

TOWN BOARD
June 25, 2003

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
Daniel G. Plummer, Councilman
Thomas Marcelle, Councilman
Kathleen A. Newkirk, Town Clerk
Robert J. Alessi, Esq., Town Attorney

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Supervisor Fuller welcomed everyone to a regular meeting of the Bethlehem Town Board and invited everyone to join in the pledge of allegiance. She introduced a new Board Member for this meeting, young Daniel Marcelle and noted he wanted to come to a Town Board meeting with his Dad.

The first item was a presentation by Mr. Michael Kolceski, O'Brien and Gere Engineers, of the map, plan and report for proposed improvements to the New Salem Water Purification Plant, Transmission Mains and related facilities. Request approval to set public hearing for Water District Improvements for July 9, 2003 at 8:15 p.m. Supervisor Fuller noted this was discussed back at the April meeting and said this will be discussed again at the July 9th meeting. She asked if there were any questions or, if not, they can be asked at the public hearing on July 9th.

The following resolution was presented for adoption:

RESOLUTION PURSUANT TO SECTION 202-B
OF THE TOWN LAW OF THE STATE OF NEW YORK
ADOPTED AT A REGULAR MEETING OF THE TOWN BOARD
OF THE TOWN OF BETHLEHEM, HELD AT THE TOWN HALL,
445 DELAWARE AVENUE, DELMAR, NEW YORK,
ON THE 25TH DAY OF JUNE 2003

The Town Board of the Town of Bethlehem has heretofore established Water District No. 1, which includes the Vly Creek Reservoir, Water Purification Plant and storage tanks in New Salem along with an extensive system of water transmission mains and distribution facilities.

An Engineer's map, plan and report dated June 2003 has been prepared in a manner and detail as determined by the Town Board regarding the proposed improvements and expansion of water supply facilities, transmission mains and related facilities.

The map, plan and report titled "Increase and Improvement of Water Supply

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

Facilities, Water District #1, June 2003”, has been filed in the Town Clerk’s office in the Town of Bethlehem.

The map, plan and report were prepared by O’Brien and Gere Engineer, Inc., competent Engineers, Licensed by the State of New York, describing the proposed new facilities, a general plan of construction, estimated cost of the project and method of financing.

The proposed method of financing the cost of the improvements consists of the issuance of general obligation serial bonds of the Town with amortization of principal over a period of 30 years.

The maximum amount proposed to be expended for the proposed expanded Water Supply Facilities is the sum of Thirteen Million, three Hundred Thousand Dollars (\$13,300,000.00).

The map, plan and report describing the proposed facilities are on file in the Town Clerk’s office for public inspection.

The Town Board is desirous of conducting a public hearing regarding the proposed expansion of water supply facilities and transmission mains and wishes to give notice thereof by publication and posting as prescribed.

On motion of Mrs. Davis and seconded by Mr. Marcelle, it is hereby

RESOLVED AND 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 at 8:15 p.m. on the 9th day of July, 2003, to consider the aforesaid plan and report and to take such action thereon as is required or authorized by law.

The adoption of the foregoing Resolution and Order was put to a vote, the result of which is set forth opposite the name of each Board member voting thereon.

DATED: June 25, 2003 Mrs. Fuller
Mr. Lenhardt
Mrs. Davis
Mr. Plummer
Mr. Marcelle
Members of the Town Board
Town of Bethlehem

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Supervisor Fuller noted the amount of money was 13.3 million dollars. Councilman Lenhardt asked if the figure should be 13.5 million dollars. Commissioner of Public Works, Bruce Secor, said it should be.

Councilman Plummer asked, noting he will also ask at the hearing as well, was how once this is bonded out, will that come out of the public works fund or the General Fund and how it would be paid back. He asked if it went into the water rates. He said he would also be asking about the timing of the different infrastructure components. He stated he would just need a handle on how it will be paid for and how it fits into either the water rates or the general fund.

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Commissioner Secor answered there would be no general fund money used in this, noting it can be only water district funds. He said the repayment of the bonds will come out of the tax base and some out of the water rents revenue, further noting this was in the 20-year projections given to the Board last year. He said this project was anticipated in that. He also stated he and the Comptroller will sit down this year before the budget preparation and project the revenues as done a year and half ago. He said there would be a comparison for next year.

Councilman Plummer stated what he is looking for has to do with the rate base now and how this 13.5 million bonded over the years will do something to that and he would like to know what that is or how it will be affected, coupled with whether or not everything has to be done all at once. He said this is talking about significant upgrades; installation of another pipe; significant improvements at the site and he is curious as to whether they have to be done right away or can they be phased in.

