

TOWN BOARD  
MAY 13, 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 ask you to join us as we ask Doris to lead us in the pledge of allegiance. Thank you.

Good evening. Our first item on tonight's agenda is a public hearing to consider Local Law No. 7 concerning amendment to our Town Code Zoning Definition. I will ask Mr. John Flanigan to give a brief overview of what the Board is considering. Oh, I am sorry I forgot 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 on the 13th day of May, 1998 at 7:30 p.m. at the Town Hall, 445 Delaware Avenue, Delmar, NY to consider proposed Local Law No. 7 of 1998, concerning an Amendment to the Code of the Town of Bethlehem, Chapter 128, Zoning, Article I Definitions 128-1B pertaining to Restaurant/Lunchroom and Retail Use.

All parties in interest and citizens will have an opportunity to be heard at the said hearing.

The Town of Bethlehem provides reasonable accommodations for the disabled. Disabled individuals who need assistance in order to participate should contact 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  
amendment  
to Restaurant  
Lunchroom and  
Retail use

- - -

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 29 day of May 1998.

/s/ Mary A. Ahlstrom

Sworn to before me this 30th day of April, 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 March 22, 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  
4th day of May 1998.  
/s/ Catherine T. Picarazzi  
Notary Public

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

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

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SUPERVISOR FULLER: Now, Mr. John Flanigan.

MR. FLANIGAN: Good evening. Over the last several years there has been many requests before the Town for specific uses that... in the area of restaurants and retail uses that would allow our ordinance to be changed so that we can accommodate certain things that we find in other communities. So, I was asked to look into the possibility of making some changes in the restaurant section of the definitions and also to look at retail uses in the definitions. And, I refer to some of these today. I... in my review I looked at the City of Albany requirements that they have for outside uses for restaurants and serving... retail... having some seats in retail areas and I also went through Colonie and Guilderland's code which I had.

Outside combinations today are becoming a way of life in other communities. As you go around to different places you can find that you can get a cup of coffee, go outside and sit some place and have it or an ice cream and go outside and sit and have it and our ordinance does not allow this. The proposed changes or these outside uses are mostly seasonal in nature and they would not be used in inclement weather in the first place and they would not become very large. In our definitions today as it stands in the ordinance today, public eating places where food is served entirely within the building and is served largely, if not entirely, at tables and where food is not sold to be taken from the building for consumption elsewhere on the premises. We are going to delete that. Also, we had a definition of lunchroom which really was almost the same as the restaurant one except it says public eating places where food is served entirely within the building and is served largely if not entirely at a counter, and where food is not sold to be taken from the building for consumption elsewhere on the premises. That point of elsewhere on the premises has always been a problem here in Town. We go way back to when McDonald's was built. They wanted to put a little place outside and if you go to most McDonald's today you will find a little area where there is some... couple picnic tables that are there where you can get your hamburger and go outside and sit and eat it. But, in this Town you can't do that according to the regulations. So, I went looking and I did some research and I came up with a couple of changes. First of all delete the whole comment on restaurants and lunchroom and replace it and put them together as restaurant/lunchrooms. These definitions that we are talking about restaurant/lunchrooms, and retail uses all occur in "CC", "C", Light Industrial and Heavy Industrial zones. We are not talking about a "CCC" zone which is office use only. We are only talking about the zones they are in. There is no specific area. We are talking about this would be carte blanche throughout the Town in those zones they would be able to put them in.

Under the definition restaurant/lunchroom, public eating place where food is served within the building and is served largely if not entirely at tables or counters. Outside accessory dining is

permitted for seasonal use up to 10 p.m. Time restriction. The outside dining area shall no longer be no larger than 40 percent of the inside area. Just as an example, if I have 1,000 square foot area inside, I can only have 400 square foot outside for that type of use. Excessive outside lighting and music shall not be allowed. Approval of this outside use shall be subject to review and approval of the Building Inspector for compliance with the New York State Uniform Fire Prevention and Building Code. There is a section in the building code that says you have to have 15 square feet per person for eating areas. So, that means outside you would be very restricted on the numbers you can have but you could have some but you couldn't have say 100. It just wouldn't work at any place we have here in Town. And, matter of fact, we have about 20 restaurants in Town today.

We get to the retail use area, you all remember Mr. Subb down here, where we went... where they wanted to put a few tables in and they went to the Zoning Board and finally they got an approval there for up to 12 seats. That really has worked out and if you have watched it and seen it over the years, it really has not... become a problem in that situation. It really works. So, we felt that a few tables or a few chairs up to the number of 12 at a take out area, retail take out area, would not become a problem as long as we use the 15 square foot against those. So, you couldn't have 20 chairs there, the best you could have is 12 if you had a big area but it could be less than that against the Building Code section. And, we used the use of a retail use, the activity of selling commodities or goods to ultimate customers for personal or household use. We never had a definition of retail use in the ordinance. This is right out of the dictionary. The placement of up to 12 seats for customer use does not change the retail use to a restaurant/lunchroom. That's in there because if you went to a restaurant, the parking requirements become very restrictive. Approval of the seating shall be subject to review and approval of the Building Inspector for compliance with the New York State Uniform Fire Prevention and Building Codes.

Now, if you are going to do this outside eating area, you cannot take up existing parking places or required parking places in order to be able to do it. You are going to have to put it some place so it doesn't infringe on the parking because the parking requirements are still there, we are not changing that at all. All we are changing is the 2 definitions to make some more reasonable uses that we find in other communities around us. Basically that is it.

SUPERVISOR FULLER: Okay, thank you, John. Any questions from the Board? Any questions from the audience? Okay, I will ask you...

ATTORNEY KAPLOWITZ: May I ask a question? John...

SUPERVISOR FULLER: Are you the audience?

ATTORNEY KAPLOWITZ: I am the Board. How many square feet is occupied by... let's say, 4 people sitting around a table? I don't know the answer, I am asking you.

MR. FLANIGAN: It could be 60 square feet for a 4 seat table. That's what the building code allows, 15 square foot per person.

ATTORNEY KAPLOWITZ: Thank you.

MR. FLANIGAN: So, that is quite restrictive in itself.

SUPERVISOR FULLER: Yes.

MR. NOZIK: Who is initiating this proposal?

SUPERVISOR FULLER: Basically, some of the people in the community have asked about it. We have heard from some businesses but mostly people that go to other areas to dine out, come back and speak about how nice it is to go to other communities where they have outdoor dining. Saratoga has been cited to me repeatedly, Stuyvesant Plaza.

ATTORNEY KAPLOWITZ: Technically, in a more specific sense, the Building Inspector is recommending it, I think.

SUPERVISOR FULLER: Yes.

Obviously, there must be a provision for...

SUPERVISOR FULLER: If you would please identify yourself, come to the microphone, for the record.

ATTORNEY KAPLOWITZ: John, what's his name.

TOWN CLERK NEWKIRK: It is a public hearing, we need it.

MR. LA FORTE: Right. John LaForte, 153 Dumbarton Drive.

TOWN CLERK NEWKIRK: Thank you.

MR. LA FORTE: I have a question along the lines. I presume there will be some way of prohibiting the eating areas occupying conventional walkways, sidewalks. Is that right?

MR. FLANIGAN: All those things still apply.

MR. LA FORTE: Fine. Sounds like a great idea.

SUPERVISOR FULLER: Yes.

MR. ZENO: John, mentioned that several businesses.

SUPERVISOR FULLER: May I have your name please?

MR. ZENO: Doug Zeno.

TOWN CLERK NEWKIRK: Come to the mike please.

ATTORNEY KAPLOWITZ: Doug, you have been there before, so you ought to be used to this.

MR. ZENO: I am getting tired with it.

SUPERVISOR FULLER: With a public hearing we have to have everything recorded.

MR. ZENO: Right, Doug Zeno, 21 Adams Place. John mentioned several businesses had made requests, could he name the businesses please that had made requests in the past in the Town. Could he name them?

