

TOWN BOARD
MARCH 9, 2005

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 5:30 p.m.

PRESENT: Theresa Egan, Supervisor
Daniel Plummer, Councilman
George Lenhardt, Councilman
Thomas Marcelle, Councilman
Tim Gordon, Councilman
Kathleen A. Newkirk, Town Clerk
James T. Potter, Esq., Town Attorney

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Supervisor Egan welcomed everyone to a regular meeting of the Town Board of the Town of Bethlehem and invited them to join in the pledge of allegiance. She asked if there was any public comment regarding items on the agenda. There were no comments.

The first item on the agenda was to approve the Town Board minutes of February 23, 2005. The motion was made by Mr. Marcelle and seconded by Mr. Plummer to approve the Town Board minutes of February 23, 2005 as submitted. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Marcelle.
Noes: None.
Absent: None.
Abstain: Mr. Lenhardt, Mr. Gordon.

The next item was a request from Commissioner of Public Works to approve the award of bid for Chemicals. Supervisor Egan said the recommendation was to award the liquid chlorine and activated carbon to Slack Chemical and the sulfate of alumina to Holland Company.

The motion was made by Mr. Lenhardt and seconded by Mr. Gordon to approve the award of bid for Chemicals as outlined in the Memorandum from the Commissioner of Public Works at the bid prices submitted. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Marcelle, Mr. Lenhardt, Mr. Gordon.
Noes: None.
Absent: None.

The following item was a request from Commissioner of Public Works, Oliver Holmes, for approval of award of bid for Materials. Supervisor Egan noted the award was listed in the Memorandum to the companies at their bid prices.

The motion was made by Mr. Marcelle and seconded by Mr. Plummer to approve the award of bid for Materials as requested by Oliver Holmes, Commissioner of Public Works, as listed in his Memorandum dated March 3, 2005 at the bid prices submitted. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

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Councilman Gordon noted even though some items are open to competitive bids, pleasing, that quite often the successful bidders are in New York State and in this award several were from Albany County itself. He said this is a positive thing.

The next item was a request from Commissioner of Public Works, Oliver Homes, for approval of award of Directional Drilling. Supervisor Egan said the recommendation is for 2 bidders.

The motion was made by Mr. Lenhardt and seconded by Mr. Gordon to approve the award of bid for Directional Drilling to Cutting Edge and LaCorte Company as requested by Oliver Holmes, Commissioner of Public Works. The motion as passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The next item was a request from Administrator, Nan Lanahan, Parks and Recreation Department, for approval of seasonal personnel.

The motion was made by Mr. Lenhardt and seconded by Mr. Marcelle to approve the appointment of seasonal personnel as requested by Administrator, Nan Lanahan as follows:

Recreation Instructor I – rate of \$6.20 per hour

Emily C. Drazan
Delmar, New York

Rachel M. Garbo
Delmar, New York.

The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The following item was a request from Nan Lanahan, Administrator, Parks and Recreation Department, for approval of Supervisor to sign Clarksville Playground Agreement.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the Supervisor signing the agreement for the Clarksville Playground as requested by Nan Lanahan, Administrator, Parks and Recreation Department. Supervisor Egan said this is for the operation of the playground program and serves children in the Bethlehem Central School District. She said the program has been in operation for over 20 years and the expenses are reimbursed by the Town of New Scotland.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to approve the Supervisor signing the Agreement for the Clarksville Playground as requested by Administrator, Nan Lanahan. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The next item was a request from Administrator, Nan Lanahan, Parks and Recreation Department, for approval of award of bid for Sodium Hypochlorite solution.

The motion was made by Mr. Gordon and seconded by Mr. Lenhardt to approve the award of bid for Sodium Hypochlorite solution to the low bidder, Slack Chemical Company, Carthage, NY at the bid price submitted. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The next item was a request from Acting Building Inspector, Mark Platel, for approval for Supervisor to execute Storm Water Management Pond Maintenance Agreement for Bentley Self-Storage LLC. Supervisor Egan said this will operate at 721 River Road, Route 144, Glenmont.

The motion was made by Mr. Marcelle and seconded by Plummer to authorize the Supervisor to sign the Storm Water Management Pond Maintenance Agreement for Bentley Self-Storage LLC, 721 River Road, Glenmont as requested by Acting Building Inspector, Mark Platel. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The following item was a request from Comptroller, Judith Kehoe, to adopt Supplement to Purchasing Policy Guidelines for Procurement of Professional Services. Supervisor Egan said this has been discussed and appeared that each department secured their professional services in a different manner and this was to provide a standard process.

The motion was made by Mr. Lenhardt to adopt the Supplement to the Purchasing Policy Guidelines for Procurement of Professional Services as requested by Comptroller, Judith Kehoe.