Commissioner Secor answered, phasing is one of the things mentioned in the long-range report and will be covered in this because there is some potential to phase some of the improvements at the water plant. He said that would be covered and as far as the bonding and the payment of the debt, there are existing bonds which are just about to expire for other projects within the water fund and that was on the 20 year spread sheet. He said he would update that and represent that for the Board to show the impacts on both the tax rates and water rates over the next 10 to 15 years.

Town Attorney Alessi said as he understood the presentation, it was mentioned there are some things that no matter what alternative you pick you are going to have to do them and then they split off. Commissioner Secor said the proposal tonight is for only that portion which is common to all alternatives. This is the upgrade to the water plant, which could be done in phases possibly, and that is one thing O'Brien and Gere will look at. He stated the transmission main and there are certain construction projects that you can save mobilization costs. He said these things would be covered when the presentation is done at the public hearing.

Councilman Davis asked in relation to this if there is any idea of when the Board might hear from the Albany Water Board in relation to any indication of when they might respond to the Town. Supervisor Fuller said not as yet but she asked them to get back to her to negotiate a long-range water contract with the City of Albany. She said they would get back to her and begin the negotiation, noting she knows this is part of the long-range plan.

The next item was a request from Bethlehem IDA for adoption of resolution and related materials regarding 467 Delaware Avenue, Delmar project. Supervisor Fuller noted this was the Klersy project next to the Library. She said this is a formality, noting there was a letter from their attorney. She noted the IDA held the public hearing on June 17, 2003

and has sent the minutes of the meeting, the resolution to be adopted. She said only the Town Board can do this and approve the resolution granting TEFRA, which is approval for the issuance of the bonds, and the amount is \$11,600,000.

The following resolution was presented for adoption by Mr. Lenhardt, and seconded by Mrs. Davis:

EXTRACT OF MINUTES OF MEETING OF THE TOWN BOARD ADOPTING A RESOLUTION GRANTING TEFRA APPROVAL

At a meeting of the town Board of the Town of Bethlehem, New York, July held in Bethlehem, New York on the 25th day of June 2003.

Present: Sheila Fuller, Supervisor, George Lenhardt, Councilman
Doris Davis, Councilman, Daniel Plummer, Councilman
Thomas Marcelle, Councilman

Absent: None.

Mr. Lenhardt presented the following resolution and moved that it be adopted:

WHEREAS, 467 Delaware Avenue, LLC (the "Company") has requested that the Town of Bethlehem Industrial Development Agency (the "Agency") issue its Bonds (467 Delaware Avenue, LLC Project), 2003 Series A (the "Bonds") in the aggregate principal amount of not to exceed \$11,600,000 to provide financing for the cost of a project (the "Project") consisting of (A)(1) the acquisition of land located at 467 Delaware Avenue, Town of Bethlehem in Albany County, New York (the "Land") (2) the construction operation of an assisted living facility of approximately 67,867 square feet (the "Facility"); and (3) the acquisition and installation therein and thereon of certain machinery and equipment related thereto (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the financing of all or a portion of the costs of the foregoing by the issuance of tax-exempt revenue bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay all or a portion of the cost or more issues or series in an aggregate principal amount sufficient to pay all or a portion of the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to be approximately \$11,600,000 (the "Obligations"); (C) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively with the Obligations, the "Financial Assistance"); and (D) the lease (with an obligation to purchase) or sale of the Project Facility to the Company of such other person as may be designated by the company and agreed upon the Agency; and

WHEREAS, the Company has requested that the interest on the Bonds be excluded from the gross income of the owners thereof for federal income tax purposes pursuant to Sections 103 and 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"); and

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WHEREAS, the Agency has provided the Town Board with: (1) a copy of the Notice of Public Hearing with respect to the Project; (2) a Transcript of the Public Hearing held by the Agency on June 17, 2003 at Town Hall in the Town of Bethlehem, New York; and (3) a copy of the Amended Inducement Resolution adopted by the Agency on March 25, 2003 with respect to the Project;

NOW THEREFORE, in our capacity as the “applicable elected representative”, within the meaning of Section 147(f) of the Code of the Town of Bethlehem, New York, the Town Board of the Town of Bethlehem hereby resolve as follows:

1. That, for the purpose of satisfying the requirements of Section 147(f) of the Code, the Town Board hereby approves the issuance of the Bonds by the Agency.
2. This approval is given for the sole purposes of qualifying any interest payable on the Bonds for exclusion from gross income for Federal income tax purposes pursuant to the provisions of Sections 103 and 141-150 of the Code.