MR. FLANIGAN: Mr. Subb is number 1 right off the top. That was the one that went to the Zoning Board of Appeals. The fish store at the 4 corners, the Ocean Deck. The Java-Jazz has made requests. There have been quite... several. And, most of them are told they can't do it because of the requirement that is in there that says you can't eat other places on the premises. That is the main point that we are looking at here.

MR. ZENO: John, what did you... did you take into account that all along Delaware Avenue we're bordering residential zones and there doesn't seem to be anything in here, written into the proposed ordinance that would protect the residential zone. And, what... and I would feel that you would... you know, before we would even consider something like this, we would look into the impact of you know, of what would happen to the residential zone with something like this and I would like to get some input from John as to what he has looked into as far as that goes.

MR. FLANIGAN: I have looked at the areas and I have looked at the zones and I am well aware of where the zones sit along Delaware Avenue in different areas, but we are not just talking about Delaware Avenue, we are talking about all the zones in the Town of Bethlehem where restaurants and retail uses would be permitted. There are some constraints that could be kept to keep them away. That's why the hour was put in it and that's why the square footage was put in it. Most of the places that we have are very small. So, the outside areas would not be very... you know, big areas. I also used some of the criteria that was done when Mangia was done which went to the Zoning Board of Appeals and also Bruegger's Bagels when they went for

their outside seating and I have been watching those and seeing how they work and they work very well. Your chances of having a very large situation where it is a continual thing with the weather conditions we have here and the short season we have for that, I don't think it is a major point but that's up to the Board to make that determination.

MR. ZENO: Well, John, the thing is is that when the weather is good is when people that are in the residential zones want to enjoy their property also. So, I mean sure if it's raining out or we got a snow storm or something like that well the people won't be out there, that's great. Neither will the people that live on their property be out there, you know, barbecuing or trying to enjoy their property. I just wanted to know, you know, really, there is a real concern on my part that it doesn't seem that we have really looked at the impact of that. When you talk about places like Wolf Road and you talk about places like Stuyvesant Plaza, well, what residential is bordering them? You talk about Bruegger's, what residential, you know, is impacting the front of where that is? So, I think that even before that... this would be considered, I would like to ask that a panel of people in the Town, residents of the Town, you know, get together with people from the Chamber of Commerce, businesses and get together and really, you know, do a job as far as coming up with a proposal that would protect all parties concerned. We like businesses in the Town, yet we want to support businesses in the Town but also, we live here and we'd like to see our properties kept up and you know, why would a person... if we are going to start this taking away at...

SUPERVISOR FULLER: Mr. Zeno, I hesitate to interrupt you but I need to get back to the topic this evening and right now, it's questions only.

MR. ZENO: That is the topic. We live here, we pay taxes here.

SUPERVISOR FULLER: I understand that but there is many people here...

MR. ZENO: There wasn't much contact, you know, of the people in the Town. There wasn't any article about how this was going to, you know, come about or anything like that. So, I think it is very important that we do something like that. Thank you.

SUPERVISOR FULLER: Questions from anyone else?

MR. MANCUSO: Jim Mancuso, and I am at 15 Oakwood Place. I would like to second Doug Zeno's concern about how the study of this proposed change would affect residential properties. There is no mention at all of that in the proposal and there is a term there called... term there says excessive noise, who is going to be the judge of excessive, how does that get determined? As I understand it, the Town of Bethlehem has no noise ordinance. If you were sitting at the corner of Adams Place and Oakwood Place you would be treated every evening to the dozens of people come by with their stereos trying to drown out whatever I have on my radio. And, I have no way of determining what excessive noise would be in this suggestion since there is no such thing as a noise ordinance as I understand it in the Town of Bethlehem. So, I think that these 2 issues should be very, very seriously considered.

SUPERVISOR FULLER: Thank you.

MR. ROWLANDS: Good evening. My name is Tom Rowlands and I am the owner of Seattle Sub and Pita Company, Java Jazz Cafe in Main Square. I don't think it is any secret that I'm one of the people who is very interested in seeing this kind of change made to our zoning law. I am here to speak in favor of the change in definition to enable restaurants in the Town of Bethlehem to create these outdoor dining areas. I cannot even begin to describe to you how difficult it is for independent restaurants to survive these days in both the Capital District and throughout the nation. The ever increasing presence of national chains makes it extremely difficult to compete and to eek out a living. I have invested and reinvested in my space in Main Square in hopes of finding the right mix of product and atmosphere to attract a large enough volume of people to survive. Delmar because of its geography alone is a very difficult

place to do business. We are in a community that must rely strictly on our own residents as our customer base unlike Latham or Colonie or Albany we do not have shoppers or commuters or residents of other communities traveling through our community on their way to the mall, or the movies or to work. If we are to survive on our limited market, we must be allowed to provide the amenities that our neighboring communities and competitors provide. If you look at any of the communities in the Capital District or if you travel to almost any destination outside the Capital District, you can see numerous examples of outdoor dining successfully existing side-by-side with the residential neighbors. Indeed, that's where most of it in the city of Albany occurs. Outdoor dining has been recognized nationwide as one of the key ingredients in the revitalization of business communities. We even have a few right here in Delmar as John Flanigan mentioned, a few variances were given and the record from the Mangia variance shows that 30 of the residential neighbors went on record opposing that variance. And, it is my understanding from the people who I have talked to that not one of those residents has complained in the many years that Mangia has been built to Town hall. I couldn't find anybody that knew that there was one. And, as John also mentioned, in the northeast outdoor dining is very short seasoned. Here it is the middle of May and we have only had a handful of days that people would be happy to be outside. In a few short months, it will be too chilly again to go out. But, this is the time of year, the only time of year, in my case where I make any money and as the saying goes, make hay while the sun shines. It is difficult for the Town Board, I know, to make decisions in cases such as this that on the surface appear to be pitting the business community against the residential community. And, I have empathy for your predicament but should you be hesitating to support this because of some of the residents are fearful of its impact, please realize that its passage does not mean you have given the business community free reign to be abusive to their neighbors. I for one, will do everything in my power to eliminate any disturbance my operation may unwittingly inflict on my neighbors and I think the record would show that most businesses in this close community have a history of the same kind of cooperation. But, in this case, if we don't cooperate there is nothing to stop this Board from establishing any number of regulations in the future that could easily address any specific problem that could arise. The City of Albany revised and put forth pages of regulations years after they had an outdoor ordinance mostly to control the late night bar situation in their densely populated areas. So, I ask you please have the courage to bring Bethlehem into the 21st century by passing this zoning change in its present form and please have faith in the business community's ability to maintain good relations with its neighbors. Thank you.

Applause.

MR. NOZIK: Did we move to statements yet or are we still on question and answer?

SUPERVISOR FULLER: Yes, I would like people. I asked for questions and there were only 2 hands went up and Mr. Zeno was the their hand so questions are over. It is time to speak in favor or in opposition. Come to the mike.