Councilman Marcelle commented the Comptroller worked long and hard on this and was subject to a lot of discussion with various members and he thanked Mrs. Kehoe for the hard work on this project. He said this was relatively time consuming and noted he thought this was a very good job. Supervisor Egan agreed and noted there were several drafts.

The motion was seconded by Mr. Marcelle and passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The next item was a request from Chief of Police, Louis Corsi, to accept donation from Nancy Farr.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to accept the donation of \$10 from Nancy Farr for the DARE Program as requested by Louis Corsi, Chief of Police. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.
Noes: None.
Absent: None.

The following item was a request from Town Attorney, James Potter, to set a public hearing date to consider formation of Storm Management Water District. Supervisor Egan asked for a motion to table this item and said this is a fairly comprehensive item. She noted Attorney Potter has received voluminous paperwork on how to get this done and wished to table this until the item is prepared.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to table consideration of the formation of Storm Management Water District. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

Supervisor Egan asked if anyone wished to address the Board. Mrs. Cathy Barber, Steve Barber and Mrs. Estes addressed the Board regarding the EPA dewatering site proposed in Glenmont. They expressed concern regarding the proposal and the Town taking some positive action in regard to this item. Mention was made of the Community Health and Safety Plan, noting there has not been a meeting regarding this yet.

Supervisor Egan noted the Town Board has not been in denial about the proposal and have been very active to pursue any and all avenues. She said there is a record of decision requiring the clean up and this is a situation where the property is not under Town control but between GE and the OG Real Estate. The Supervisor noted that this is a Federal issue and she has made numerous requests for technical assistance including funding.

Councilman Marcelle noted some of the points are very valid but there has been a lack of passion in regard to this issue. He said reality has set in and now there may be some passion for this item. He said he supports all of the ideas expressed and hoped that the Town can revisit this situation.

Supervisor Egan reiterated that they will continue to do everything they can and the committee has to do with getting people involved, getting technical expertise, and getting volunteers who want to get involved and help. She said the appointments will be made soon. She thanked Mrs. Estes.

Mr. Chris Marsh of the Bethlehem Central High School expressed his concern regarding the bike trail that will run through Albany County. He said most of the trail runs through Bethlehem and noted it would be patrolled by the Bethlehem Police. He said he has walked the line from Albany to Delanson and it has been his understanding that there is no way to get back there by car or in a timely manner. His concern includes people coming from downtown Albany crossing the Normanskill and proceeding further. He has concern for stealing and other crime that might ensue. He asked what the Board's opinion is on the trail. Supervisor Egan said she would be happy to sit and discuss this at length in her office. She noted it is still privately owned and should not be used. She said there is a strong voice of people who want the line to be available for biking, hiking and walking recreational use. She said at this time, all the issues have not been settled. She said Albany County has not purchased the line as of this date. She said the County has been granted the monies to purchase it but it has not been done.

Supervisor Egan said she disagreed about presuming that there would be a huge crime rate because of the bike trail. She does think once the trail is there and people are using it, it self-polices for the most part and is safer than just the abandoned railroad path that has been there in the past. She noted they will be looking at these things as they move forward.

Mr. Marsh said in regard to the Supervisor's reference to a bike path in Cape Code, noting it is a vacation spot versus Bethlehem with homes and businesses. Supervisor Egan said Cape Cod has many homes and businesses also. Mr. Marsh said they are

vacation homes and businesses and people go on that who are more well to do people who go on vacation to Cape Cod versus Albany. He asked if the County is aware that there are people who were willing to buy the track and rights to the property as is. Supervisor Egan said it was her understanding that the County was aware of that. Mr. Marsh asked if that was taken into consideration at all and if the Town of Bethlehem had any say in this matter. Supervisor Egan said we did not.

Councilman Marcelle noted Albany County is the lead agency in this and they will be purchasing the track. He said they will have the responsibility as owners of maintaining it. He said he was sure at some point they will come to the Town of Bethlehem asking for revenue or services to do that but that is one step away from where this is today. Mr. Marsh asked who owns the property now. Supervisor Egan noted it is CP Rail who currently owns it.

Mr. Marsh thanked the Board. Supervisor Egan thanked Mr. Marsh.

Councilman Gordon noted there will be a law enforcement presence when the path is open. Mr. Marsh asked if that would be something the Town of Bethlehem would have to pay for. Mr. Gordon said the police force is paid. Supervisor Egan said we do not know that yet and it will be negotiated out once the County purchases the path.

Mr. David Carpenter, Esq., representative of Gladstone Development, said they are developing the Meadowbrook 3 subdivision in the northwest corner of the Town. He noted they have had several conversations with Supervisor Egan and said she has been very helpful, as they have been trying to figure out the comprehensive plan process. He said he presented a letter to the Supervisor, noting he did not know if the Board Members have had a chance to review the letter.