The motion having been duly seconded by Mrs. Davis, it was adopted and the following votes were cast:

AYES: Sheila Fuller, George Lenhardt, Doris Davis, Thomas
Marcelle
NAYS: Daniel Plummer

Dated: June 25, 2003

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Councilman Lenhardt pointed out the fact that one of the documents provided contains a misprint and should be corrected. Supervisor Fuller noted this was probably done for the school district and the town.

The next item was a request for consideration of rezoning of River Road, Cedar Hill/Selkirk area. Mr. Dominic Carota thanked the Board for the opportunity to address the Board. He said he resides at 1408 River Road and was the spokesperson for a task force of 6 neighbors that live in the rural not zoned district.

Mr. Carota informed they want a fair and comprehensive zoning plan in the area of the rural not zoned district. He said the area is the Route 144 corridor south of the Vlomankill to the Town of Coeymans line on the east side of Route 144 and south of Beaver Dam Road to the Town of Coeymans line on the west side of Route 144, as well as, the Maple Avenue area in the hamlet of Selkirk. The group presented a map to the Town Board. He said the task force is composed of residents owning from 1 acre to many acres, a cross section of the area.

Mr. Carota stated they met approximately 7 times. They are proposing zoning categories of AAA Residential, A Residential, Heavy Industrial and CCC Commercial. He said

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during the meetings there was questions raised, no opposition expressed and the proposal is the result of the meetings. He said the agricultural regulations do apply to any and all of this land. He also noted the residents were aware of the fact that they could apply for a use variance if there is something they wish to do and it is not allowed within the designated zoning.

Mr. Carota admitted they did not contact all of the residents of the area. He said they contacted those they deemed to be in areas, which were rural and residential. He noted they appreciated the difficult discussions the Board has had on this topic.

Mr. Carota and the other members of the task force noted they would be willing to meeting with the Town Board to discuss their proposal.

Supervisor Fuller asked if any of the large landowners or the farmers participated. She said when this started, there were 3 volunteers from both groups. Mr. Carota said the answer is that no one from the large landowners association volunteered to talk with them and work with them. He said that is the answer, however, of the large landowners that were contacted on the Route 144 corridor designation, 2 of them – Mr. Jennings and Dr. Chi – agreed to participate in the task force and give their input. Councilman Davis noted the Supervisor had spoken with representatives. Mrs. Fuller noted Mr. Mead and Mrs. Powers volunteered when she asked for representatives and that was why she asked the question. She said she anticipated that there would have been representation from the group. Mr. Carota said there was not.

Mr. Putney said he believed they were invited to participate. Supervisor Fuller and Councilman Davis said they were. Mr. Jennings said in the presentation the land south of the Vlomankill has not been part of their interest and has not been on any of the maps.

Councilman Davis asked Mr. Carota about his statement that the AAA designation was from the Thruway south but she believes that there is some commercial from the Thruway south on the west side. Mr. Carota said that was correct but not on the east side of Route 144 that borders the Hudson River. Mr. Carota said he was sorry if he misspoke. Councilman Davis said this is for the record.

Councilman Lenhardt asked Town Attorney Alessi regarding the zoning about the AAA and CCC zoning, how do you incorporate agriculture as of right? Town Attorney Alessi said the answer is that it would be done differently than what is proposed here.

Councilman Davis asked if Mr. Alessi could be more specific. Town Attorney Alessi said the way the proposed local law is written is the most poignant example of that. He said the way the law is going to public hearing, it is not a final law or final decision but is going out for comment, it says that for all land in the rural not zoned area. He said this is a subset of agricultural uses whether they are 10 acres or below 10 acres would be permitted as of right and that is the way you effectuate agricultural uses being permitted. Councilman Davis said if the Board approves the local law that comes before the Board at the public hearing, with the changes for the public hearing, if approved then automatically the agricultural areas that are proposed here in this would then be covered

if this was approved subsequently. Town Attorney Alessi said the 2 would not mesh so what is proposed here, as he understands it. He said for example, the AAA Residential proposes to make agricultural use as of right in an AAA Residential. He asked Mr. Carota if this was their intention. Mr. Carota said the intention was for the rural not zoned district, it was their intention. He said he did not think it was their intention to change Town Law for those areas that are in Delmar or Slingerlands that are AAA Residential to have then as agriculture by right in those areas. Town Attorney Alessi said they probably understand, not that they are expected to be totally conversant with the code, although you are quite conversant with it that we have districts listed in the Code that say AAA and that has a meaning throughout the Town. He said as it would currently stands – and he said this is not intended to be comprehensive – but as it stands now, agricultural uses would not be permitted in this AAA zone. He said the local law that is coming for public hearing would make agricultural uses permitted, as of right, in both the AAA and CCC areas.