MR. NOZIK: Okay, thank you. I am Steve Nozik. I live at 19 Adams Place directly behind Main Square. I want to thank Mr. Rowlands for his candidness because I think basically we are here at the request of Main Square, we and some of my... when I say we meaning my neighbors were here in front of a zoning board meeting last summer dealing with the same question which was turned down and I think we are here dealing again with the same issues and being portrayed in another way. And, I guess one of my concerns is that this issue is being portrayed as a majority type of issue because I think there are many good people myself included who like the idea of outdoor dining. I don't think any of us are against the concept of outdoor dining per se. The problem here is that Main Square is constructed right next to a number of residences and this is the situation in the Town of Bethlehem, particularly on my street on Adams Place, is not comparable to Stuyvesant Plaza and is not comparable to the situation on Wolf Road. And, I think that the effort to portray this as a majority issue, even though there may be a lot of people in favor of

this idea, is ingenuous. I don't think that it's okay to create a public disturbance for some Town residents even if there are a lot of other Town residents that are in favor of it. And, I think that the kindest thing that I could say about this particular proposal is that it is inconsiderate of the residents that are living right next to Main Square. Now, I don't think that the Town government would ever allow an ongoing public disturbance in the nature of continuous loud party yet we are being asked to allow perpetual dinner party during the warm weather months until 10 p.m. each night... which is going to be right next to my home and the home of my neighbors. And, there is no noise ordinance at all, there is no way of enforcing this. When we went through this discussion last summer with the zoning board of appeals, it was noted by a number of zoning board members that already the situation over there is quite noisy for the residents and what was being proposed at that time was outdoor music and what is being proposed, at least as written up in the recent Times Union article is that 40 percent of the indoor dining space be put outside. Now, this is the potential for a lot of noise. I really think that this is quite a serious issue. Also, while I have nothing personal against Mr. Rowlands, I don't know him at all, I think that the facts of the matter are that the management of Main Square has broken commitments right along since the beginning of the... of Main Square going up. They have broken commitments with provided adequate site screening. They have broken commitments with keeping lights low and having them off early in the evening and if anybody has any doubts about this, I invite them to come over to my property and to view the situation and tell me whether they think that that is an adequate type of site screening or whether or not the lights are low in the evening. So, you know, what good is the word... even if people are well intentioned right now and they're... they have good intentions, what to prevent some future ownership turning over from adding a sports bar or adding a rock 'n' roll bar and changing the location to a noisy type of situation. Now, it is my opinion that the Town has an obligation to protect residents, as well as, to try to do well by businesses and I think it is your obligation to try to protect neighborhoods and my neighborhood from continuous noise by ensuring that there is peace and quiet. And, I think that the proposal of this amendment would lead to a result which is inconsiderate to me, to my family and to my neighbors. And, I think that it ought to be rejected. And, my attorney also has some words that he wanted to say about this.

Applause.

MR. MOORE: Thank you. I am Michael Moore, I am here on behalf of Mr. and Mrs. Nozik. I am also a resident of the Town of Bethlehem by the way. What I would like to propose on behalf of my clients is the following: that you not pass this amended ordinance. You leave the system that you have now in place with the current definition because quite frankly ladies and gentlemen, it's working. Or at the very least, you respond to the concerns that have been raised this evening and leave the current system in place for any restaurant property which is proposed to be located within say 100 feet of a residential zone as the Main Square property is. In light of Mr. Rowlands comments, I just want to touch briefly on the newspaper article that appeared in the Times Union last month on this article where he is quoted as saying, 'I've got my plans all drawn up'. I sincerely hope he was just being a little presumptuous. But, there is indeed a history to this matter which the Board may be aware of but I would like to briefly bring to their attention. As Mr. Nozik mentioned, last year, Dennis Corrigan doing business as Main Square Management made a variance application to the Town Zoning Board of Appeals to allow outdoor dining at the 2 facilities in Main Square. That matter came up before the Zoning Board of Appeals, in July there was a public hearing and then at a board meeting later in July the board made the following statements as reflected in their minutes. 'There are concerns considering the noise near the residential neighborhood. Conditions required for granting a use variance have not been met. No financial hardship has been shown by the applicant.' Those findings of the zoning board were later memorialized in a resolution of the Board which issued on August 6th which again, if I may, quote from the following Findings of Fact. 'The owners of the restaurants were not present at the hearing. The Board notes that even though a large petition in favor of the decks

was presented, most of the signatures were not from the immediate area of the proposal. There was opposition to the proposal by a group of adjacent neighbors. They raised the point of additional noise and disruption to the enjoyment of their rear yards that about the area in question.' Conclusions of Law 'The Board determined that the burden of proof on the applicant's part for a use variance had not been met under Section 128-100 of the Code of the Town of Bethlehem. There was no proof of a clearly demonstrable hardship. The granting of the use variance could be injurious to the immediate neighborhood by the additional use and noise generated. Additionally under Section 267b.2 use variances of the Town Law, no proof was presented that the applicant could not realize a reasonable return without the decks and that the situation at the site is unique' and the variance was denied. Again, ladies and gentlemen, that is not me, that's not my clients, that's the Town Zoning Board of Appeals less than a year ago. Nothing has changed in the interim.

How does your current system work at present? Well, we made a Freedom of Information request to the Town recently seeking information on all of the request for variances from the restaurant use definition and what we have been told in the documents that have been provided to us is that there have been 4 requests in the last 8 years. These are formal requests. Whatever other requests may have been made informally, I am unaware of. But, these are 4 formal requests for a variance from that restaurant definition. Two of them were granted and 2 of them were denied. The 2 that were granted were for the Bruegger's restaurant/bagel shop in Delaware Plaza and the Mangia in Slingerlands. The 2 that were denied were a pizza parlor, Gibby's in Glenmont and the Corrigan Main Square application of last year. From those facts, ladies and gentlemen, I conclude again your system is working just fine. It's not broken. Those restaurant owners who can demonstrate that they can operate outdoor dining in a way that doesn't interfere with the quality of life of their residential neighbors will get their variance. And, those who cannot, will not. And, that is the way the system is supposed to work. It takes care of everybody. It protects the businesses, it protects the residences. If it ain't broke, don't fix it.

The 2 that were granted, again, a Bruegger's and a Mangia... if I can just briefly talk about those, I am sure you are all familiar with where they are. The Bruegger's is in Delaware Plaza. Delaware Avenue at that point is a 4 lane highway. The nearest residences at that point are on Euclid Avenue on the opposite side of a 4 lane highway. And, on each corner of Delaware and Euclid there is a bank. Heading west on Delaware, there is a bank... another bank and a professional office building and then you come to Plymouth and there are houses on Plymouth. But, the backyards on Plymouth don't but up on the Bruegger's facility. They back up on the back end of the Delaware Plaza shops. No outdoor dining there. There are 4 tables that I counted the other day at the Bruegger's facility. Three of them face on Delaware and one is sort of around the corner facing into the plaza. Bruegger's is, I think it is safe to say as well, not an evening or dinner establishment primarily. It caters to a breakfast crowd and a lunch time crowd. If everyone of those 4 tables were full at any given time and all the patrons at those tables were shouting at the top of his or her voices, it's very doubtful that anybody on either Plymouth Avenue or Euclid Avenue could hear them simply because of the noise of the traffic on Delaware Avenue that's always there. Similarly with the Mangia, it is at the intersection, as you know, of 2 pretty busy roads -- New Scotland Avenue and Kenwood Avenue. There is also a Conrail line there. Directly across the street we have the Tollgate restaurant and an insurance building. Heading back into Albany on New Scotland you have again a fire house, the Village Deli and the nearest residences are quite some distance away. Again, on the other side of the tracks. Going back down Kenwood, you come again to a couple of professional buildings, a hair salon I believe is there and there are some houses on Grove Street. The backyards of those face up on the parking lot of the Mangia but the dining area in Mangia is out in the front of the building facing on New Scotland Avenue. And, the nearest residences to that dining area are further out on New Scotland, again shielded by the corner of the building of the restaurant.

COUNCILMAN DAVIS: I believe there is an apartment building right across the street.

MR. MOORE: That is correct. I believe that is correct as well. Doesn't look like it is fully occupied to me but there is an apartment building.

COUNCILMAN DAVIS: That is residential of sorts.

MR. MOORE: But, again, ladies and gentlemen, neither of these situations are at all comparable to the situation that my clients find themselves in where their backyard... where their backyard ends, the parking lot of Main Square begins. And, the only thing separating their property from these outdoor facilities at Main Square if they were to be permitted, is a few feet of asphalt in a parking lot. Nothing at all comparable to the situation of the 2 facilities that have been permitted by this Board in the past.

Again, the system is not broke. There is no need to fix it. Leave it in place or exempt facilities or require facilities like Main Square that immediately about residential properties to go through the burden of proof that they are now required to go through and which these very same facilities in Main Square, last year, failed to prove. Thank you.