Mr. Carpenter said the subdivision is a 48 unit planned residence development in the northwest corner of the Town. He said it is one of the projects that had its review interrupted by the enactment of the moratorium in March of 2004. Final plans had been submitted and it was one of the projects in limbo at this time according to Mr. Carpenter.

Mr. Carpenter said the most recent proposal is to extend the moratorium for another 6 months. He said the present comprehensive plan work is not easy and the Board is doing a fantastic job. He said he could understand the need to extend for the public comment period to continue. He said it is recognized that a 6 month moratorium is going to extend the period to a point where basically the construction season will be gone.

Mr. Carpenter said there are two ways to go about addressing this that is equitable to the developers and is also beneficial to the Town. He said there are a couple options they would like the Town to consider. One, according to Mr. Carpenter, is to allow review of these projects to have what the Supervisor has called a soft landing. He said this would permit the review of these projects immediately. He said this would allow for the projects to get lined up. The second thing is the idea of recommencing administrative review that does not have to do with the zoning of the project, Mr. Carpenter said. He said there are a number of regulatory approvals that must be obtained when developing a project that is not from the Town. He gave an example of the Army Corps of Engineers for storm water. He said what they are asking or that the Town could consider in advance of the public hearing is to get the Board thinking about ways to restart the administrative ministerial reviews of the projects that are already in the pipeline. He said they are trying to suggest a way that these projects can get back up to speed even during the additional moratorium time.

Councilman Marcelle asked for a copy of the letter. Mr. Carpenter distributed copies and Supervisor Egan thanked him. Councilman Plummer said there is a schedule that is a work in project and looks to be late June/July to vote on the comp plan and the zoning regulations. Mr. Plummer said assuming the moratorium is voted in the affirmative on the 23rd of March, right after that is when the administrative recommendations would be effective. Mr. Carpenter said in all honesty, they would like

the Board to say on this date that the administrative, non-zoning related, matters could begin. He noted they did not expect any regulatory approvals to be handed down before the comp plan is done.

Councilman Plummer asked Town Attorney Potter, noting the public hearing is scheduled for March 23, 2005, if these are the kinds of things after review that this will give an opportunity to include in the moratorium. Town Attorney Potter said he did not know that you would have to include them in the moratorium language that provided that the Town planning staff is at liberty to discuss with developers teeing up their project once the zoning is approved. He further said if the Town planning staff were to engage in that process, developers would be at risk that the zoning could change. He said if a developer goes for approvals to other agencies, the Army Corps, predicated on the assumption of zoning, if the zoning changed... the density changed... which you may not anticipate at this time, the developer would certainly be at risk. Mr. Carpenter said his client would have to be aware and comfortable with that to go forward and take some of the risks and if you could be taking 2 steps forward and 1 step back

Councilman Marcelle asked Town Attorney Potter if the Board would have jurisdiction over this kind of triage. Mr. Potter said he believed it would be the planning staff and he would be concerned about possible due process implications if the Town Board were to set forth the order in which developers were to be considered. Mr. Carpenter said this is why they wanted to get this to the Board before the public hearing.

Councilman Plummer asked if the proposed local law specifies an extension for 6 months. Supervisor Egan said it did. Mr. Plummer asked when the Board voted on that. Supervisor Egan said the notice was to go out no more than 6 months or less than 3 months based on Council's advice after talking to the Secretary of State. She said you have to put a definite term in the local law and after hearing testimony; certainly the Board has within its discretion to make any changes it needs to the language as proposed. She said copies of the proposal have been distributed. She said those changes can be made the night of the hearing, after the hearing or at a special meeting and her understanding is that another hearing would not be necessary as long as the change made was not deemed a substantial change to the language as proposed. She said whether it goes from 6 to 4 or whatever, she believes it is something that can be done after hearing testimony and done at that level. Councilman Plummer said that is not considered to be substantial. Town Attorney Potter said it is a function of degree and it is an issue of how the courts would view it if you went from 6 to 18 months then there is a degree issue.

Councilman Marcelle said he thought if the Board said 6 months and then retract it to make less time, the pool of litigants goes down to about zero because no one is complaining that the moratorium is in place. He said if it was set at 90 days and jumped 6 months, there is a potential for litigation. Town Attorney Potter agreed. Supervisor Egan noted in principal she agrees but she said she gets handfuls once or twice a week of sentiments that 6 months is not long enough. She said there is a voice in the community that they hear from that says 6 months is not long enough. Councilman Marcelle noted they want it for 60 years but that is not possible.