Councilman Davis said she guessed that was what her question was. Councilman Lenhardt asked how it does that. He stated that the Board is changing an area that is rural not zoned and they are asking that an area presently zoned rural not zoned be rezoned to a different classification of the Code. He asked if everything that was there prior to a change stay as of right regardless of whether the designation identifies something different. Town Attorney Alessi asked Mr. Lenhardt if he was asking if the proposed law was passed at the public hearing and then subsequently passed this, what would happen? Town Attorney Alessi said those people on the date this law would be passed, would be grand fathered in and they would be non-conforming uses. He said an agricultural use would be a non-conforming use and there are specific provisions in the Code as to how you deal with a non-conforming use. He said they get to continue it but they cannot expand it by greater than a certain percentage, etc. He said this would be a notable limitation on agricultural uses. Mr. Lenhardt said he just wanted to check that. Mr. Carota said they essentially understood that. He said essentially they were asking to be heard tonight by the Board and to tell the Board that the agricultural as of right issue is a concern of theirs. He said they do desire to have that as part of the designation. He said he was sorry if that was not clear in the discussion. He said this was a concern and this gave them the opportunity to publicly discuss with the Board what they have been working on and hoped for. He said Mr. Alessi explains very well what would have to be done in the future.

Mr. Carota said the task force agrees that we need some commercial development, residential development with a comprehensive plan but more importantly they want to be aware that in the event that things do not change, there is a very good chance that there could be industrial or light industrial development literally next to someone's home without much right for them to seek a remedy. He said this is what their general hope is.

Councilman Plummer said it seems to him that there is a hearing scheduled where there is a need to take care of an issue that is a result of Judge Benza's decision and the status or residential in an agricultural zone was in question and they are going to address that, noting it is an immediate problem. He said this was correct and there is a lot out there

beyond that. He said everyone seems to agree that there has to be something done to clarify the code and make changes. He said Mr. Carota came forward on Monday night of this week, noting the IDA sponsored an economic forum with about 150 to 160 people there with all kinds of ideas. He said the overwhelming theme was that we need a plan to go forward. He said there is the Bethlehem Tomorrow group, reports from the past and there is a lot of information out there. He said they have discussed retaining a land use consultant to help move this forward and he thinks this and all the other recommendations and put it together and retain a land use consultant and start having hearings and moving forward. He said he thinks this is how it should proceed.

Mr. Carota said he thinks, personally, he would agree and assumes that most of the task force would agree also but nonetheless, they felt it was important enough to stand before the Board to express what their desires were.

Councilman Marcelle said he applauded Mr. Carota's and the task force's effort, noting it is taking control of your community and being involved to shape their own destiny. He said it is a positive and a model for citizens of a Town like Bethlehem. He congratulated Mr. Carota on that and then said there was one thing that made him pause with concern. He said he just needs to understand their thinking a little more. He said off the thruway west of 144, between 396 and not quite to Beaver Dam Road, there is a CCC area, asking about the limitations of the CCC zone. He asked if they considered C commercial because it is basically the same uses of right as CCC but then allows many more commercial uses with site plan approval. Mr. Carota said they contacted the landowners to elicit them to come and talk with the task force. He said it was discussed and he thinks the outcome was that the CCC offered the ability to develop it in a fashion, which essentially would be fair to everyone.

Councilman Marcelle asked what they foresee as commercial uses that would be acceptable. Mr. Carota said what was discussed basically was for people that think of commuting, professional office building and that was in the CCC zone, he believed. He said bank, savings institutions or those types of entities that seem to be consistent with where they are geographically relative to the Thruway interchange but at the same time not completely inconsistent with the residents that surround that or are across the street. He commented that a restaurant would have odors and large trucks coming in and noted the trucks could come in at all hours of the night. He said a professional building would probably be deemed more like a Monday through Friday delivery.

