

TOWN BOARD  
MARCH 11, 1998

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

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

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SUPERVISOR FULLER: Good evening and welcome to a meeting of the Bethlehem Town Board. We will begin our meeting this evening with the pledge of allegiance.

The first item on tonight's agenda is a public hearing with an amendment to a local law. I will ask the Clerk to read the call of the hearing.

TOWN CLERK NEWKIRK:

NOTICE OF PUBLIC HEARING  
TOWN OF BETHLEHEM

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem, Albany County, New York will hold a public hearing March 11, 1998 at 7:30 p.m. to consider proposed Local Law No. 4 of 1998, amending the Code of the Town of Bethlehem, Chapter 128, Zoning, Article XI, Height Regulations, Section 128-44.

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

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

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

Public Hearing  
to amend Local  
Law No. 4, 1998  
Height Regula-  
tions for  
Industrial are  
only

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State of New York)  
County of Albany )

MARY AHLSTROM of the Town of Bethlehem, being duly sworn, says that she is the Assistant Publisher of THE SPOTLIGHT, a weekly newspaper published in the Town of Bethlehem, County of Albany, and that the notice of which the annexed is a true copy, has been regularly published in said THE SPOTLIGHT ONCE A WEEK FOR 1 WEEK consecutively, commencing on the 25 day of February 1998.

/s/ Mary A. Ahlstrom

Sworn to before me this 27th day of Feb. 1998.

/s/ Kathryn Olsen  
Notary Public, Albany County

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

KATHLEEN A. NEWKIRK, being duly sworn, deposes and says that she is the Town Clerk of the Town of Bethlehem, Albany County, New York and that I posted on Feb. 25, 1998, a Notice of Public Hearing, a copy of which is hereto attached, on the sign board of the Town maintained pursuant to subdivision six of Section thirty of the Town Law.

/s/ Kathleen A. Newkirk  
Town Clerk

Sworn to before me this  
5th day of March 1998.  
/s/ Catherine T. Picarazzi  
Notary Public

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

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

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SUPERVISOR FULLER: This basically is a law, we are deleting Article XI. What it is is changing the height restrictions in each of our districts. We presently have 60 feet in an industrial district. This law is amending it to make the height 80 feet. John Flanigan is the expert on this and he had to be out-of-town, so I have become John Flanigan tonight. But, to give you an idea of what the Town Board is actually proposing here, the height of the Town Hall building is 39 feet. Selkirk Cogen smoke stack is 200 feet. When you are looking at cooling towers at Cogen, if anybody is familiar with that area, is 59 feet. Lights at the Bethlehem Central football field, maybe that will get your attention, they are 75 feet high. So, what we are looking for is only in the industrial area of the Town, no where else is this height restriction changing. It is going from 60 feet to 80 feet. Are there any questions from the Board? Any questions from the audience? Those wishing to vote in favor... speak in favor. Those wishing to speak in opposition.

May I have a motion to close the public hearing?

The motion was made by Mr. Lenhardt and seconded by Mrs. Burns to close the public hearing at 7:35 p.m. The motion was passed by the following vote:

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

*Kathleen A. Newkirk*  
Town Clerk

The Supervisor convened the regular meeting following the close of the public hearing.

Supervisor Fuller asked for a motion to adopt Local Law No. 4 of 1998 amending the Code of the Town of Bethlehem, Chapter 128, Article XI, Height Regulations, Section 128-44.

The motion was made by Mr. Johnson and seconded by Mr. Lenhardt to adopt Local Law No. 4 of 1998 amending the Code of the Town of Bethlehem, Chapter 128, Article XI, Height Regulations, Section 128-44. The motion was passed by the following vote:

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

Noes: None.

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SUPERVISOR FULLER: The next item on tonight's agenda is a presentation pertaining to the water infiltration project. The purpose of tonight's meeting, Mr. Alessi, who is our counsel, is here to advise the community which is what we assured everyone we would keep you informed as best we could at each step of the way. All of the information we have right now is on file in the Town Clerk's office and will be on file in the library tomorrow. Mr. Alessi.

Presentation  
pertaining to  
water infiltra-  
tion project  
Mr. Alessi to  
advise the  
community

MR. ALESSI: Would you like me to come up to the microphone?

SUPERVISOR FULLER: Sure, it might be easier and then everybody can hear.

MR. ALESSI: Good evening Members of the Town Board. Two points I want to highlight. 1. We have filed the litigation as when I was last here I said we would do at the end of February. That has been done. The law suit was filed against J.K. Fraser and Associates and for technical legal reasons, a couple doing business as, also known as, entities which are essentially all Fraser entities. So, that is under way. In terms of process on that point, they will have 30 days from when they receive the law suit and acknowledge receipt of it to answer. At that particular time, they have following options: they can answer the law suit which is a pretty pro forma response. They will deny, they will deny information and belief or they will admit some allegations, they will search some affirmative defenses. If they choose not to answer, which I have said I would anticipate they would answer, but if they don't they can make a motion to dismiss and claim they don't have to answer that they have a legal basis to have the law suit dismissed. The third option, which is a version of the first option, is for them to answer and then to implead a party that they think is either responsible in whole or in part for the allegations we have claimed. And, my prediction is that that third option is the more likely to occur. So, that is the law suit.

The second item that is closely related to the law suit is we have... well, I will put it this way, the defendants will argue that we have a duty to mitigate our damages. And, to cut through the legal parlance of what that means is, if you claim you have an injury, you cannot sit back and allow that injury to get worse without doing something to diminish your injury. And, translated here, the defendants would argue that if you claim you didn't get as much water as you were supposed to, then you should do something as soon as possible and as much as prudent to improve that situation even in the absence of conduct by the defendants. And, in that regard, as I have counseled this Town Board months ago, that we should do that and that in that regard as I have indicated at last... at the last Board meeting, O'Brien and Gere has been retained -- it is nothing new, they have been on board since last year -- and last year they set forth a plan as to how they were going to attack what we have called the solution, as opposed to why was this problem caused and in there they set forth options. And, one of the options in improving the water yield is to go into the river with the approval of the relevant governmental agencies and to see if that well yield can be improved. What O'Brien and Gere is actively working on now is to determine 1. whether removal of siltation will improve the well yield and also to determine as a study, whether if that is effective... efficacious, at

what frequency would that have to occur. And, that takes a deal of scientific investigation, it is not an answer that comes quickly. But, my recommendation to the Town continues to be that we need to do that to protect our litigation position and also as a practical matter, to make sure that we maximize the amount of water yield that we have. And, so that is part 2 of the update is my recommendation to the Town that they continue those efforts and that they continue them at a pace that is quickened but yet is prudent. And, what I mean by that is, we need to move along quickly but we have to make sure we account for governmental approvals and those governmental approvals have built in protections for the environmental and all other considerations that we would have to address.

So, that is my update on the water matter and I would be happy to respond to any questions the Board may have.

SUPERVISOR FULLER: Thank you, Bob. Any questions from the Board?

COUNCILMAN LENHARDT: I have 2, Bob. What do you anticipate and maybe you are not the one to answer this, the cost of this testing to be?

MR. ALESSI: You are correct, I am not the person to give the most precise answer on that and I defer to those who can give one. I have a very good idea but there are other people who can be more precise and I would prefer that they do that.

COUNCILMAN LENHARDT: Well, whatever... okay. This one you can answer though, I believe. Whatever the costs are, could they be recoverable from the defendant in the law suit?

MR. ALESSI: Absolutely. Absolutely, among other costs.

SUPERVISOR FULLER: Would the cost of the dredging be part of this cost that we could put in the law suit?

MR. ALESSI: We already...

SUPERVISOR FULLER: It becomes an expense for the Town.

MR. ALESSI: The answer is yes, it is already in there, there is some broad language that sweeps in this and more. And, it will come down in the law suit to certain issues as to whether we actually recover but this is certainly something that we're... we put in controversy, will remain in the law suit and we expect to doggedly and relentlessly pursue that cost and every other cost that we incur.