Applause.

MRS. CAPONE: I don't need to ask, I am positive you all drove at Main Square at 9 o'clock at night and saw all the excitement. When Dennis built Main Square he put a wall of trees and a fence. That's what's between the neighbor and the parking lot. At the same time, hey, life has changed, it is time to do something til 10 o'clock at night with no music, I don't see why you wouldn't do it. They have lights, somebody told me recently do you mind the light Bruce Secor put there. I said I love it. When I come home late at night, I can see people before they see me. When I get up at 2 o'clock in the morning, I can see what is happening there. There's something to have light in your neighborhood. Thank you. I am in favor of Dennis.

Applause.

MR. KELLY: Hi, my name is Mark Kelly. I live on Furman Place in the village and I also have the privilege on a daily basis to operate 2 businesses right here in Delmar. Not coincidentally, they are both located in Main Square -- one is named Kelly Mordecai and the other is called Dura-turf Sports Surfaces. As Kelly Mordecai we have an opportunity to market a consulting firm and we have an opportunity to travel all over the nation. We get a chance to go to small communities. We get a chance to go to large cities. And, we have opportunity first hand to observe just how well this sort of outside dining environment can integrate in a community when properly planned. It works. First hand experience will also tell... I can tell you from first hand experience years ago I was a resident of Willet Street in downtown Albany, my apartment -- first floor apartment -- was backed up very, very close -- as close if not closer to these fine residents that have to deal with the situation on Adams -- to the outdoor dining at the Beverwyck restaurant. Much larger, much more boisterous and it was really not a problem.

The beautiful thing about democracy is that it gives us an opportunity to adjust and readjust and take into account situations that do get out of control so we can pull them back. In this particular case, I have to speak in defense of Dennis and Tom Corrigan, these 2 gentlemen operate a first rate, well managed, immaculately clean, incredibly sensitive environment there. We would not do business if that were not the case. We also have the advantage of having people from all over the country because our client base is national, come to us from time-to-time and visit our offices and have always remarked, gee, why don't you have an outdoor place we can grab a sandwich? And, we scratch our head and as Einstein once said, there is nothing in life so complicated it can't be explained simply, except when you have to try to explain why in the Town of Bethlehem we don't have outdoor dining. Then it becomes fairly complicated. This is a very simple matter. At 10 o'clock, no

music, we don't need committees, we don't need groups of people getting together. I think if we went out as a professional poler and marketer and asked the majority of the people in the Town of Bethlehem, is this a good idea, the overwhelming majority would say yes.

Now, to this gentleman's point -- this gentleman's point, democracy exists for the overall majority. There will be cases from time-to-time where if this gets out of control, it will have to be dealt with and as Tom Rowlands, so accurately pointed out, this Town is empowered to come back and revisit it and deal with if it gets out of control.

The other last point that I would like to make in closing is that one of my downsides is that I work an extraordinary amount of time in my businesses meaning that I am at Main Square usually by 7:30 in the morning and I am there many times on the weekends and many times in the evenings. This is not an out-of-control environment. As a matter of fact, when indeed, certain groups of rowdy kids may get together and decide to cause a problem, the first people on it the next morning are Tom and Dennis Corrigan. The first people they talk to is usually Tom Rowlands saying hey, can you clean this up if this is a problem if it's related to you, it may not be related to you or not. No skate boarding signs. I mean they control that environment. Now, overall what we are talking about is changing an ordinance for an entire Town and so we can't continually focus and try to pin that somehow the Corrigan's are running a shabby operation when, in fact, we all know they are not. Overall this Town has got to step forward and got to step into the next millennium and realize that all over the nation communities large, communities small enjoy this. It does work. This doesn't need to be analyzed and in Einstein's case and to get back to that quote, this is very simple. We should do this. Thank you.

Applause.

SUPERVISOR FULLER: Thank you.

MRS. CAPONE: I inquired the Police Department they said they have next to no complaint about Jazz time.

GENTLEMAN: Marie, we'll sell you our house.

MRS. CAPONE: I don't want it, I love where I am.

GENTLEMAN: That's right.

MRS. CAPONE: That's where I am going to die.

SUPERVISOR FULLER: Excuse me. Please.

MRS. CAPONE: Crossing the street from here.

MRS. DELANEY: I am Marty Delaney. President of the Bethlehem Chamber of Commerce. I just want to take a quick second to say thank you to the high school students that are here this evening. You are all awake, right? Please don't let this be the last Town Board meeting that you come to and I don't necessarily mean in Bethlehem. Continue to do this as you get up into my age group. I think you are going to find it a very worthwhile experience. Don't be afraid to speak up even if maybe you are, at something like this. I really applaud you for being here tonight and staying awake. Thank you.

We believe this proposal the Economic Development Committee of the Bethlehem Chamber of Commerce, believes this proposal as written by Building Inspector, John Flanigan, will help the businesses in our community without having a negative impact. This is a very positive step by our government toward eliminating the perception that Bethlehem is unfriendly to business. Tonight we want to thank the Town Board for addressing these issues. We fully support this proposal as written and we applaud your continued efforts to ensure that our business community can compete with our neighbors. We look forward to working with you and the residents of our Town to protect our special quality of life that we have here in the Town. While at

the same time ensuring that our local businesses not only survive but thrive in the Town of Bethlehem. Thank you.

Applause.

SUPERVISOR FULLER: Thank you, Marty. Excuse me I don't want to let you speak right now until we get... everyone has had the opportunity. If you don't mind. Is there anyone who would like to speak?

MR. MANCUSO: I was asking a question before, now I want to speak.

SUPERVISOR FULLER: I am sorry, you're right. I am very sorry.

MR. MANCUSO: I want to compliment the young people who are here tonight too. It's such a pleasure to see you here. We are so happy that you have come here to participate in Town government. So, you get our side complimenting you as well. Thank you very much for being here.

We're being asked to change a Town ordinance. We are not being asked to approve whether this business should have outdoor eating. We are making a major step over a small matter, as they keep telling us a small matter. The attorney tells us that the system has worked so far. Now, we're all for outdoor eating. I love to go to Europe and sit outside. It is just marvelous to do that. We all know that is not the 20th century, not the 21st century but the 14th century. They did it in Italy on the piazzas in the 14th century. So it's not the 21st century. We are not going into the 21st century, we are going back to the 14th where we belong. Now, if I were a businessman, however, I would want to look very carefully at the business of starting outdoor eating. And, if I were sitting on the Town Board, I would want to know whether doing this -- changing the ordinance for the case of one -- is really going to promote business as the Chamber of Commerce tells us it is going to do. Now, there have been many, many studies of environmental reaction and there have been many places where they have built public spaces for people to use that people never use because they are not adapted to it. And, one of the keys to using public space adequately is that people like to be in a place where they are looking out at action. Now, both of these places that were giving back, this is Mangia and Bruegger's, the people are sitting there looking out at action. Now, again, if I were part of the Chamber of Commerce and want to promote business, I wouldn't want to promote a risky business of a restaurant having an outdoor eating place that faces on somebody's back yard. I am not sure that is going to work and I certainly wouldn't want to change a Town ordinance over a risk business that might not work anyhow. So, I don't see why we are talking about helping business or promoting business. I don't think that that is the issue. The issue is do we want to change a Town ordinance that has been working because one person comes before the Board asking for this to happen. That's the issue. It's not a matter of one person or supporting business or not supporting business and I kind of dislike the tone of accusing the people who are objecting to this being aimed at them like they're not being friendly to business. And, somehow those people are part of the problem of the Town of Bethlehem not being friendly to business. I... I kind of resent that tone.

Applause.

SUPERVISOR FULLER: Mr. Mancuso, you have spoken in opposition of what is in front of us tonight?

MR. MANCUSO: Yes. Yup. Definitely in opposition, changing the Town ordinance because of some particular case.