Town Attorney Alessi said just so he was clear on the proposal, he asked if the land colored yellow and green was what the group would be agreeable to agricultural use as it is defined in the draft local law as an as of right use in those 2 areas. Mr. Carota said the answer is yes.

Councilman Davis said there is also the possibility that someone could go and ask for another rezoning request if someone wants to do something that is allowed in CC rather than CCC Commercial. She said they could come to the Town and request a zoning change. Mr. Carota said they did consider that people could come and ask for variances

and that the variance process then really does open up the public hearing process and allows for input on each one that is presented.

Town Attorney Alessi commented that use variances are very hard to get in New York State. He said it is not like previously where if people think it was a good thing it was granted. He said now one landowner can stand in the way of a use variance that maybe the whole community might be agreeable with. He said he does not want the Board to feel that use variances are something that can be done and even if someone comes forth for a rezoning, which is a legislative act which the Town Board has great discretion, there is a doctrine called spot zoning that you cannot simply rezone it to accommodate a use. He said this would expose the Town Board to challenge. He said it must be decided on a case-by-case basis. He said he recommends to municipalities in New York State that they assume that people are not going to get relief through the use variance process or area variance process or through a sort of spot rezoning. He said the group should try to include everything that could encompassed and do not rely on the fact that someone can go and get a use variance.

Councilman Plummer made a suggestion that the Board ask for qualifications from land use consultants and ask that they respond in a decent time frame. He said he does not know what that would be, mentioning 60 or 45 days but to help move the process along. Councilman Lenhardt concurs with the suggestion but noted that Mr. Carota's proposed, typically in the past when this is received, if the majority of the Board agrees, it is referred to the Planning Board for a recommendation. He said he as always tried to keep an open mind with the idea that the Planning Reference Resource document should be something we should seek to try to implement but just as was tried with Slingerlands when the residents along their wanted the property zoned commercial, he feels the process should be followed and refer it to the Planning Board but at the same time he does not want to loose track of getting someone in to work on recodifying the entire Zoning Code.

Mr. Carota said the proposal actually added uses to the current 32 enumerated uses in the Rural Not Zoned District. He said the 32 and the proposed was something that seemed pretty consistent with what was being done in the zone. He said they were looking for relief from the potential threat of light industrial or industrial use as of right in the rural district. He said specifically, what they have put forth is a series of recommendations. He said he does not intend for it to be comprehensive, letter of the law and ready to be voted upon by the Planning Board for consideration. He said what he thinks they are looking for at this point is a public venue to discuss this in an open forum and to have the Board consider that when people come up and speak to the Board that they are not just large landowners, there are also small landowners here and may the majority of voters are small landowners, however, there are also large land owners that feel very much the same as that individual who owns a parcel. He again thanked the Board for the opportunity to present information.

Supervisor Fuller said she thought the suggestion of Councilman Plummer was something the Board has talked about recently because with all the questions coming up

about the zoning, that is the way to go. She said to get someone in to take a look at the land use plan to start with and see if they can try and put in some of the changes but on the other side of the coin, they also need to find a consensus in this community. She said consensus building has been difficult throughout the years. She said there is a plan and the other night the Board heard everybody wants a plan. She said there is a plan but the plan that fits everybody's wishes is where it becomes the hurdle. Mr. Carota said he believes they understand that and that is why he is here. Supervisor Fuller said absolutely.

Mr. Jennings, resident, said it was a great presentation and noted he was a member of the Task Force. He said the Assessor tells him they own 200 acres and noted it is an awfully even number and he cannot quite believe it. He said they are in favor of the change but is concerned about another postponement. He said he thinks they leave themselves vulnerable to an application that could come in and could not be stopped. He said one of the things they would like to do is to put in a moratorium while things are under consideration. He said they feel something should be done so they are not sand bagged by someone who comes in and says there is an application in and it is legal and the Planning Board has to approve it because it is legal and meets all the criteria. He said he does not think that the proposal as it goes forward as it has come to the Town Board is going to make a huge difference in terms of the long range planning as far as the uses of the land in the Town are concerned. He said you can look at the map and say there is a lot of land there that might have alternate uses and so forth but what is being said is that that is probably what we do not want to be put in the area. He said he would like to see this get on the front burner, get it tied, to go forward and take care of the difficulties and let the people of the area, all of whom, with the exception of a couple raise questions, want to get this done. He said he would like to see this go forward and get this done.