COUNCILMAN DAVIS: Bob, I assume that the government approvals that you are referring to would be to DEC and the Federal government. And, they would be under SEQR.

MR. ALESSI: Well, it depends. The Federal governmental approval you are referring to most prominently is going to be the United States Army Corps of Engineers.

COUNCILMAN DAVIS: Right.

MR. ALESSI: It depends upon a couple of things and that is the government has to make a determination as to whether this is an "emergency" and that term has different meanings through different regulations. If they determine it is an emergency... for example but not limited to this that we have a significant issue that can't await the normal process. The SEQR regulations themselves have an exception but it is a temporal one and that means that you can go in do what you need to do, do as much environmental work as you can do up front. It may be that the SEQR process occurs concurrently but it could be a little bit after the fact. I have been involved in that in a number of instances where the emergency provisions in the SEQR regulations have been invoked and that is why they are there. That is why they are in the SEQR regulations but you have to meet the criteria for them. And, that is something that the government will be reviewing.

COUNCILMAN DAVIS: And, I assume that public hearing is part of that process.

MR. ALESSI: The answer is that it depends upon whether they invoke the emergency process. I can tell you that it has been a rare case that I have been involved with where there hasn't been a degree of public hearing involved in it.

COUNCILMAN DAVIS: And, would there be exceptions to the period during which dredging can begun... the spawning season is coming very quickly, April 1st. I assume that that would not be an exception then in any case.

MR. ALESSI: I don't want to rule that out but the spawning season is a very significant issue...

COUNCILMAN DAVIS: Yes.

MR. ALESSI: I don't, again, want to rule it out but it would have to be a very compelling showing to do something while that is going on.

COUNCILMAN DAVIS: So, we really don't have a great deal of time between now and April 1 and then I believe the next date is the end of August when again, dredging is allowed.

MR. ALESSI: It is either July or August.

COUNCILMAN DAVIS: It is either the end of July or the end of August, I don't remember. But, I know it is very late in the season. So...

MR. ALESSI: That is correct.

COUNCILMAN DAVIS: So, I mean there is not a big window here now and what does that... I guess what I am asking is what does that do to the whole process that you are referring to as far as litigation is concerned?

MR. ALESSI: Well, we got on... I believe it was February 17th, a document from O'Brien and Gere that said, we've looked at it and these are our recommendations. Shortly thereafter, the regulatory approval process was invoked to be able to put that in motion. So, we acted as quick as we could with the direction from the experts that we have hired.

What it means to answer your question directly is that 1. we have a legal obligation, the defendants would argue, and I don't want to be litigating that issue, I don't want to not do something and then have it come back that we should have. We will make our best efforts and if we do not get governmental approval to do what we did... or what we wanted to do, then it will be most difficult for the defendants to argue that something should have been done during that time period and it wasn't because we will have put forth our best efforts to do it and that again, harks back to the mitigation of damages concept. So, surely we would be disappointed if we don't get that approval but that is an approval process that is quite challenging and I am not going to make any predictions other than to say that if we don't make it we have protected our litigation position.

COUNCILMAN DAVIS: Thank you.

MR. ALESSI: You are welcome.

SUPERVISOR FULLER: Susan, had some questions.

COUNCILMAN BURNS: I have some questions. Thank you, Bob, for updating us on everything here tonight.

MR. ALESSI: You are welcome.

COUNCILMAN BURNS: And, I agree that monitoring and sustained and continued evaluation of the facility is the way to go and that is... I am assuming what we have been doing. Last year when we dredged... we are talking about dredging the Hudson again and last year when we

dredged, I am assuming those records were all kept... those test records and evaluated those.

MR. ALESSI: The records that were kept were... the consultant was... keep in mind... was Rust Environmental who did that and that is a party who is, I presume, right underneath the magnifying glass of Fraser right now. So, we had requested records from them and they have, to date, refused. I think Mr. Secor will be able to best know the extent of records that we have. But, we certainly have records. Do we have complete records? The answer is no because one of the parties that were quite potentially adverse to created them.

COUNCILMAN BURNS: Okay. I am asking that question because O'Brien and Gere puts this under test dredging and that is for evaluative purposes and monitoring purposes. And, if that information is there, why would we be doing this again?

MR. ALESSI: I understand your question. Your question is, have we done this once and if we have done it, have we learned from it or are we going to be doing anything differently which asks the question of why are we proposing to do it again. Am I understanding your question?

COUNCILMAN BURNS: Correct, yes.

MR. ALESSI: All right. The answer to the question is that what we are proposing to do is different from what was done last time. What was done last time was essentially a conclusion without study. It wasn't that something was imprudent, but in the nature of the emergency that was before us, there was a hypothesis generated about what to do which was to go in and to remove a certain amount of siltation from the river. And, that was done. What was not done and what couldn't be done because the time period didn't allow it, was the study -- design it in a way that you get 2 things out of it. Not only to remove silt but also to remove from different areas to give you an idea of what really is happening when you remove silt. And, that had to be designed and it takes time to do that and that's what O'Brien and Gere's been working on. So, O'Brien and Gere will access and learn from what was done before but the scope of what they are going to be doing is different. So, I break it down into... what O'Brien and Gere is doing is 2 things. 1. Is overseeing and directing the removal of siltation which is very similar to what was done before but part 2 which wasn't done before, is to do some test studies as to the effect of that. For example, to determine what's the rate of resiltation if anything and how frequent will that occur. That will inform how often we may have to do it and also if it's done and it just comes back in, that may answer a question as to whether that is an efficacious way to go at all. But, it is something that needs to be done. So, what is being proposed now has some similarity to what was done before but there are other very significant events that will occur that will not... were not done before. Whether or not they prove beneficial, remains to be determined.

COUNCILMAN BURNS: Okay from what you just said, how can that constitute an emergency?

MR. ALESSI: Well, the emergency is fairly straight forward from our perspective and that is you have a spawning season that is coming up, that is constraint number 1, so you have a window as Mrs. Davis identified. Number 2 if your well yield continues to go down, you have obligations to provide water in more than 1 place and I don't want to go into them because those are issues that I think go into the litigation category. But, in terms of the emergency, it is what you do to protect yourself in that particular instance. Water supplies, when you don't have them, are generally viewed across the State as on the radar screen for emergencies and then it is looked at behind the facts as to is it the type of emergency and there is some definitions, it is not just the lay person's understanding of it, that have to be looked at to see whether the criteria are met.

COUNCILMAN BURNS: Okay. I will continue.

MR. ALESSI: Did I answer your question?

COUNCILMAN BURNS: I think so. Siltation is a major component according to O'Brien and Gere that is contributing to the well yield but not the only component and he recommended in August that 4 other recommendations as far as the ground water were any of those... I wasn't here then and I don't remember seeing or hearing about that... were any of those recommendations followed?

MR. ALESSI: Let me go back to where you said O'Brien and Gere said it was a significant factor. O'Brien and Gere said it's a contributing factor in their report and that has some meaning with regard to certain matters. With regard to the other matters, those other matters are being followed up. It is a triage situation as to where do you think you can go first and be the most effective and so the focus right now is on the siltation and ways of being about to quickly but prudently improve well yield. So, certainly in terms of what is going to go on out there, there will be information gleaned that will be informative to the other recommendations. But, that... what they are doing out there. The primary purpose is for studying what's the effect of removing the silt and it's not to address ground water but as an incidental benefit we'll get some information on the others.

COUNCILMAN BURNS: Okay. I know we have to apply for permits, were they applied for?

MR. ALESSI: Yes.

COUNCILMAN BURNS: They were. And...

MR. ALESSI: Let me say authorizations were requested.

COUNCILMAN BURNS: Is that DEC and the Army Corps of Engineers?

MR. ALESSI: That is correct. That's correct.

COUNCILMAN BURNS: I guess worst case scenario, if it's not approved, we have a short term problem and a long term problem, excuse me, basically. If we don't dredge the well yield may continue to decrease over the summer months and there won't be enough water for industry from the Vly Creek so we are going to have to buy more water, I believe. This is what I have concluded, what I have seen in my papers. So, that is the short term problem this summer. And, a long term problem is, you know, what is the plan in the long term? And, I guess my question is, if it's not approved the dredging, will we have a problem with a water shortage for industry this summer?