MR. TISHMAN: Hi, my name is Jeff Tishman. I live at 8 Oakwood Place which is directly opposite the north entrance to Main Square. I have been living there for about 7 and 1/2 years now. What I would like to do is formally voice my opposition to the idea of having an outdoor eating area in the back portion of Main Square opposite Mr. Nozik's property. As far as I am concerned, the buffer there is just too small. The distance between a residential area and a commercial eating establishment is not sufficient to properly provide protection

for the residential area. In the 7 and 1/2 years I have been there, I've had myself awoken many times at 3 a.m. by snow removal equipment. I've had the barking dogs from the pet grooming facility that's recently opened at Main Square. And, now I am finding out that I'm going to have my life disrupted again by an eating establishment. My idea is not so much opposition as maybe compromise. If you want to have an outdoor eating portion for a restaurant that is currently at Main Square, why not have it face Delaware Avenue and not a private residence... Thank you.

Applause.

SUPERVISOR FULLER: Yes. If you would please come to the microphone in favor or in opposition.

MR. BLANFIELD: My name is Mickey Blanfield and I'm the proprietor of Beff's. First of all, given any of the opposition that has already been set forth, it wouldn't even affect us. So, I would like to... in Mr. Rowlands defense speak for him. What I would like to say...

SUPERVISOR FULLER: I think we need to get back to focus on this is not Main Square, this is not Mr. Rowlands, this is not the Corrigan's -- this is the Town issue.

MR. BLANFIELD: I think it should be passed then. The businesses in this community have a very tough time competing. Any business that is in Delmar, survives on Delmar people. Ten years ago, given the attorney's position, 10 years ago, no attorney would pursue say a personal injury case but yet times have changed and now attorneys find that they have to go after personal injury to survive, to make money. Any restaurant here, 10 years ago maybe an outdoor patio didn't matter but with the influx of the Outbacks and the Macaroni Grills and the Olive Gardens, these small independent restaurants in Delmar need to get to the 20th century, need to compete and one way to compete is to allow the passing of this variance to allow the passing of these outdoor patios. And, there should be a proof... burden of proof should be on the people but it should be given the chance to prove them wrong, that it won't work rather than to automatically say they are wrong and never give them a chance to survive.

Applause.

MRS. NOZIK: I am Debra Nozik at 19 Adams Place and obviously you don't have to guess what my position is on the situation. Delmar is a very unique kind of community and my husband and I have lived here since '86. So, we have been around for a while and we really love this community very much. We are very in favor of business. We use the businesses here constantly and have a lot of really positive feelings towards them and I can understand the role that you are in because you are riding a very fine line here between trying to think of what is best for business but I really implore you very, very much to think that we are also a unique community. We are not Colonie. We're not the City of Albany. We're not Latham. Okay, we're Delmar and if a huge strip that's parallel to Delaware Avenue which is Adams Place and Herber and... we're talking hundreds and hundreds of homes, okay, and we are all parallel to Delaware Avenue. If you change this ordinance, we don't know what is going to happen 1 year from now, 5 years from now, 10 years from now, 20 years from now in terms of what kind of businesses want to open up along Delaware Avenue. Big question mark, we don't know. Right now the laws protect the residents. You do away with the current ordinances, who knows what is going to happen in the future. Right now everybody may be in good faith, although as my husband said, right now we have some difficulty with conditions as they are. But, if you do away with the current ordinances who knows what is going to happen in the future. I don't want to sound like an alarmist or party pooper but you just don't know. .... whatever, drinking, whatever. You don't know. And, there's no noise ordinance to protect the residents currently and there's... can't keep sending the police out using up their good time. So, please take this into consideration. Thank you.

Applause.

MR. O'SHAUGHNESSY: Hi, my name is Dennis O'Shaughnessy from Glenmont. I am in favor of this bill as far as John Flanigan setting a limit at 40 percent. I don't feel that there is a large enough eating establishment in this Town where the 40 percent is really going to affect too many people. I know that when my wife and I go out to dinner, too, we normally look for a fairly quiet place to go to. If I want a loud time, maybe I'll go to a Bethlehem football game or the Giants or something like that. When I grew up and I was involved in sports, I was told that there is no 'I' in the word 'team'. Well, there's also no I in the word Town and I think that we have to look at the overall Town rather than small, small areas. As far as Delaware Avenue and people living around it, I feel that there's a little bit of an obligation that the people have to have and I feel that when you buy a house next to commercial property, next to light industrial, I think you have to realize that some day those different things can happen and change in those properties. I know if you buy a house and next door to you happens to be some agricultural farm land, I don't think later on you can complain when you smell manure. So, I think you have to investigate the area that you are moving into and...

GENTLEMAN: ... were there before Main Square was built.

MR. O'SHAUGHNESSY: And, you have to go along with that. But, I am in favor of this. Thank you.

Applause.

MR. MC CAFFREY: My name is Kevin McCaffrey. I am the General Manager of Beff's at the 4 corners. I've lived in this Town off and on since 1962, which gives me, I think, a little bit of a right to speak from the progress the Town has taken in those years. When I first moved here, I lived in Glenmont. It was farm land, it was nothing. I mean, there was a gas station with 1 stall and the post office was in the same building. Time goes on, things progress. Look up and down Delaware Avenue, what you people are talking about is allowing the change to come in with the money and the fortification to fight and get the outside dining. And, you are eliminating the small businessman who doesn't have maybe the time, the money, the equipment, and the stuff to fight against a variance and to spend the time. If this variance or this ordinance is not passed tonight, you might as well just forget about it because the season will be over by the time it is done. We are talking May, June, July, August. By the time you go through the policy, you have to apply for outside dining in November in order to possibly be opened in May or June.

MR. ZENO: Why didn't you?

MR. MC CAFFREY: I did and I had it all planned because I found out we were going to have this ordinance, so I didn't. So it saved me money.

MR. ZENO: Yes, but that is your problem...

SUPERVISOR FULLER: Excuse me, if you would...

MR. MC CAFFREY: Well, it is also my right.

SUPERVISOR FULLER: ...you need to address the Board, please.

MR. MC CAFFREY: Well, I am sorry. He was asking me questions, I was answering him.

Our business over the course of the summer goes down 20-25 percent. I have the facts, I have the figures to prove it. The reason it goes down that much is because people go to the decks, to outside dining, to places other than Delmar.

LADY: On vacation.

MR. MC CAFFREY: Some go on vacation, that's true. But, there is a lot of businesses that have outside dining whose figures go up 20 and 25 percent with the same people being on vacation or not being on

vacation. I am in favor of this ordinance. I think it helps the small independent restaurateur. I think it helps us compete with the chains, with their fortifications and their backings and it gives us an even shot.

Applause.

MR. RHODES: My name is Dave Rhodes. I live on Pineview Avenue, so I am not right next to Main Square but I am a part of the neighborhood and I've lived on Oakwood Place in the past. I am going to suggest a compromise as well. I think one thing you could consider is rather than using the gross area of the existing restaurant space, you consider just the dining area. Another thing that I think you could consider, I think it is clear from tonight's comments that the point of contention is not anywhere in Town other than areas where the residential property abuts commercial property and at this point, that's confined to Main Square but we don't know that that's going to always be the case in the future. I think what you can do is simply make an allowance for the fact that that situation is going to occur and take into consideration the possibility that property values of the residence in those areas could be affected. Now, I don't have any figures and I don't know that anybody else does either as to the impact of this on property values but obviously it has an impact on the quality of life of these residents or they wouldn't be making the comments that they are making. I don't think we have any cold hard facts on how much this type ordinance would benefit business, so you really don't have cold hard facts to weigh against each other. You really don't know whether the interests of the... of property owners are going to be more damaged if this is passed or if the interests of the business people are going to be more damaged if it isn't passed. So, that being the case, I think you have to consider the fact that the neighborhood has been their for a long time. Neighbors, certainly and homeowners have a right to protect their property values. We don't know how long the businesses are going to be around but it would seem to me, just as a general impression, that businesses come and go more frequently than residents do. So, at any rate, my point is this, if this is the problem area, why not simply restrict outside dining to a certain distance from a residential area, whatever distance you think is appropriate and I think that would make everybody happy. So, that's my suggestions.