Councilman Plummer asked with the kinds of things being presented here, could something like this be included or does that cross the line when you talk about using the word substantial. Town Attorney Potter said not having seen the letter, the planning staff ramp up and addressing issues he would not, personally, see as a substantial change. He said he does not know if that would be necessary to include within the moratorium law. He said he thought that was a function of policy that the departments could implement. Councilman Plummer said theoretically it could be done outside of the moratorium. He said that may be a way to do this because someone might feel as though the Board made a commitment and the Board will try and do their best in a year, noting he thinks they are close to it. He said if it turns out that 6 months is needed, there may be some things that can be done administratively to help developers that are in this situation to get back in the door and get things moving. He said he thinks that would make it a lot easier to go the 6 months if it is decided at the hearing that is something they have to do. Mr. Carpenter said they would appreciate any lenience that the Board would be willing to consider. He said he came up with these as administrative guidelines. He said he is not certain it

would be legal to put them in the moratorium or to enact them by resolution. He said they are looking for a way to ease the pressure a little bit and it benefits both the development community and the planning staff.

Councilman Marcelle asked if there was a possibility of putting a little more meat in the outline that has been presented. Mr. Carpenter asked in what sense. Mr. Marcelle said whether or not it is something legal or not for the Board to take. He said this could be done by a separate local law or resolution later on, noting Town Attorney Potter raised some legitimate concerns. He said if they were to consider it, it would be in Mr. Carpenter's client's best interest to come forward at the hearing with a little more legal details of this.

Town Attorney Potter asked if the Planning Department were to begin undertaking a review and do their best to get to those people who are at the door started, if that would be a substantial assist to the development community and Mr. Carpenter's client. Mr. Carpenter said he thought it would be absolutely helpful. Supervisor Egan said she has had many conversations with Mr. Carpenter and she thinks there is a recognition, at least from this developer, that they understand they cannot get back to the Planning Board with any definitive decision and actually Mr. Carpenter quickly acknowledged in the conversations before the Board meeting that this is all at the risk of the developers themselves. She said wearing her conservative legal hat, the one thing they were very conscientious about when the moratorium language was drafted -- and she knows it was good because other communities are echoing it now -- that the Secretary of State's office who approves these has said, the one thing we were very good at was being very consistent and fair and equal across the board. She said that is her one concern that this continues to be handled this way.

Supervisor Egan said there will continue to be dialogue on this between now and the public hearing on the moratorium. The notice is out for March 23, 2005 for 6:30 p.m., the Supervisor noted. She said it will be at the conclusion of the regular board meeting. She said again, for heads up of the Board Members, the current moratorium expires on April 8, 2005 so action needs to be taken at the next meeting.

Mr. Carpenter said to follow-up, he developed the criteria in regard to it being arbitrary and capricious. He said this was to help the Board, the Planning Board, the Planning Department -- whoever it is that winds up taking a look at this to develop a way to have a rational sort of set of factors that they can apply to any project in the pipeline, not just theirs. He said he hopes that the Board will consider this.

Supervisor Egan thanked Mr. Carpenter and he thanked the Board.

Supervisor Egan said for the Board Member's information, about a week and a half ago or so, the rfq's went out. She said Mr. Carpenter raised a very good point in regard to the potential deluge of projects/submittals that are going to happen at the conclusion of the moratorium. She said one of the things the Town is doing in preparation for that is to engage and get proposals for Town designated engineers that would come on board and represent the Board in the review of these projects. They are done at the cost of the developer, Supervisor Egan said.

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Supervisor Egan mentioned on the meeting on March 23, 2005 the Department of Transportation has requested about 30 minutes to make a presentation to the Town Board in regard to an update on the Route 85, Cherry Avenue Extension, and bypass. She said the record of decision has been issued on this and they are ready to move into design phase. She said they want to make a presentation to the Board in regard to the use of roundabouts on that particular stretch of roads.

Councilman Plummer asked if that was consistent with the schedule that they had proposed. Mr. Leveille said that it was, indicating it is right on schedule.

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Supervisor Egan asked if there was anyone else wishing to address the Board. Three were none.

The Supervisor asked for a motion to adjourn to Executive Session to discuss personnel issues.

The motion was made by Mr. Plummer and seconded by Mr. Marcelle to approve adjourning to Executive Session to discuss personnel issues. The motion was passed by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

The motion was made by Mr. Plummer and seconded by Mr. Gordon to adjourn the regular Town Board meeting at 6:58 p.m. The motion was carried by the following vote:

Ayes: Ms. Egan, Mr. Plummer, Mr. Lenhardt, Mr. Marcelle, Mr. Gordon.

Noes: None.

Absent: None.

Town Clerk

EXECUTIVE SESSION

There was no formal action taken at the Executive Session.