MR. ALESSI: The answer to that question is that it's quite obvious that there are potential issues on the horizon. You have identified some of them. I don't want to speculate at this stage as to what they might be because there is implications to that speculation that are not... could not... could possibly not be beneficial to the Town. The answer is there is a plan in place to address these types of issues, to address the contingencies that you are speaking about. That has a legal component to it but it is also predominantly a policy component. So, in that regard, I don't want to get out... on... in front because I think it is as much a policy issue as it is a legal issue. But, in terms of the litigation, we've got a definite litigation plan to deal with that but that plan is not identical with the policy issues that are inherent with the contingencies that you speak about.

COUNCILMAN BURNS: I am talking on a practical level, though, not on a litigation level that we might have to buy some water for industry this summer or that might happen.

MR. ALESSI: That's a possibility, whether that's a probability, I don't know. But, it certainly is a possibility.

COUNCILMAN BURNS: Which leads to cost, last time it was \$78,000 for the dredging, if the well yield goes down, how much water-- you know, is this going to... what is this going to be costing us? That's a big question and...

MR. ALESSI: In reference to your \$78,000, that was paid for by FEMA.

COUNCILMAN BURNS: Correct.

MR. ALESSI: So, to be... not to put too fine a point on it but it's not an out-of... that was not an out-of-pocket cost for the Town and we, none the less, will be seeking recovery of that money in the lawsuit should there be a claim by other parties that they are entitled to that money back. You cannot solve a problem unless you understand it and have a plan for it so I think it has been discussed and it's certainly been clear to me that the Town is going to have to spend money to solve this problem. And, part of spending money is to go in there to see in the most cost effective way, what can be done to solve it short term and long term. And, it is going to cost money to do that. So, the answer, if your question are we going to be spending more money with O'Brien and Gere and others, the answer is yes.

COUNCILMAN BURNS: I'm... that was my question, it is going to cost if that happens.

MR. ALESSI: And, as Supervisor Fuller indicated, O'Brien and Gere communicates with us. Those documents, as I understand it, their proposals are going to be on file here at Town Hall and in the Library. And, people will be able to look at them and you know, make their own judgements with regard to what is happening. But, you know... so to speak, the map will be shown. When an engineer says we recommend that you do "a", it's going to cost "x", they are going to have a logic in those documents that people are going to be able to see and read.

COUNCILMAN BURNS: Have any... has any preliminary work in anticipation of, perhaps, dredging been done?

MR. ALESSI: Yes.

COUNCILMAN BURNS: What is that?

MR. ALESSI: It's mostly study. It's mostly study designed... there has been a lot of work done understanding the system that was allegedly designed by Fraser and others and as you can imagine, that's necessary to understand that system to be able to come up with ways to approach solving problems. We have to keep in mind, I believe, that that system took several years to design and study and to be able to troubleshoot a system that took a lot of time to design and study, takes an effort and that's step 1. And, our judgement is that our O'Brien and Gere has that well underway, however, because the system is not performing as represented, you can study a system that only gets you a certain amount of information, then you have to move to why isn't it working in the appropriate way and more importantly at this stage, what can we do to get it working the way it is supposed to. And, that's what this... since sedimentation, siltation is a contributing factor, if we are going to have to deal with that we have to know how that is going to act and react and that is why we are going where we are going now.

COUNCILMAN BURNS: And, if... this is pursued the dredging, who would be conducting the test?

MR. ALESSI: O'Brien and Gere would be overseeing it and to the extent of conducting the tests, it will be persons under the supervision of O'Brien and Gere. There will be Town officials who will be there observing it. So, those are the people who would be involved and there may be some of our expert consultants involved as well that are involved in the litigation.

COUNCILMAN BURNS: And, when do you expect to hear about whether it has been approved, whether the permits have been approved by DEC and Army Corps of Engineers?

MR. ALESSI: If it were a traditional route we were going, I could give you a more certain answer. The answer is it's uncertain but based upon my experience I would expect an answer within a week, perhaps the most a couple weeks. That type of answer may be not a final answer but it may be one that you get a pretty good idea what the final answer is going to be.

COUNCILMAN BURNS: I see. Okay, thank you very much.

MR. ALESSI: You are welcome.

SUPERVISOR FULLER: Bob, another question with the need possibly to purchase additional water from the City of Albany, any expense that the Town has, it's expense that goes forward as part of the package in our law suit.

MR. ALESSI: Absolutely, every penny we have incurred is part of it.

SUPERVISOR FULLER: Is part of it...

MR. ALESSI: And, every penny we will incur, i.e. for example to go to Albany that delta... if it would have cost this much to produce that much water here, and it is going to cost this much to buy it from the City of Albany, we are going to go after the entire delta that number in between from the defendants in this law suit. They have put us in the position where we have to do that and that is part and parcel of the damages that we will pursue. And, they know that and I would hope that if they are looking at this in a logical and prudent manner, there would be nobody more motivated to get this thing solved than them because the longer we do that the more their damages goes up.

SUPERVISOR FULLER: The more costly it becomes.

MR. ALESSI: The more costly it becomes.

SUPERVISOR FULLER: No doubt about it. Any other questions from the Town Board? I think we have some people in the audience that may have some questions.

MR. ALESSI: Okay.

SUPERVISOR FULLER: Yes.

MR. DAVIES: Mr. Alessi, I have mixed feelings about this dredging in the proposal. I have had an opportunity to look at this letter from O'Brien and Gere, February 17th, it was addressed to Mr. Secor. I am wondering is he dealing with O'Brien and Gere directly or are you?

MR. ALESSI: Both

MR. DAVIES: So, all right, then the next question, have you specifically asked them to do something and if so, is it a written communication?

MR. ALESSI: The answer is yes. And, I am going to defer to Mr. Secor if you would like the specifics of it but the answer... we've asked them and I... the documents on this, by the way, don't start on February 17th, Mr. Davies, at least from my perspective, they go back into August where I think if you read them together, at least my simulation of those documents is you can make out what was asked of them and what they are proposing.

MR. DAVIES: Well...

MR. ALESSI: August 10, 1997.

MR. DAVIES: Is it possible to get a copy of the communications as transmitted to O'Brien and Gere? That's what I would be interested in.

MR. ALESSI: Oh, the answer is absolutely yes. These are public documents.

MR. DAVIES: From you or Mr. Secor?

MR. ALESSI: Supervisor Fuller...

SUPERVISOR FULLER: Probably easier to get them from here I assume.

MR. DAVIES: All right, okay. All right. Well, let me just quickly run down here some of the questions. In the letter report which is only a page a half I guess from O'Brien and Gere, they said siltation is one cause of lower well yield. Did you ask them to evaluate the other causes, if not why not?

MR. ALESSI: The answer is yes. As a matter of fact, they have not been limited in any way in what... to look at the cause of the problem. There has been a judgement, an engineering judgement, that has been made that if your goal is to increase your well yield, and to do it at a quick a pace as is prudent that looking at siltation is the first thing that should be done.

MR. DAVIES: Is that a legal opinion or an engineering opinion now?

MR. ALESSI: That's an engineering opinion.

MR. DAVIES: By O'Brien and Gere?

MR. ALESSI: By O'Brien and Gere.

MR. DAVIES: Well, I didn't read that in their letter. You referred to regulatory constraints to get done by April 1, and what is that?

MR. ALESSI: Well, there is a permit process. You go before the DEC and you go before the Army Corps of Engineers and under the DEC regulatory regime it is considered, their words not mine, a minor action and you go for a permit under 6NYCRR Section 621 and 6NYCRR Section 624. So, that is the regulatory scheme and then there are some other water quality, water body issues under the Part 700 that will be relevant. For the Army Corps of Engineers, you've got their typical regulations for being in a river and they also consider this -- I am paraphrasing their words -- but it is also similar to a minor action that the DEC uses. This is not saying this is an insignificant event, but there are certain permit approvals that are classified in a certain way.