Councilman Marcelle asked Mr. Jennings, under consideration of a public law we called or termed it stop-gap that would do some zoning until there was a chance to hire a specialist and review everything – asked if the local law that is proposed alleviate the concerns about someone coming in with some use that is inappropriate for the 144 corridor. Mr. Jennings said he does not see that that does anything to alleviate their concerns.

Town Attorney Alessi said it sounds like the residents are concerned about the list of 32 and that there are some uses on the 32 that they are concerned with and asked if they wanted to eliminate any from the code. He asked if that was correct or are they okay with the 32 uses? Mr. Jennings replied, he could not go down the list right now. Town Attorney Alessi said the only things allowed are those listed subject to site plan approval. Nothing else right now is allowed and the only thing in addition to the 32 under the law that is up for public hearing, that would be allowed, is agriculture as of right, single family and some other barely benign uses. He said his question was -- are their uses on the list of 32 that they were opposed to in these areas? Mr. Jennings admitted he had not looked at the list recently. He said he is anxious to have something happen and bring up the red herring in all of this by using the word 'Waste Management'. He said they have 140 acres and are planning to use something like 25 of the acres and are in court over a

piece of that. He said no one has objected, to his knowledge, except for a little grumbling of the office building. He also said it is the dumpster storage and all of the other stuff.

Mr. Jennings said he is concerned about the remaining lands when they say they are here and want to do something else. He said they would say they do not have to tell anyone what they are planning to do. He said he may not speak for the entire task force but he is in this from the beginning, frankly, for the sake of the Town of Bethlehem. He said he is reasonably insulated personally. He said he believes the zoning they are proposing would cut off anyone coming in and finding a way to do something they do not want.

Mr. Jennings continued, he would like to see action and if there is a long range-planning situation that is going to propose any of the code, he thinks it is going to be a very difficult proposition. He said he does not think it will be any more difficult to change it in a AAA, CCC situation down in that part of Town than it would be anywhere else when the time comes.

Town Attorney Alessi said what he was trying to do was to test in a genuine way, what are the ones that the group is in opposition to. He said he knows pretty much the list of 32 and they are the only things that are permitted. He said he feels it would be helpful to the Town Board both from going forward on a long term but to try to assess, is there really an exposure and what would be helpful if they could get back and say, you know on the list of 32 these cause concern or maybe look at the list of 32 and say those things do not concern them. He said he is trying to get at the exposure that they are seeing during this period of time. Mr. Jennings said a truck maintenance facility is not on the list which is why they are concerned. Mr. Alessi said it is not allowed. Mr. Jennings said it is being allowed. Judge Benza's decision makes it not allowed.

Town Councilman Marcelle said as he understands it, it was the position of the Building Inspector and the Zoning Board of Appeals that said if it was not excluded you could put it in. He said Judge Benza rejected that position. He said as he understands it, the Town is limited to the 32 uses enumerated in the Code which seem on the face, seems relatively benign and consistent with that section of Town. He said all they are trying to do is say what is not listed are residential uses and agricultural uses and that is the stop gap measure to make sure people can sell their houses, put additions on, and put decks on. He said the concern that Counsel raised, that he was trying to get at is, if there is no really catastrophic event that can happen with these 32 uses... there is a whole big area to look at and they are going to have a specialist come in but in the interim they want to ensure that nothing bad happens in the area. He said they want to make sure that after looking at the list of 32 they are satisfied that nothing catastrophic or inconsistent with the character of the community happens under these 32. He said if there is a particular concern he requested that they identify that for the Board because that would be helpful.

Councilman Lenhardt said he believes that the majority of the residents in the area have the biggest concern that -- suppose a higher court overturns Judge Benza's decision, now they are just as exposed as they were from day one. He said they are trying to do something about it.

Town Attorney Alessi said in regard to the threat of a court case... and he stated he has not looked at this in detail... but his judgment was, if this Town passes the law that is proposed that lawsuit would be mute because the law will have changed. He said that appeal could be subject to dismissal the moment this law is passed. He does not see the Appellate Court even addressing the issue because if someone were opposing this, they would move to dismiss the appeal because it is mute because the Town has changed the law.

Mr. Jennings asked if the Waste Management proposal was grand fathered? Town Attorney Alessi said it was not. Mr. Jennings asked if that was a retroactive law. Town Attorney Alessi said it is not a law; it is a judge's decision. Mr. Alessi said the judge said it was never an allowed use under the Code. He said it is not what the Town is doing that is causing that result, and it is not a grandfathering. He said grandfathering means that at one time it was legal and something changed. Judge Benza says it was never – the garage part, the non-administrative part – was never permitted so there is nothing to grandfather, Mr. Alessi stated. He said that is the affects of his decision.