Applause.

MS. LANG: Hi, my name is Kate Lange. I would like to speak in favor of it. I eat outside with my family all the time, like on my porch, and we laugh and we are not rowdy, we are just having a good time and none of my neighbors have ever complained. I guess I just think it is a shame when family and friends and laughter have become a nuisance instead of a joyous noise that people are happy to hear in our Town.

Applause.

MS. FINKEL: I am Melanie Finkel and I agree with Kathryn.

MS. LUBER: I haven't spoken yet.

MS. FINKEL: Well, she is here too. I agree, we definitely should have the outside eating because I just like to point out, how often are young, rowdy kids out eating by themselves at 10 o'clock at night anyway. How much noise can you make at 10 o'clock? I mean, obviously, if you are out after 10 o'clock at night by yourselves, you are either old enough to behave yourself or you're not going to be eating out. So, I think it would be okay. Thanks.

Applause.

MS. LUBER: My name is Kathryn Luber and I am a senior at Bethlehem Central High School and I just like to say first and foremost that I think that there should be outside eating allowed outside there because I hear a lot of people saying here that... concerned with the improvement of business and all that but I think one of the main concerns should just be like having the Town be more fun. I mean,

for... students, I mean, summer's not exactly the most exciting place obviously ... here and...

Applause.

MS. LUBER: ...and for students, I mean, even the slightest bit of excitement in this Town would be muchly appreciated. And, I really don't think... a lot of people are talking about the noise and the noise ordinance and all that... well, ya, you would have to change that and you would have to take a big step but isn't that what... taking... making risks and doing things... I mean isn't that what everything is about? In order to change something, you are going to have to take big steps. If you take little steps, you are not to get a change. You are not going to get what you want. And, what else was I going to say... also, for the noise involved, we are not talking about putting in a Manhattan... like, club here, we are talking about a little outside eating area. We are not talking about a lot of noise involved and I think 10 o'clock is pretty reasonable hour to have... and someone said, I am not quite sure who it was, address the fact that if someone shouted at the top of their lungs outside in Delaware Plaza you wouldn't be able to hear it because of all the traffic going by. Not really, how much traffic is there on Delaware Avenue at 10 o'clock at night? I mean, I really don't think that there is that much traffic going by and I think it would actually make this Town a little bit more fun and like jazz it up a little bit. You know, just have a little eating area and... we are not talking about that much space.

Applause.

SUPERVISOR FULLER: Thank you. I would just like to mention that our high school students, it's called participation in government class are here with us at every meeting, different group of students but comments tonight on the outdoor dining were almost as exciting as the debate over parking on VanDyke Road. So, I do appreciate all your input, students. Thank you.

MR. D. CORRIGAN: I am Dennis Corrigan, I guess I am the bad guy of the hour and I apologize I don't have a bullet proof vest on my back. I'd also like to thank the high school kids for coming in, especially since you support our position.

I had some prepared statements to make, however, and I am sorry that this has deteriorated into Main Square versus the neighbors because it truly is a much larger issue. But, I jotted down a few comments that I did want to respond to relative to some of the neighbors comments and I offer them in no particular order. One is that it is important, I think, to understand that the way our current ordinance works and I address these comments to the attorney... we did not have a showing of hardship when we went before the Zoning Board of Appeals last year and frankly, that was my error. I didn't understand the process, it's the first time I have gone through it. Perhaps Mr. Rowlands or some of these other businesses who are here tonight who have some concern about the health of their business, should have been the applicants rather than myself. But, the way it currently works is the only way you can get a variance in this Town from something like a restriction against outside eating, is to prove that your business is unhealthy which seems to me convoluted and backwards from what we would want. Why would we want to allow an unhealthy business, a weak business from having the opportunity to invest in capital and have to maintain something that might be an expensive operation to build and to maintain when they are in their weakest position rather than say a healthy business who has the capital and the resources in order to say build a deck, maintain a deck, put in proper lighting, properly staff it and so on. The fact of the matter is if you review the record, I think, with Bruegger's and Mangia's, and I am sorry to tell this to this Board, but the fact of the matter is those were improperly improved. A review of the record will show that in both of those cases, there was no showing of a nonself-created hardship which is what I learned last year, the legally mandated test for the issuance of a variance. So, there is no mechanism in this Town for a healthy restaurateur to get outside seating under the current ordinance.

Also, couple comments were made about perhaps restricting the location of outside eating to the street side of these perspective restaurants. Mr. Flanigan mentioned there are approximately 20 restaurants in Bethlehem and I went around Bethlehem and looked at-- and including those who were listed in the phone book and my 48 years in Town -- there are approximately 11 that could not possibly provide any outside eating if they were restricted to the street side of their property. Briefly those are, Seattle Sub and Pita at Main Square, obviously; Alteri's at Main Square; Casa Mia in Glenmont; Alteri's in Glenmont; Toole's restaurant; Mediteranio restaurant; Beff's; Boston Market; the Four Corners luncheonette; Friendly's; and Mercado's. That's 11 out of the approximately 20 that John mentioned that we have in Town. Now, don't presume that I know anything at all about whether these folks want this or not. I am just simply looking at the logistics, the physical logistics of trying to do something if that limitation were put in place. It's not practical. If that were some thing the Board thought was necessary, frankly, we are all wasting our time and energy here tonight.

The other point I would like to make and again, I apologize, these are not in any order. But, I think... I may be wrong here but I truly believe that the statements... the concerns of the neighbors are grossly overstated. A couple of folks sitting out on a deck drinking coffee and eating pitas, whether it be at lunch on a Thursday or a Saturday evening at 6 or 7 or 8 o'clock at night is not something that is going to disturb the neighbors. I just think that if you take the emotion and the exaggeration out of the statements that are being made, a logical and reasoned analysis of the situation would tell you that it just isn't going to happen. This isn't rocket scientists, there is no need for a big study of something as simple as this. We can look at every community surrounding Bethlehem in the Capital Region.

Also there was a couple of comments made and again, I don't want this to deteriorate to Main Square, but I would make the point that we went through... in 1986, went through all of the proper approvals that are required by the Town and we built in conformance with all of the requirements to the Planning Board in our site plan approval and we have operated in accordance with them for 10 years.

The last comment I wanted to make... well actually, it is not the last one, sorry. There was a lot of... this whole thing seems to hinge around noise. Right now there is no noise ordinance in this Town. There is nothing to prevent he or any of the neighbors or any commercial establishment or industrial establishment in this Town from playing music all night long if they want. They can plan it as loud as they want. The only thing... Bernie...

ATTORNEY KAPLOWITZ: Everybody says that but that's not true.

MR. D. CORRIGAN: I know, the only thing that would limit them is disturbing the peace. Am I correct?

ATTORNEY KAPLOWITZ: Well, you can call the police any time you got a nuisance created next door...

MR. D. CORRIGAN: Correct.

ATTORNEY KAPLOWITZ: It's worked in the United States for a 100 years... 200 years.

MR. D. CORRIGAN: Disturbing the peace. The fact of the matter is, this proposal because it places some sound restrictions, some noise restrictions and some time limitations is stricter than the ordinance that we have operated under in this Town since 1947.

ATTORNEY KAPLOWITZ: We also do have some noise restrictions in specific areas but that's let's not even go into it.