MR. DAVIES: Well, they could be May 1 or June 1 that you do the dredging, is it not?

MR. ALESSI: That's correct or it could be July or August.

MR. DAVIES: O'Brien and Gere in their letter said they will provide an assessment of potential improvement in yield. Now, why didn't they review the past data with regards to the dredging operation that was carried out in March of 1997?

MR. ALESSI: Well, I am not so sure that they haven't reviewed the data that exists but I will just hark back to my answer to Ms. Burns, that they are going to go beyond what was done so I don't have any reason to believe that they haven't reviewed what was done in the past.

MR. DAVIES: Well, I just looked at the data that has been provided.

MR. ALESSI: Yes.

MR. DAVIES: And, in March 1997, the yield was down around 1.7, 1.8 million gallons a day. It previously had been up around 2. Within 5 months it was back below 2 million gallons a day. So, within a short... relatively short period of time, less than a year, you are below the 2 million gallons a day. I would think this would... should have provided some input to them to take a look at what they are trying to accomplish. That's just an observation.

MR. ALESSI: I agree with you and I believe it has.

MR. DAVIES: But, it is not reflected in their report.

MR. ALESSI: Well, that's really not... I mean... that's not... their correspondence is not an engineering report. It is correspondence. There's a report and a typical engineering report that will be produced once the contours of what is going to be done are solidified.

MR. DAVIES: All right. What is the cost of dredging and has there been a cost analysis made of the dredging versus buying additional water from the City of Albany?

MR. ALESSI: There has been an analysis made of the cost of dredging and there has been analysis that has been made as how that relates to buying additional water. And, while the numbers are not finalized, the numbers... Supervisor Fuller, I... you know, I will defer to others with regard to the numbers because I am not the best... the best person suited to answer that one. I know what the ball park is, but I don't want to guess.

SUPERVISOR FULLER: I believe the cost of the dredging itself is about \$45,000.

MR. DAVIES: \$45,000.

SUPERVISOR FULLER: And the last time...

MR. DAVIES: But, there has been no evaluation as to how much water we can buy for \$45,000. Would it meet our need? That's the question.

MR. ALESSI: I think that is a fairly easy calculation and when I did it in my head, given the period of time we are talking about, we used up the \$45,000 pretty quickly.

MR. DAVIES: Now, there is, in my view, a serious problem that is not addressed at all by O'Brien and Gere. And, I think it relates to liability but maybe on the part of the Town and that is the removal of the bottom silt in the Hudson and disposing of those bottom silts on land owned by the Town of Bethlehem essentially on top of our infiltration galley. Now, if there are contaminants in the bottom silts that will be dredged, it should be of concern. Last March 10, 1997, 3 samples were collected of bottom silts. A number of analysis were done. It was submitted to the regulatory agency by Mr. Secor and Mr. Fraser. There was no covering... a technical interpretation of the data. DEC received that, they had no record of a memo review by any of their technical people with regards to those results. I have the data here but if you look at it, the mercury levels exceed the limits for disposal in an unrestricted area. One of the 3 lead samples exceeded the DEC guide for putting it in an unrestricted area which you have to consider this is a restricted area being on top of the well. The pesticides, DDT and ..., their analysis was not sufficient to determine the test compliance for the DEC. Now, just to pursue it a little further, we are speaking about dredging the Hudson River as we read in the paper about every week, the Hudson River is classified pcb superfund site. The pcbs are not on the surface of that bottom sediment in the Hudson River but down at some depth. The Port of Albany, it's about 1 to 3 feet in depth that you run into high concentrations of pcbs. That's true all the way down to Kingston and down to New York City. If we remove those bottom silts and remove them at depth in 6, 8, 12, 15 inches, I think we may be encountering some pcbs that we don't want to deal with. And, I think this should be a part of the evaluation by O'Brien and Gere ... that EPA has and make this evaluation. I think there is a lot more work that O'Brien and Gere should do with regards to their recommendations to the Board to dredging. Let me just make a final observation here, I read the Spotlight article, oh, a week or 2 ago, and I was quite frankly disturbed. The article sort of summarized that the amount of damages that we have sustained has not yet been determined. Well, that's true. It was also indicated that the Town will be responsible for resolution of any liability claims and I read between the lines that maybe the public won't have any input at all, that we could get involved in the ... settlement. And, I think that last most troubling thing was that Mr. Secor calls the water system a success and the Town is saving a million dollars a year. This water system is not a success, it's a disaster. In regards to saving money, if you take a look at what it costs to produce water from that plant and what we are getting paid from Selkirk Cogen, we are losing \$300,000 a year. Now, I would just pose to you, as an attorney, if we get any judge to consider damages against the Town when our officials claim that we have a successful water system.

MR. ALESSI: Let me address what I understood to be the questions out of your comments and if I don't hit every one of them just let me know. In reverse order, I don't know if the Spotlight is here, I think I see Mr. Hanson and he can best address what he writes and... but I can best address what I said. And, with regard to the article, as I read it, the Spotlight was not quoting Mrs. Fuller, it was not quoting Mr. Secor, that was their view of history. I don't understand and again, the Spotlight if they want to can answer it. I don't believe they called up Mr. Secor or Mrs. Fuller and asked them any questions after the last meeting I was at. My experience would indicate to me that what they did was they accessed historic comments and historic statements. Those are not, to my knowledge, present tense statements by either person.

With regard to whether it's a success or not, frankly, I am unconcerned. My job is to get back every penny we are going to loose here. And, from my perspective, there has been an error made and that error has caused problems that we are all talking about and the people who have caused that error should pay. So, from my perspective, whether it is a success, whether it is a failure, there is an error made and there are damages from that error and we are going to go after them.

With regard to the comments about, I believe you are probably referencing if I recall correctly the very last line or two in the article where I was quoted, I believe I was quoted as saying the final decision will be 100 percent the Town Board. Well, I don't believe I am stating anything that happens on every single issue that comes before the Town. By law, the Town has to act by resolution and the only Board in power to do that is the Town Board so every decision is final. I think you have heard some statements here tonight that I find not to be traditional. I laud the Board for it but it doesn't happen all the time and that is there are documents that are going to be on file in 2 places and you are going to essentially get documents real time so that you can look at them. The intent I suspect behind that is so not only can the public comment but that the public can make informed comments which I wholeheartedly support. I said when I first appeared before the Town Board that I wanted us to work together and when we have documents on file there is a lot of people, such as yourself, who can come forward and can say, my recommendation is you do this. My hope is when you get these documents and you start seeing them real time, you will be able to continue to contribute to that discussion. So, my expectation is that we will access as we do on every other issue on this Town, especially those of importance to people with knowledge and people who have something to contribute. My hope is they will contribute constructively. So, I intended to say nothing more and you have to understand when you are speaking with the Spotlight they just have so much space they can print and they distill down what they think is appropriate. And, there was other discussion around that 100 percent of the Town Board not dissimilar but not as lengthily as I am giving here but my expectation is that there will be extensive opportunity and repeated opportunity for the public to be involved in saying to the Town Board what they think the Town Board's path ought to be. So, just so there is no uncertainty, I expect although it is not my call, but from what Supervisor Fuller said tonight, I think it is reasonable to expect that that the public is going to be involved and going to have the opportunity to comment. Every meeting I have been at, members of the public have stood up and commented and I have benefitted from those comments and I certainly assume the Town Board has.

MRS. BURTIS: Hi, Bob. I think what Sherwood's talking about, open government... the lack here, the Town Board made a decision without having a Town Board meeting, I guess the Supervisor made an emergency decision to dredge the river with no public comment, there was no article in the Spotlight and it was done in March of last year and the community heard about it in May. So, we are talking about serious decisions made here... environmental decisions that are made without even input from the other members of the Board. So, what we are hoping and that we are all learning... we have been at this now for 5 years is that this water system... that what we are hoping is that we are learning along the way and that.. you know, that... for instance, just to mention an issue that we are worried about is that you will

go behind closed doors with the attorney from... for J. Kenneth Fraser and come up with a settlement and the settlement will be far below the cost of this system, 14 million dollars plus the 28 million dollar when you roll it out into the debt and then we will hear about it after the fact and there won't be any public input. So, this is talking about why we have sessions like this, that is one of the things we are very worried about.