Mr. Carota said someone could pick through these uses and for the most part he felt they were benign. He said if you look at the 32 uses he does not think there is anything in there that point out to them or alert them to a light industrial or industrial threat. He thanked the Board.

Councilman Davis said she has listened to the Board and to the group and followed what has been said for months. She said the Town Board did approve a task force to study this issue. She said the task force members that were willing to meet have met and the other half was not willing to meet and she thinks the requests should be listened to. She said they have requested a public hearing and she thinks that when someone requests a public hearing, the Board has to give them the acknowledgement of that. She said she does not think that is an unfair request. She said she doesn't see anything wrong with going ahead and hiring a consultant and look at what the decision is. Mr. Carota said he thanked Mrs. Davis for that but he said their concern at this point, given what occurred a couple weeks ago was that to schedule yet another public hearing is a delay in time frame and that concerns them almost more than putting them specifically on the agenda.

Town Attorney Alessi noted on an unrelated topic -- in the event the Town Board is not aware of this -- on the water supply and the great efforts that have gone into that with the system, Mr. Jennings is a landowner down there and he has been absolutely terrific, patient, and understanding of the Town's need for the greater Town of Bethlehem on a very important issue. He wanted to let the Board know because many of these discussions he is dealing with in terms of the implementation of the Board's policy on this are difficult but this is an example of a landowner who is helping the Town and the greater amount of residents by being helpful and patient. He said he wanted to let the Board know that.

Councilman Davis acknowledged how much work the residents have put into this. She

said they have been working on a regular basis. She said they have been meeting on a regular basis, it has been a long time, done a lot of work, she knows it has been frustrating and she appreciates their not wanting to have a public hearing and to wait and see what happens with this. She said they have done a great job.

Supervisor Fuller noted the public hearing is August 13 at 7:30 p.m.

Councilman Lenhardt addressed the procedure when someone comes in to request a zone change of an area within the Town. He noted normally it would be referred to the Planning Board for a recommendation and asked if he was correct. Supervisor Fuller said he was correct and further stated usually it is a developer with a project. She said she did not think it was individuals. Councilman Lenhardt said there has been a couple requests in Slingerlands but the majority of the Board did not refer it to the Planning Board. He said the area was along New Scotland Road and residents wanted their properties rezoned commercial. He noted he and Mr. Plummer were the only Board Members who voted to refer it to the Planning Board. Supervisor Fuller said she did not recall that. She said there were some residents who lived across the street from Price Chopper who came to the Town Board. Mr. Lenhardt said that was correct. Mrs. Fuller said she believed it was an undertaker and an attorney who each were asking about rezoning possibility and the undertaker was referred to the Planning Board. She said the 3 property owners were residents who came along because Mr. Breeze was interested in the rezoning. Mr. Lenhardt said they were all in A Residential zones. He said he was not concerned about who did what, he was just concerned about the procedure that is supposed to be followed when this kind of thing occurs. Town Attorney Alessi asked if Mr. Lenhardt knew if those people were looking to rezone to a PRD. He said as is known from the zoning code, if it is a PRD – whether it starts with or wants to be one, under the Code, it has to go to the Planning Board. Councilman Lenhardt said it depends upon what the request is. Town Attorney Alessi said that was correct.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to go forward in the Town to request qualifications from land use consultants and ask that they respond to the Town within 45 days. The motion was passed by the following vote:

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

Noes: None.

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Supervisor Fuller noted that in the mean time, the public hearing August 13, 2003, may add additional information and before this is adjourned on August 13, depending on the outcome, the Board may have to take a look at putting together the local law to set a public hearing. She noted it is a lot of ifs because the Board has no idea what will happen the night of the public hearing or what the vote may be from the Board Members, and what the decision of Judge Benza may have done. She said there are a lot of unknowns but they all know what has been done and it will not be lost. She said the consultant would be for the future. She said it might not have to hold up what the residents or the landowners are wishing to have done.

The next item was a request from County Executive, Michael Breslin, for adoption of resolution pertaining to amending County's Empire Zone Boundary.