MR. D. CORRIGAN: Okay, not an issue here. The other thing I wanted to point out, lastly and this is last I promise, relative to how popular or unpopular is this? When we went before the ZBA there is a requirement that all properties within 250 feet of a proposed... the requester of a variance be notified of that action so they have an

opportunity to come in and to question and to express their support or opposition at the public hearing that the ZBA holds. We had, believe it or not, 42 properties that are within 250 feet of Main Square, approximately half or slightly over half are residential. So, approximately say 20 to 25 residential properties, the rest being commercial. Of those 42 properties, I believe, there was approximately 6 people who came to that meeting. One spoke in favor, 2 spoke in opposition, 2 listened and 1 asked questions. We also came in with petitions from 550 people supporting, signatures... petition signatures from 550 people supporting the construction of the decks at Main Square. They did not all live in Bethlehem. They were not all immediate neighbors of Main Square obviously, but these are all people by definition who either live or work or spend their money and support Bethlehem businesses or do all 3.

The final thing I would say and I guess my last one wasn't the final, is that we should all remember that these businesses need to be healthy. The taxes in this Town are approximately 50 percent paid for by non-residential property owners and I can't tell you how many requests I get but I know Tom Rowlands for 10 years has supported Little League, Bethlehem plays, the printing of middle school play tickets, on and on it goes. Beff's does the same thing. I think that is true for almost every business in this Town. Marty might address the fact, if she's still here. Bethlehem businesses I think you would find are much better at supporting local community programs and sports programs than businesses in any other community in the Capital District. Thank you.

Applause.

MS. CAPONE: Hi. My name is Suzanne Capone. I've worked in Main Square for several years now and Tom Rowlands brought us pitas. It was a concept we had never seen, we were all afraid of. Now, we all enjoy it. Now... that was his contribution to the '90s. Now, he wants to bring us the next step up. He works extensively with the children in the high school age group. He gives to them. He provides the leadership, the parental guidance that most parents don't want to do to these children. Now, we are going to stifle his growth and teach these kids do. We don't want business. We don't want your creativity. We don't want growth. Let him have what he wants and let him prove that it's wrong.

Applause.

SUPERVISOR FULLER: I am going to remind everyone again, this is not about Tom and Main Square. This is about the Town.

MR. GIACONE: Hi, how are you? I'm Jim Giaccone from 12 Sunset Drive, lifetime resident. The owner of My Place and Company and Mr. G's. I just want to say the fact that I am in favor for it and also set the record straight that... although never a formal application, I have inquired a couple times to try to do something for outside, as well as, having conversations with other restaurant owners -- Dan Formica. There is a record, someone said one formal application or a record of 4 for the history. There is a lot of informal ones and I wanted to let you be aware that what happens is -- as an independent businessman you work so hard, 60 hours just to keep afloat and try to keep up and keep up with the times and do what you can, you don't have the time or the energy or the necessary resources or the know how to move forward to get a group together to bring a law forward to get it passed. I think it is a good thing and hope you can see your way clear to hopefully pass it and get by the few minor disgruntlements. Thank you.

MS. VELTMAN: Hi, I am Barbara Veltman. I am the General Manager of My Place and Company. I am totally in favor of this. I have lived in Delmar for most of my life until I got married, I moved out in Coeymans. Being a restaurant manager, this is what I have decided to do with my life. I am not an engineer. I am not an architect. I'm, you know, in order for me to move up I can't just keep being the same old, same old. So, if my restaurant and other restaurants in the Town, not just Main Square, are able to do something to fortify their business that enables me, as an individual, to maintain my family, my relationship, my husband, whatever. Plowing and things like that, I

feel bad for the people at Main Square and I am just going to address because when and if you do approve, which I hope you will, other people will come out and they will oppose it as well because they live in neighborhoods. I think you have to look at the appeal of having outdoor dining. It is very appealing. A lot of places have done it, cutting it off at 10 o'clock is very reasonable. Living right on Delaware Avenue, it is going to... you are always going to have excuses not to do something. I feel the bottom line is that if you look aside of some things that I feel can be kind of trivial and I don't mean to insult people, by letting a small business try to make their way through and grow at times, that you are going to stop at everything. You know, plow trucks... plow trucks go down Delaware Avenue, it's not just at Main Square. It's not just at garages. Noise level... if you are sitting out in your yard, what are we going to start doing calling our neighbors because they are making too much noise? It's talking about appeal and enjoying the quality of life and making it better. And, I hope you do both for us. Thank you.

MS. HAMMOND: My name is Barbara Hammond and I live at 17 Adams Place. And, I would just like to say that I am opposed to this. It seems to have worked in the past, as the lawyer had mentioned, that those who qualify for things got it, those who didn't meet the requirements, didn't get it. And, it doesn't mean...

GENTLEMAN: Would you speak up? We can't hear.

TOWN CLERK NEWKIRK: Tip the microphone toward you, please.

MS. HAMMOND: Okay, sorry.

TOWN CLERK NEWKIRK: That's okay.

MS. HAMMOND: And, I think that you have been doing a good job upholding all the variance and so forth and it should be kept that way. And, I have a question, who is going to decide in this new change what is excessive as far as lighting or music no matter where it is in Town? Not just because I live behind Main Square but who decides what is too much light, what is too much noise? Thank you.

Applause.

SUPERVISOR FULLER: Is there anyone who would like to address the Board who did not have an opportunity?

MR. ZENO: Well, I would just... you were asking questions before. I didn't speak to that.

ATTORNEY KAPLOWITZ: You never asked a question, Doug.

SUPERVISOR FULLER: You guys are giving me trouble again.

MR. ZENO: I mean... that's the way you set these things up, Sheila, what can I do? I can go by what you say.

SUPERVISOR FULLER: No, this is how the public hearings are held, Doug and you know it.

MR. ZENO: No, I know it. I said this is how you set it up, questions first and then for and against, right?

SUPERVISOR FULLER: Yes.

MR. ZENO: Now, I am in for or against part.

SUPERVISOR FULLER: Now, are you for or against now?

MR. ZENO: My name is Doug Zeno, 21 Adams Place. I am against the proposal as it is. I would like to ask a question, how many people here are against outdoor eating? Raise your hand. How many people? There's not one. No, I am not against outdoor eating. What we are talking about... what we are talking about here...

SUPERVISOR FULLER: Doug, I am conducting a Board meeting and there are still a full agenda here.

MR. ZENO: But, what we are talking about here isn't an issue of outdoor eating. You are talking about for and against outdoor eating. No, we are not against outdoor eating. What we are against is the way the proposal is written right now.

SUPERVISOR FULLER: I understand that.

MR. ZENO: Dennis Corrigan talked about hardships and he said that if we came in... if a business came in as a hardship, they could have maybe got this. Wrong. We've got laws set up. A hardship cannot be claimed by a business if the laws are in effect already when they move in there and then there business doesn't work out under prevailing laws and then they say well it is a hardship for me.

MR. D. CORRIGAN: Where did you get your law degree? You are absolutely wrong.

MR. ZENO: That's the way... Well, that's the way it's been working here. That doesn't pass as being a hardship as far as the proposal.

SUPERVISOR FULLER: Doug, if you would please address the Board as to your in favor or opposition, please? We are not debating the issue.

MR. ZENO: My opposition here is the way it's proposed right now is that there is nothing here that has... there is nothing that says about noise at all in this ordinance. Is there anything in here, John, that talks about noise?

MR. FLANIGAN: It talks about excessive noise.

MR. ZENO: Where? What's it say?

SUPERVISOR FULLER: Excessive outside lighting or music shall not be allowed.

MR. ZENO: It says... John, proposed it...

TOWN CLERK NEWKIRK: Doug, please put the mike back so it records and stays there.

MR. ZENO: Well, I am trying to hold it here so I can move around and look at the people's eyes when I talk to them.

TOWN CLERK NEWKIRK: But you are not supposed to. Doug, you are addressing the Board, please.

MR. ZENO: What I am saying... here it says, ah, what they are calling this thing is public eating place where food is served within the building and served largely if not entirely at tables or counters. Outside dining and eating is permitted for seasonal use up to 10 p.m. The outside dining area shall be no larger than 40 percent of the inside gross area. Excessive outside lighting or music shall not be allowed.