Getting back to the dredging, dredging is a major, major thing to do. You cannot just go and dredge the Hudson River. There are a gazillion laws, there is a whole... brochure you can get that talks about how to dredge, what to do with the dredged material which in a lot of cases is toxic and everybody who lives in the Capital Region knows that we have a pcb problem at the bottom of our river. And, that is one of the major concerns so... it seems... one of the things happening is your coming here tonight and doing a very good presentation. The Board is... the Board is acting ... but there is probably going to be a vote on this stuff tonight without much perspective from the community about dredging once again. Dredging can cost us money... if it cost \$79,000 last year, we didn't pay for it because we were able to get the Federal government to pay for it, that's not going to happen this year. So, there is another \$80,000 cost. This thing is starting to get astronomical.

It is also... one of the things I wish that my community had in their vocabulary was the word environment. I wish when... I think... I worry that we are becoming the laughing stock of all the communities along the Hudson River. Why, because we have built a system that the people didn't want that is now drying up and we are using an environmentally unsound process, dredging, in order to protect ourselves and we should really just abandon just a quick fix. What happened last year is we dredged. We got water over the summer and in like the fall, the well was going dry again. So, probably that exact same thing is going to happen again. So, I am with Sherwood, I have mixed feelings. I am uncomfortable that tonight the Board is going to make a decision based on one evening of discussion... major decision, there is no guarantee that that \$80,000 is going to come back to us. Do you know how much malpractice insurance Fraser firm has?

MR. ALESSI: Yes.

MRS. BURTIS: May I ask you what it is?

MR. ALESSI: It is \$1,000,000.

MRS. BURTIS: Okay. So, that... this is a 14 million dollar project plus now we are adding on all these \$80,000 figures and lawyers figures, engineering firm figures and in debt we have a 28 million dollar debt on that... so, what might happen -- may not be your worst case scenario, it just may be reality, that what we get back is 1 million dollars. So, who is going to pay for all that, we are going to pay for that. That... paying for an unpopular system that the people asked the government not to have. So, when we come to an issue tonight and talk about dredging, I feel very disappointed that we at the Town Board... going to make a decision tonight and also I will tell you, we are getting unpopular not only with the Towns along the river, we are using dredging as routine maintenance and I think you mentioned, Bob, that that it might come to that. In order to salvage the system an engineer like... said we have to dredge every year, maybe you have to dredge twice a year... well, the government of agencies, DEC, the Army Corps of Engineers may not even permit that. Dredging for the use ... is an unheard of thing. So, once again, we're an environmental in the County, the government of the Town of Bethlehem. I am getting concerned about that. When I talk to the people in the agencies, at DEC, at the Army Corps of Engineers, they are upset from last year that we said we have an emergency and we need to dredge and they are saying to us in the last couple of days that they are going to deny this permit application for dredging. And, are you aware of that?

MR. ALESSI: I am aware they are evaluating it. I have not been told officially or unofficially that they are going to deny it or they are going to approve it.

MRS. BURTIS: Well, they... the person...

MR. ALESSI: I would hope that they are going to do what a governmental agency does. That's assiduous and objective and that is they are going to make a final determination once they have adequately reviewed what has been presented to them. And, that is my experience with the DEC and I have no doubt that they are going to go through that process. And, I don't have any reason to believe that they have reached a conclusion on this.

MRS. BURTIS: Well, they've said, Jeff Gregg -- who is the person who is reviewing the permit -- said that the ... decision at DEC has already been made and Bethlehem will be denied it and the reason Bethlehem will be denied it is because we have asked for it so late in the game. You can't dredge after April 1st because you disturb the spawning of the fish. Now, in order to... dredging is a serious thing, you have to follow certain steps. Well, part of those steps includes a 30 day comment period. So, we don't have time from now until April 1st to fill out the application, have it reviewed, have the 30 day comment period and have it go back. So, are you going to ask for emergency permission to dredge?

MR. ALESSI: We have already asked for an ability to dredge within a time period that avoids the spawning season. In effect, that is a request for an emergency approval.

MRS. BURTIS: So, you technically... haven't... like last year Mr. Secor said this was an emergency and the request was turned around in about 48 hours. That's not happening this year... you are not specifically saying that it is an emergency in the application.

MR. ALESSI: We have said to them what our needs are. It is their job to place that in the regulatory category they think it falls in. If under their regulations, they conclude that's an emergency application, that's how they will treat it. And, that is how they will evaluate it.

MRS. BURTIS: Okay, well, what... I don't know if anybody on the Board is talking with DEC, I just picked up the phone and talking to these people and learned that DEC is not treating this as an emergency and that there is no... not time between now and April 1st given the seriousness of dredging and the laws... last year Mr. Secor asked for waiving these laws for an emergency. This is really not an emergency because we can turn around and buy water from Albany and besides it is not a drinking water supply. So, it is questionable whether or not last year it was an emergency. This year they are saying that it's not an emergency and that they are going to deny Bethlehem's application for dredging.

MR. ALESSI: If I were... if I had to pick the person who should be most concerned about that, I would pick the defendants in this litigation.

MRS. BURTIS: Well, I wish... I think what we need is some vision in this Town. I think we have to begin to stop having quick fixes and Band-Aid approaches and saying... Selkirk Cogen and GE and Owens Corning is not going to have enough water this summer so we are going to dredge the river... which means we are going to disturb the river bottom, we are going to disturb the ... we are going to take all that ... and material and we are going to dump it about 75 feet from the well where it possibly could leak back and contaminate the water. I mean I think those things are ... I think what the bottom line is what I am saying is that it is time for the Town Board to step back and not look at quick fixes but look at the big picture.

MR. ALESSI: You covered a lot of territory there and I think some of them were questions. And, Supervisor Fuller would you like any responses to those or would you like to move on?

SUPERVISOR FULLER: You are free to respond if you would like, Mr. Alessi, but I think there's other people here that may have some questions also. Is there anything new that we need to hear this evening? Students, this is your participation in government. Any other questions or comments?

MRS. CAPONE: Yes. I want to commend the Town for getting the service of such a knowledgeable Republican attorney. Now, there is another one thing I want to talk about very short, I am going to say it fast, before you shut me off. There is something... but the rats are playing at 9 o'clock.. good night.

SUPERVISOR FULLER: Good night.

COUNCILMAN BURNS: I would just like to add there are many knowledgeable Democratic attorneys out there too.

SUPERVISOR FULLER: All attorneys are knowledgeable.

ATTORNEY KAPLOWITZ: Right.

MR. ALESSI: One of my most significant representations was for the City of Albany on their landfill in the Pine Bush. I concur there's knowledgeable people in all strips.

SUPERVISOR FULLER: Thank you, Bob.

MRS. SHAPIRO: I have just one quick question, which ... is tonight. O'Brien and Gere will proceed with their evaluation without the dredging? What effect does this have on the data that you say...?

MR. ALESSI: The answer is we will be denied the data that we feel is necessary to come up with a short term solution. And, we will proceed. We do have a plan and I think we have a good plan not only in terms of litigation but otherwise. We have a vision and what we will do is we will look toward the mid-term/long-term. We have the right to make an application for the same permits and to be able to do the same activity but it will not be on the accelerated basis that would otherwise occur. So, that will be the typical permit process that will occur.

MRS. SHAPIRO: Are you talking about permits for dredging?

MR. ALESSI: I am talking about permits for things including dredging but not limited to them.

MRS. SHAPIRO: Because you presented this as necessary to mitigate the costs...

MR. ALESSI: Yes.

MRS. SHAPIRO: For your suit. Now, if you are denied dredging and you have already fulfilled for that ... for mitigation and were denied it but you also projected it as necessary for the evaluation of why... and that's not... Is it really necessary for their evaluation or is this just a ... to dredge?