The following resolution was presented for adoption:

THE TOWN OF BETHLEHEM
RESOLUTION OF SUPPORT AND CONCURRENCE
WITH THE ALBANY COUNTY EMPIRE ZONE
(FORMERLY ECONOMIC DEVELOPMENT ZONE)
REVISION APPLICATION

Introduced by Supervisor Fuller

WHEREAS, New York State has created the Economic Development Zone program to encourage industrial and commercial development in selected municipalities across the State, and

WHEREAS, Albany County, as an eligible municipality, received original designation of an Economic Development Zone made up of sub-zones including portions of the Town of Guilderland and City of Watervliet, and

WHEREAS, New York State has amended the Zones program to increase benefits and allow additional sub-zones, and

WHEREAS, Albany County intends to revise the County Economic Development Zone boundaries (now referred to as Empire Zones) to encourage industrial and commercial development and to allow for the creation of an additional sub-zone in the Town of Bethlehem, and

WHEREAS, the Town of Bethlehem is committed to the development of new business within the proposed sub-zone, and

WHEREAS, the Town of Bethlehem wishes to support and concur with the Empire Zone revision application,

NOW, THEREFORE, be it resolved that the Town of Bethlehem Board, in its capacity as governing body of the Town, does hereby support and concur with the Albany County Empire Zone revision application.

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

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

Noes: None.

Absent: None.

Hon. Sheila Fuller
Supervisor, Town of Bethlehem

Kathleen A. Newkirk
Town Clerk

The next item was a request from Highway Superintendent to dispose of vehicle at auction.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve of disposal of the following vehicle at auction at Northway Auto Exchange, Inc., Clifton Park, NY:

Vehicle 432, 1994, International Cab and Chassis, Sewer Treatment Department.

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 Chief of Police, Louis Corsi to accept resignation of Roger Contento, Telecommunicator.

The motion was made by Mrs. Davis and seconded by Mr. Marcelle to accept the resignation of Roger Contento, Telecommunicator, effective June 17, 2003, as requested by Chief of Police, Louis Corsi. The motion was passed by the following vote:

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

Noes: None.

Supervisor Fuller noted Mr. Contento would be missed. She said he started many years ago as a Police Officer and then left and came back and served as a Telecommunicator. She said he has done a great job for the Town of Bethlehem.

The following item was a request from Louis Corsi, Chief of Police, for approval of appointment of Police Officer, effective June 29, 2003 at \$37,077. Supervisor Fuller said Mr. Fiore is presently a police officer in the Village of Coxsackie Police Department and this will be a lateral transfer with the approval of the Albany County Civil Service Department. He will be assigned to the patrol division, Supervisor Fuller noted.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the appointment of Rico Fiore, Schenectady, New York to the position of Police Officer, effective June 29, 2003 at an annual salary of \$37,077. 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 Engineering Services Administrator, Michael Cirillo, for approval of award of bid for Geodetic Reflectorless Total Work Station.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to approve the award of bid of one (1) Geodetic Reflectorless Total Work Station to J. C. Smith, Syracuse, New York at a bid price of \$6,341.95 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 Nan Lanahan, Administrator, Parks and Recreation Department, for approval of seasonal personnel.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the appointment of Seasonal Personnel as requested by Nan Lanahan, Administrator, Parks and Recreation Department as listed in the Memorandum dated June 25, 2003 at the titles and salaries indicated. 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 to go to bid for Pool Deck Repair. Could advertise July 2, 2003 and open bids on July 25, 2003.

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

WHEREAS, the Town desires to advertise for bids for pool deck repair work at the Elm Avenue Park, 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, 2003 and that bids be received up to 3:00 p.m. on the 25th 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 item was a request from Administrator, Nan Lanahan, Parks and Recreation Department, for approval of award of bid for Lifeguard Chairs, Diving Towers and Diving Boards.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the award of bid for diving stands, diving boards and lifeguard chairs to the low bidder, Recreonics, Inc., Louisville, Kentucky at the bid price of \$34,560.34 as requested by Parks and Recreation Department Administrator, Nan Lanahan. The motion was approved 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 May 28, 2003 and June 11, 2003.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve the Town Board minutes of May 28, 2003 and June 11, 2003 with correction. 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 cancel the meeting of July 23, 2003.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the cancellation of the Town Board meeting scheduled for July 23, 2003. The motion was passed by the following vote:

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

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The Supervisor noted the next Town Board meeting will be held July 9, 2003 at 7:30 p.m.

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

Councilman Marcelle shared the fact that his son, Daniel Marcelle, attended the meeting with him.

The motion was made by Mr. Marcelle and seconded by Mr. Lenhardt to adjourn the regular Town Board meeting at 8:50 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