?

MR. SECOR: Yes, you do.

MR. DAVIES: Can I get it within 5 days?

MR. SECOR: You can get it tomorrow.

MR. DAVIES: I will have it tomorrow. This is unbelievable.

-----

Mr. Kelly wanted to thank Mr. Austin and Parks and recreation for the help in graduation celebration

Mr. Kelly changed topics and noted unfortunately Mr. Austin is gone but he wanted to make the Board aware that the graduation celebration was a great success. Supervisor Fuller thanked Mr. Kelly. Mr. Kelly said he wants to thank Mr. Austin and that he wanted to do this publicly. He said he was here late. Mr. Kelly said they could not have done it without the great support of Mr. Austin and the Parks Department. Supervisor Fuller noted Mr. Sagendorph, Highway Department, with the fencing. Mr. Kelly said thanks to Mr. Sagendorph also. Supervisor Fuller thanked Mr. and Mrs. Kelly for the decorations that went on. She said the graduation celebration is a great event for the seniors in the community. She said it is a very positive thing done by hardworking parents.

-----

Supervisor Fuller thanked everyone for attending the regular Town Board meeting. She said the next meeting will be held July 23, 1997.

Discussion Mrs. Shapiro asked about an ordinance on noise, noxious, waste Mr. Alessi drew it up and is being reviewed

Mrs. Shapiro asked if everyone remembered that an ordinance was discussed during the process with Spurlock. She asked if anything is being done. Supervisor Fuller said they have not forgotten it. She said this is on the noxious, noise, waste. She said Mr. Alessi did draw this up and it is being reviewed by Mr. Flanigan and Mr. Lipnicky. Supervisor Fuller said Mrs. Morice called about a month ago inquiring about the same issue. She was informed of this status. Mrs. Shapiro thanked Supervisor Fuller.

-----

Adjourn to executive session

Supervisor Fuller asked for a motion to adjourn the regular Town Board meeting. The motion was made by Mr. Putney and seconded by Mr. Johnson to adjourn the regular Town Board meeting at 8:42 p.m. The motion was passed by the following vote:

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

*Kathleen A. Newbirk*  
Town Clerk

## STATEMENT SUBMITTED TO THE TOWN BOARD July 9, 1997

By

William J. Kelleher

The Town Board is now aware that the dredging of the Hudson river was a complete failure. The particles of sand, silt, clay and iron hydroxide that were removed have been replaced by the normal flow of these particles down the Hudson river. The temporary increase in well yield, reported by Mr. Secor, was caused by the normal springtime increase in flow of the Hudson river and not by the dredging.

Whenever there have been heavy rains or a snow melt on the watershed the well yield went up to 3 to 4 MGD on a temporary basis. However when the flow in the river is low, such as for June of 1997, the well yield decreases to less than 1.7 MGD. The well yield will continue to go down and by next year the yield could be less than 1.0 MGD during periods of low flow in the Hudson river.

The dredging had to be done over an area 10 times larger than was actually dredged in order to cause a temporary increase in well yield. The scouring effect caused by the high water velocities in the Hudson, after the start of the 1997 springtime runoff, did unplug some of the filter area resulting in a temporary increase in well yield. Mr. Secor can prove I am wrong by giving drawdown data and water elevations in the well for every day from March 15 to June 30, 1997. It should be noted that Mr. Secor has not given any of this engineering data to support his claims.

The Town needs to hire a competent engineer who will look at issues of water quality and quantity, money and engineering malpractice. The engineer should fully understand that the report or reports will be used to hold those responsible for the poor design financially responsible.

The five major areas of concern are:

- 1.- All of the reasons why the well yield is 1.7 MGD instead of the 6 MGD promised by the consultants.
- 2.- Why the 3 day pump test at 6 MGD, promised by the design engineer, was never made.
- 3.-The reasons why the \$650,000 ozone equipment can't be used.
- 4.-The reasons why no one recognized that this water has very high concentrations of organic nitrogen compounds that cause an extremely poor quality drinking water.
- 5.-Reasons why the Town had no financial protection whatsoever against failure of the well and failure of the ozone to improve the water quality.

The Board should not vote in haste and award a contract tonight. Instead the Board should consult with attorneys, hire an independent engineer to replace Mr. Secor to supervise the contract, develop a contract for professional services, and let the contract out for bidding. The names of the consultants who could be sued for malpractice should be given. Therefore I oppose the request made by Mr. Secor to obtain the services of O'Brien & Gere at this time.