MR. ALESSI: Well, I think you have been very perceptive and stated quite well the issue. And, the answer to your question is that it is necessary to continue on with that regard because if you have an engineering firm that says sedimentation, siltation is a contributing factor to the problem, you better go study ways to eliminate that aspect of the problem. That is under the rubric of mitigation of damages. The only thing changes is the clarity with which you do it. Instead of doing it quickly now, you do it through a permit process but it doesn't obviate the need for your to do it. Our engineers tell us you need that information because if you are going to look at it long term, you got to know what you're going to do is the siltation is just going to come back. So, the study needs to be done in order to get the information necessary for long-term so, it is not something that goes away. It still comes under the rubric of mitigation of damages, it's just on a different time schedule.

MRS. GERSHAN: I have a question. A comment was made earlier that there are... is high mercury levels in the river and ... pcbs. I don't think I heard a response to what would be done ... and what.....

MR. ALESSI: I think there is a question whether your question was picked up by the recorders that why we are pausing.

TOWN CLERK NEWKIRK: Yes, I need your name also. If you could come up to the microphone it would be better, please. Thank you and state your name please.

MRS. GERSHAN: Martha Gershan. I live in the Town. Can you hear me?

TOWN CLERK NEWKIRK: Yes.

MRS. GERSHAN: Good. The comment was made earlier that there is a high mercury concentration in the river and we know that the pcbs and perhaps there are even other toxins that were in that report and I didn't hear a response about what would be done with those materials if and when they are dredged out of the river, where would they be put and what potential liability might the Town have for those toxic materials.

TOWN CLERK NEWKIRK: Thank you.

MR. SECOR: The report that Mr. Davies is referring to is on file. It was put on file with all the other documents. You have to look at the report there were three classifications of types of sediments. There was totally unregulated, a little bit regulated, and there might have been a couple above that. This was next to the lowest level of classification. So, you would have to look at the results and say whether it was a high level or a very low level. In reality the mercury level was a low level. And, the level of treatment was such that the DEC gave us a letter in writing that these sediments -- if you understand the system, our system is parallel to the river. The water is now traveling down through those sediments and then into the infiltration gallery. We have tested for pcbs repeatedly, we have never found any evidence of pcbs. We have tested the sediments for pcbs, didn't find any. We are taking those sediments away from where the water is traveling through and putting them into an area on the inward land... land side which is on the back side of the clay cut off wall. So, you are actually taking these materials out of the direct stream of the water and putting them in a different spot which was pointed out to our... in our application for doing the work and approved by DEC. So, if you go back... if you went back to the original work and in this package there is a work plan, it shows where the disposal area is and how it was done and the reports to DEC. They asked us to do certain tests. We did those, the tests were given back to them. They looked at those and issued a report that said these sediments are acceptable and you can dispose of them as you have proposed to do. So, it was all done through the regulatory process.

MRS. GERSHAN: You say you were talking about last year's testing.

MR. SECOR: That is correct.

MRS. GERSHAN: And, what about this year's?

MR. SECOR: We haven't done those yet. We're... again, we have asked for the permission. They will come back through the regulatory process, tell us what the steps are we have to do and we will follow those steps. So, we have started the process and this is... what the purpose tonight is to keep the public up-to-date on what we are doing.

COUNCILMAN DAVIS: Bruce, I believe that anyone who makes an application for dredging has to also as part of the process give very clear specifications on how that material will be disposed of. I mean, that is all part of the permit process, correct? I mean, you don't just dredge and then dump. That's all something that is part of that process.

MR. SECOR: And, just 2 other things. Dredging is a very common occurrence. Dredging goes on every year in the river for maintenance issues throughout the river basin. The Corps of Engineers issues permits on a regular basis for dredging. Dredging is an environmentally sound process. What we are doing is vacuum dredging or actually... just like you vacuum the carpet in your house to pick up things. You collect that material and put it into a place which, as Mrs. Davis has just pointed out, you know -- you tell them exactly

what you do, what your work plan is, how you are going to contain the materials, they are tested. It is a very controlled process.

MRS. GERSHAN: Perhaps, someone ought to tell the DEC because they are going to take a couple years to assess whether dredging in relation to pcbs on the GE liability is a good thing to do or how much it's going to upset the river or are aware of what influence it's going to have over pollution of the river and does it seem therefore, to the lay person reading the newspapers and following the GE case which we have all seen so much about. That dredging is so simple a matter .....

MR. SECOR: Yes, it's a matter of, as Mr. Alessi pointed out, there are minor actions, small areas, small projects and there are very major things. If you want to dig a hole to put a tulip bulb in or if you want to dig an excavation to make a new lake, I mean they are very different items. And, that is really the difference you are talking about.

MR. ALESSI: If I can just add for the... the question, we don't want to make it out like it is simple. There are protocols that are well established. Pcb's and mercury... I can tell you I have been all over the northeast in environmental litigation we don't like to accept it and I am not saying we should accept it but lead, mercury and pcbs are virtually ubiquitous. They are all around so much so that the DEC has established background levels for them and said all right, this is the acceptable level to have in the environment. So, there are some places that have acceptable levels and there have been risk assessments that say this much is acceptable. As a matter of fact, DEC doesn't even regulate pcbs below a certain level. You can debate whether or not that is appropriate but that's what the law is. And, there's... if you did a soil sample of your yard, you would find probably some surprises in there and the question is is that a risk. Well, that is what they have standards to assess that. So, these types of constituents while they have a notorious reputation and some quite well deserved, it requires really a technical analysis to determine what is the risk. But, I can tell you, we don't take that lightly and we don't view this as something that is insignificant but, you know, the DEC is the agency that overlooks it and we're... it's not just the DEC, you have got the Army Corps of Engineers that is watching over this, and in terms of environmental issues I thought we did ourselves pretty proud, you included Linda, when we dealt with the Spurlock application. And...

MRS. BURTIS: You dealt with that because the citizens watchdog group came along after the Town was ready to approve of a formaldehyde plant coming to the Town. From then...

COUNCILMAN LENHARDT: The Town never had a choice.

MRS. BURTIS: And, I appreciate the ... of the people but I felt badly that the Town doesn't believe that ...

MR. ALESSI: You know, they say that when there is high tide all the boats rise and you know, I would like to think that Spurlock made a decision that was right for it and we made a decision that was right for us and I thought we all worked well together including Spurlock. So, I think it works when it works.

MRS. BURTIS: Thank you, Bob.

MR. DAVIES: Sheila, I have to respond to Mr. Secor. He said there was no pcbs found which was an incorrect statement.

SUPERVISOR FULLER: I think that that is a debate that you and Bruce have had over the years.

MR. DAVIES: Well, what I would like to do. I will get to you the summary I've made .... I will send it to Mr. Alessi and I am going to send it to DEC because I think it should be a part of the record that we are getting some information that really is not factual.

SUPERVISOR FULLER: Thank you, Sherwood. What the Board has before them this evening is basically an update on where we are headed and

it is all part of what are we going to do for the Town of Bethlehem to be sure that we have what we were promised for 5 years ago. This is not a case of voting on an issue of where we are headed for the next step, the question is, we need to protect our tax payers. We need to get what we were promised 6 million gallons a day. We also must know that each and any one of us, all homeowners, had a problem in our homes, we would be going after whoever the expert was at the time to get our money's worth. We need to protect our investment and that is exactly what we, the Town Board, are doing here this evening. This is not something that requires a vote. It is our counsel has arrived to update us. I have chosen to make this a very public meeting so that each and every one of you can participate in it. That is the only reason it is on the agenda. It is not authorization to do anything. It is continuing on with the advice of counsel.

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Engineering  
Division  
to go to  
bid for  
metal and  
plastic pipe  
and resolution

The next item was a request from Terrence Ritz, Engineering Division, Department of Public Works, for approval to go to bid for Metal and Plastic Pipe for 1998-1999. Could advertise March 18, 1998 and open bids on April 8, 1998.

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

WHEREAS, the Town desires to advertise for bids for the purchase of Metal and Plastic Pipe for 1998-1999, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 18th day of March, 1998 and that bids be received up to 2:00 p.m. on the 8th day of April, 1998 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,  
Mrs. Burns.  
Noes: None.

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Commissioner  
of Public Works  
award bid for  
Radio Read  
Water Meters  
to EJ Prescott  
Inc., Montpelier  
Vt.

The next item was a recommendation from Bruce Secor, Commissioner of Public Works, for approval of award of bid for Radio Read Water Meters to E.J. Prescott, Inc., Montpelier, Vt.

The motion was made by Mrs. Davis and seconded by Mrs. Burns to approve the award of Radio Read Water Meters to E.J. Prescott, Inc., Montpelier, VT at the prices indicated in the bid document. The motion was passed by the following vote:

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

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Traffic Safety  
Committee Local  
Law Public  
Hearing through  
streets stop  
intersection  
Chase Court at  
Westphal Drive

The following item was a recommendation from Richard Vanderbilt, Chairman, Traffic Safety Committee, for consideration of a Local Law amending the Code of the Town of Bethlehem, Vehicle and Traffic, Through Streets designation for Haagate Drive and Corrit Drive and Stop Intersection for Chase Court at Westphal Drive. Could advertise March 25, 1998 and hold public hearing April 8, 1998 at 7:30 p.m.

The motion was made by Mr. Johnson and seconded by Mrs. Burns to approve the setting of a public hearing for April 8, 1998 at 7:30 p.m. to consider proposed Local Law No. 6 of 1998 amending the Code of the Town of Bethlehem, Vehicle and Traffic, regarding Through Streets designation for Haagate Drive and Corrit Drive and Stop Intersection for Chase Court at Westphal Drive in the Haswell Farms Subdivision. The motion was passed by the following vote:

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

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The next item was a request from Michael Cirillo, Engineering Services Administrator, for approval of acceptance of two (2) deed documents for the Wemple Road reconstruction project. Supervisor Fuller noted the project had been approved and these are the deeds to go forward.

Engineering Services approval for acceptance of two deeds Wemple Road reconstruction

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the acceptance of two (2) deed documents for the Wemple Road reconstruction project from Thomas and Valerie Newell, Glenmont, NY and Mr. and Mrs. David Harrington, Glenmont, NY. The motion was passed by the following vote:

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

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The following item was a request from Engineering Services Administrator, Michael Cirillo, for approval of acceptance of deeds for the School Garden Terrace Subdivision located in North Bethlehem.

Engineering Services accept deeds School Garden Terrace subdivision

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the acceptance of five (5) deed documents from Andrew Chainyk, Albany, NY for the School Garden Terrace Subdivision located in North Bethlehem. The motion was passed by the following vote:

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

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The next item was a request from David Austin, Administrator, Parks & Recreation Department, for approval of seasonal personnel as per his Memorandum dated February 25, 1998.

Parks and Recreation approval seasonal personnel

The motion was made by Mrs. Burns and seconded by Mr. Lenhardt to approve the appointment of seasonal personnel as listed on the Memorandum dated February 25, 1998 from David Austin, Administrator, Parks & Recreation Department, at the titles and salary rates listed. The motion was passed by the following vote:

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

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The following item was a request from Administrator, David Austin, Parks & Recreation Department, for approval of seasonal personnel as per his Memorandum dated March 11, 1998.

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the appointment of seasonal personnel as listed in the Memorandum dated March 11, 1998 from David Austin, Administrator, Parks & Recreation Department, at the titles and salary rates listed. The motion was passed by the following vote:

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

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The following item was a request from David Austin, Administrator, Parks & Recreation Department, for approval of the Supervisor to sign a Concession Stand Agreement for the Elm Avenue Town Park. Supervisor Fuller noted 5 years ago the Town went out to lease with regard to the operation of the concession stand at the Elm Avenue Town park.

Parks and Recreation approval for Supervisor to sign a Concession stand agreement

Councilman Burns asked how this would be affected if the soccer or softball people wanted to set up something at night when they have games. She said she didn't read that or she couldn't get that from the contract. Mr. Austin explained they allow the groups individually to be able to do that if it is a fund raiser specifically for their organization and if they are a nonprofit organization. He said this has been the policy to allow them to do that on their fields. He further said if they want to contract with a private vendor, they would have to work out some legal agreement between them.

Mr. Austin further noted Attorney Kaplowitz would probably indicate the Town would have to enter into the agreement with the vendor for the service requested. He said he was not sure it was proper for a group to have an agreement with a private vendor on Town property without the Town's involvement. Councilman Burns asked if they wanted to set up a table with candy or soda or something they could. Mr. Austin said they do allow that. He said he does not believe that would interfere with this lease agreement because this specifically says pool and snack bar area. So, if the groups were to set something up at the playing fields, Mr. Austin said he does not see that as a conflict. Councilman Burns thanked Mr. Austin.

Supervisor Fuller noted the gentleman operating the concession stand is Tom Rowlands, Java Jazz/Seattle Sub.

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the authorization of the Supervisor to sign the Concession Stand Agreement for the Elm Avenue Town Park with Tom Rowlands, Java Jazz/Seattle Sub, Delmar, NY. The motion was passed by the following vote:

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

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Councilman Burns added when she looked at the prices, she hoped there is not a charge of \$1.70 for a hot dog. She knows that is the maximum he can charge but she hoped he wouldn't do that. Mr. Austin said the prices do include tax. Supervisor Fuller noted the hamburger at \$2.00 is a bargain. Councilman Lenhardt agreed. Mr. Austin said he does not think his prices are really high. Councilman Davis said as she remembers, the real bottom line is that it is much more efficient and cost effective for the Town to go this route than it is for the Town to do this operation. Mr. Austin agreed and said it is a much better financial arrangement. Supervisor Fuller said this presents less aggravation.

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Parks and  
Recreation  
Clarksville  
Playground  
agreement

The next item was a request from David Austin, Administrator, Parks & Recreation Department, for approval of the Supervisor to sign the Clarksville Playground Agreement. Supervisor Fuller noted this is a summer playground that is offered in the Town of Bethlehem at each of the elementary schools and the Clarksville elementary school because it is in the Town of New Scotland should not be denied the opportunity of the same program for their playground. This is authorizing the Supervisor to sign and the Town of New Scotland reimburses the Town of Bethlehem. There is no cost to the Town of Bethlehem.

Councilman Burns asked Supervisor Fuller if this has been done in the past. Supervisor Fuller said this has been done for a long time. Mr. Austin said for about 20 years. Councilman Davis noted the Memorandum from Mr. Austin stated that information in the first paragraph.

The motion was made by Mr. Johnson and seconded by Mrs. Burns to approve the Supervisor signing the Clarksville Playground Agreement for the summer of 1998. The motion was passed by the following vote:

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

Noes: None.

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The next item was a request from Chief of Police, Richard LaChappelle, for approval of transfer of funds to be applied to the repair of police vehicle.

Request from  
chief of Police  
transfer of funds  
repair police  
vehicle

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the transfer of funds from the Insurance Recovery Account to Police Account A3120.464 in the amount of \$7214. to allow for repair of a police vehicle. The motion was passed by the following vote:

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

Noes: None.

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The next item was the appointment of Edward J. Gorman, Esq., Delmar, NY as Water District Counsel at \$4,956. Supervisor Fuller said it is a distinct pleasure to recommend the appointment of Mr. Gorman to replace Lance Crossett. She noted he was in attendance this evening.

Appoint Edward  
J. Gorman Water  
District Counsel

Councilman Burns said it was a pleasure to meet him and asked Mr. Gorman about his resume, noting his length of employment says January 1995 to February 1998, asking if he was still working with the firm. Mr. Gorman said it is a law firm and he is not working with them. He said he started his own law firm with another gentleman. Councilman Burns asked if he has a background in municipal law. Mr. Gorman said he has done work with municipalities through Phelan, Burke and Scolamiero, LLP. He said he was a representative through their insurance company. Councilman Burns thanked Mr. Gorman. Supervisor Fuller noted Mr. Gorman's resume and interview was a little prior to the start of his own business. She apologized for Councilman Burns having to ask the question.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the appointment of Edward J. Gorman, Delmar, NY as Counsel to the Water District and to serve at the pleasure of the Town Attorney. The motion was passed by the following vote:

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

Noes: None.

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Supervisor Fuller congratulated Mr. Gorman. Mr. Gorman thanked Supervisor Fuller and the Board.

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The next item was a request from Superintendent of Highways, Gregg Sagendorph, to award the contract for the regional Household Hazardous Waste Collection Day to Care Environmental Corp. of New Jersey; and for the Supervisor to sign a resolution to apply for grant money for partial reimbursement from NYS.

Superintendent  
to award contract  
for regional  
Household Hazardous  
Waste Collection  
Day to Care  
Environmental  
Corp.

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to approve the award of the contract for the Regional Household Hazardous Waste Collection Day to Care Environmental Corporation of New Jersey and to approve the resolution to apply for grant money for partial reimbursement from New York State. The motion was passed by the following vote:

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

Noes: None.

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Superintendent  
of Highways  
award bid  
for guide  
rail to  
Chemung  
Supply

The next item was a request from Superintendent of Highways, Gregg Sagendorph, to award the bid for guide rail to Chemung Supply Corp., Elmira, NY.

The motion was made by Mr. Johnson and seconded by Mrs. Davis to approve the award of bid for Guide Rail to Chemung Supply Corporation, Elmira, New York at the bid prices specified in the bid document. The motion was passed by the following vote:

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

Superintendent  
of Highways to  
award bid  
milling of  
blacktop  
pavement to  
Pallette Stone

The next item was a request from Gregg Sagendorph, Superintendent of Highways, to award the bid for milling of blacktop pavement to Pallette Stone Corp., Saratoga Springs, NY.

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the award of bid for milling of blacktop pavement to Pallette Stone Corporation, Saratoga Springs, New York at the bid prices submitted in the bid document. The motion was passed by the following vote:

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

Superintendent  
of Highways to  
award bid for  
washed crushed  
stone to  
Callanan Industries

The following item was a request from Superintendent of Highways, Gregg Sagendorph, to award the bid for washed crushed stone to Callanan Industries of South Bethlehem, NY.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the award of bid for washed crushed stone to Callanan Industries, South Bethlehem, NY at the bid prices quoted in the bid document. The motion was passed by the following vote:

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

Superintendent  
of Highways  
to award bid  
for topsoil  
R. J. Valente  
Gravel Co.

The next item was a request from Superintendent of Highways, Gregg Sagendorph, to award the bid for topsoil to R.J. Valente Gravel Co., Wynantskill, NY.

The motion was made by Mrs. Burns and seconded by Mr. Lenhardt to approve the award of bid for topsoil to R.J. Valente Gravel Co., Wynantskill, NY at the prices quoted in the bid document. The motion was passed by the following vote:

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

Councilman Davis questioned whether others had complained as Mr. Sagendorph had about the quality of the topsoil and that was why it was significantly improved this year. She further asked if R.J. Valente Gravel Co. told him what had happened. Mr. Sagendorph said they just feel they have a better quality of soil this year. He said it is hard to go out this time of year and check it because it is either frozen or under water. He said we have to take their word for it. He said he spoke with Attorney Kaplowitz about this item and Mr. Kaplowitz indicated we have to give them an opportunity to produce it. Mr. Sagendorph said they know up front that we are not bashful about throwing them out. Councilman Davis thanked Mr. Sagendorph.

The following item was a request from Gregg Sagendorph, Superintendent of Highways, to award the bid for gravel to R.J. Valente Gravel Co., Troy, NY, and to Callanan Industries of South Bethlehem, NY.

Superintendent  
of Highways  
award bid of  
gravel to Valente  
Gravel Co.

The motion was made by Mr. Johnson and seconded by Mrs. Davis to approve the award of bid for gravel to R.J. Valente Gravel Co., Troy, NY and Callanan Industries, South Bethlehem, NY as per the Memorandum from Highway Superintendent, Gregg Sagendorph, dated March 6, 1998 for the types of gravel indicated. The motion was passed by the following vote:

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

The next item was a request from Superintendent of Highways, Gregg Sagendorph, to award the bid for rental of large track excavator to Robert H. Finke & Sons of Selkirk, NY.

Superintendent  
of Highways  
award bid for  
rental of large  
track excavator

The motion was made by Mrs. Burns and seconded by Mrs. Davis to approve the award of bid for rental of large track excavator to Robert H. Finke & Sons, Selkirk, NY at the prices quoted in the bid document. The motion was passed by the following vote:

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

The following item was a request from Gregg Sagendorph, Superintendent of Highways, to award the bid for rental of heavy construction equipment to various contractors.

Superintendent  
of Highways  
award bid rental  
heavy construction  
equipment to  
various contractor

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to approve the award of bid for rental of heavy construction equipment to various contractors as listed in the Memorandum from Highway Superintendent, Gregg Sagendorph, dated March 6, 1998 at the prices indicated. The motion was passed by the following vote:

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

The following item was a request from Superintendent of Highways, Gregg Sagendorph, to purchase three (3) single axle trucks from State Contract. Supervisor Fuller noted the money was in the 1998 budget.

Superintendent  
of Highways to  
purchase (3)  
single axle  
trucks from State  
Contract

The motion was made by Mr. Johnson and seconded by Mrs. Davis to approve the purchase of three (3) single axle trucks from State Contract as per the request of Highway Superintendent, Gregg Sagendorph. The motion was passed by the following vote:

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

The next item was to acknowledge receipt of Preliminary Plat approval for the Cherryvale Subdivision, McCormack Road, Slingerlands from the Planning Board for information purposes.

Preliminary Plat  
approval for  
Cherryvale Sub-  
division McCormack  
Road Slingerlands  
from Planning  
Board  
Approve Town Boar  
minutes of 1/14,  
1/28, and 2/11  
1998

The next item was to approve the Town Board minutes of January 14, January 28 and February 11, 1998 as submitted.

The motion was made by Mr. Lenhardt and seconded by Mrs. Burns to approve the Town Board minutes of January 14, 1998 and February 11, 1998 as submitted. The motion was passed by the following vote:

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

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The motion was made by Mr. Lenhardt and seconded by Mrs. Burns to approve the minutes of January 28, 1998 with correction of spelling of a name in the minutes. The motion was passed by the following vote:

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

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Councilman  
Burns is  
looking for  
approval to  
have the  
Town Board  
Meetings  
Televised

Councilman Burns said she wanted to add that she is in the process of preparing a resolution for the Town Board for the approval to televise, video and broadcast the Town Board meetings. She said she has talked to channel 31 and they are on board and ready to move. She said they have the personnel and there would be no cost to the Town. She said she is preparing the resolution and hopefully it will be submitted at the next meeting and go forward. Supervisor Fuller noted what was done with channel 31 is when there has been a major meeting such as Price Chopper, LUMAC, water, they were invited to come in and they did cover the meetings. She said the Board would be more than willing to have them here. She said she was not sure channel 31 had the interest in covering routine business items. Councilman Burns said they are very interested.

Councilman Lenhardt asked if a resolution was necessary. Supervisor Fuller and Councilman Davis said they did not think so. Councilman Davis said she thinks an invitation is probably fine. Supervisor Fuller said she can ask them to start for the meeting of the 25th. Councilman Burns said he will not be ready for the 25th. She said they are hiring a new person who is going to be doing this. Supervisor Fuller said she would touch base with them and see how soon they would like to come in. She said a resolution is not necessary. Councilman Burns said okay. Supervisor Fuller thanked Councilman Burns.

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Supervisor Fuller asked if anyone wished to address the Board from the audience. There was no one.

Meeting  
was adjourned

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to adjourn the regular Town Board meeting at 8:56 p.m. The motion was passed by the following vote:

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

*Kathleen A. Newkirk*  
Town Clerk