MR. FLANIGAN: That's right.

MR. ZENO: It doesn't say noise. Approval of this outside use shall be subject to review and approval of the Building Inspector for compliance with the New York State Uniform Fire Prevention Building Code. Where does it say noise, John?

MR. FLANIGAN: It doesn't say noise.

MR. ZENO: Oh, well, you just said it says noise.

MR. FLANIGAN: It says music...

MR. ZENO: No, you said noise.

MR. FLANIGAN: Doug, I am not going to argue.

MR. ZENO: What I am saying is... is that when places... we've got... when a business comes in and wants to build, they have to come before the Planning Board. When Main Square was built it was built like an

outdoor amphitheater without... with all the noise as people do their activities, outside, coming and going all the noise bounces back into the residential neighborhood. We've got... we've got things on the books now for planning which say that we are supposed to have proper screening. What... John, can you tell me what proper screening is? These are types of problems we've got. You know, we can say well you know we've got that there and it says proper screening, well what is it? Obviously, it wasn't when it says excessive lighting or something, it didn't apply to Main Square when they built it by our homes. We were promised that the lighting would be turned off between 9:30 and 10:00 o'clock at night. All them big fluorescent lights that you can see over on Kenwood Avenue. That didn't take place. In fact, what they did was they added more lighting. I bring this up as a point because what happens is, we put things in and then we don't try to enforce them. We don't have anything defined properly so that we can enforce anything. And, then it's who is going to put on the most pressure. One of the gentleman said here, well, democracy is ruled by the majority. Well, no, democracy is in place to protect the minority and I hope that we can understand that. We've got a great Town here, we talked about issues of businesses. I think Beff's pizza is great. I think Seattle Subs is great. Ocean Deck has great fish. My only problem is that I don't go into these places more because I am trying... I have been putting the pounds on here and I am trying to get it down a little bit. But, I dream of Ocean Deck's fish every time I drive by there. Mr. G's got great subs too. But, what I am saying is, is that there is not 1 person that raised their hand and said they are against it... outdoor eating. We all want to see outdoor eating. But, let's take this thing and don't jump at it and put it into place right now and vote on this thing. Let's postpone it, let's get some people together in the Town to see what we can do to make this thing really work and be enjoyed by everybody in the Town. That's what government is all about. And, that's all I really wanted to say on that part of the issue.

But, again, back to Main Square, it wasn't... it was designed where all the levels of noise go back into the neighborhood. There is 2 dining areas in Main Square right now. What happens if they decide to put 6 dining businesses in there... can they have 6 decks out there? Of course, according to...

MR. D. CORRIGAN: No. We can't put in 6, Doug. And, why are you shouting, by the way?

MR. ZENO: I mean... I wanted to make sure you could hear me, Dennis, because other times... because it seemed...

SUPERVISOR FULLER: Doug, there are other people that need to address the Board because very shortly I have to close the public hearing.

MR. ZENO: Well, can we have a democracy here and get some of the residents together with some of the businesses in this Town and come up with a plan? We've got students here and they're looking at government and how government works. Let's see it really work. We could get some students on the panel. We could get residents on the panel and we can get businesses on the panel. It would be a great thing for the Town. Thank you.

SUPERVISOR FULLER: Thank you, Mr. Zeno.

MR. DZEKCIORIUS: I have been a resident since 1971 in this Town and I have seen restaurant businesses come and go. And, we've had quite a few on Delaware Avenue that have left us apparently they couldn't make a profit. So, I am in favor of outside dining and I am for whatever the variance that Mr. Flanigan proposed. The restrictions on 10 o'clock I don't think there is a problem. And, if you go any place including Mangia's, there aren't too many people dining at 10 o'clock at night. Usually they pretty much wind down 8:30 - 9:00 o'clock, 9:30, the wind down is there. So, you have my vote. Thank you.

Applause.

SUPERVISOR FULLER: Thank you.

MR. T. CORRIGAN: I'm Tom Corrigan, 103 Hampton Street. I am part owner of Main Square but in addition to that I also own a building at the 4 corners. That building, by the way, has been very, very difficult to rent over the years. If I had the ability to also put some tables in there it would make it substantially easier to keep that building occupied. I think we need to look at this.

In addition to that, I also live in a neighborhood and I have a neighbor that has dinner parties and their dinner parties are no different than -- and probably quieter than -- dinner parties at a controlled deck in that everybody knows everybody at the dinner party. At the deck, I doubt that's going to be the case, so I really don't believe that there's going to be a noise issue. Thank you.

Applause.

MR. SAMSEL: Bob Samsel, Selkirk. At the beginning of the evening, I was under the impression that we were talking about the Town of Bethlehem. Evidently, we are talking about Delaware Avenue. Now, there is a lot of eating places down in Selkirk that can't put tables out -- we got sandwich shop, we got a convenient store, we got a pizza place, we got Stewart's -- let's try and keep this so the Town of Bethlehem, not for Delaware Avenue. Thank you.

Applause.

MS. CARBERRY: I don't know which one works.

TOWN CLERK NEWKIRK: The silver one.

MS. CARBERRY: My name is Janet Carberry and I live and work in the Town of Bethlehem. And, I am in favor of allowing outdoor dining in the Town of Bethlehem. I eat my lunch outside Main Square every day and I have conversations and I don't think that I'm a disturbance to the neighbors there. And, I don't think I would be any louder if it were evening. So, anyway, I think... it is going on already. Every nice day we are outside eating our lunch and we are having conversations and I don't think that they are disturbed by the noise.

Applause.

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

TOWN ATTORNEY KAPLOWITZ: Let me ask a few questions. I won't if you don't want me to.

SUPERVISOR FULLER: What are you going to ask?

MRS. KVAM: Hi, my name is Diane Kvam. I live on Woodridge Road and I think it is a great idea, the outdoor dining. If I wanted a lot of noise I could stay home with my 2 kids and my dog. So, I am really in favor of it. I think it's a super idea. Thank you.

Applause.

MR. ROBBINS: This one.

TOWN CLERK NEWKIRK: Yes.

MR. ROBBINS: Hi. My name is Gary Robbins. I live and work in Bethlehem. I am a business owner. You know we are talking about a few tables anywhere in the Town of Bethlehem where people can sit down, eat a meal, what's different about sitting outside your house and eating a meal? You know. Basically, I am for this, you know, if a problem arises, we can deal with it at that point. You know, you are not even giving people a chance. Thank you.

Applause.

SUPERVISOR FULLER: Thank you. Okay, last call. Mr. Mancuso, for the third time.

MR. MANCUSO: Absolutely, thank you very much. Again, I am very much in favor of outdoor eating. I love it. I think we should have every place possible to have outdoor eating -- home, restaurant, wherever. I am against this ordinance and I think all of us should be against this ordinance. I think it is very poorly thought out. I think it does not take into account some very, very important issues and I am against this ordinance. And, I want to remind the people who tell us that we should know that change will take place. But, they should know that when they start a business in an area, they're starting under the code as it exists then. Why should I expect change in my... against me to take place where they expect that change should not take place against them. I have realtors coming and telling me that my beautiful home which is far superior to many of the homes that are being built now, is only worth "x" amount of money because it is in the wrong neighborhood. We don't want to have someone come in and tell us it's in the wrong neighborhood because we got a noisy restaurant out back.

SUPERVISOR FULLER: Mr. Mancuso, can we stick with the topic?

MR. MANCUSO: Well, I am telling you why I am against this ordinance.

SUPERVISOR FULLER: I think you already did tell me and I need to let another gentleman have his say.

MR. MANCUSO: All right. Okay, just so that we are sure that you understand I'm against this ordinance. I am not against outdoor eating. I think it's great. I don't want the terms put in those terms.

Applause.

MR. AGNETA: My name is Carlo Agneta. I live at 22 Adams Place and I am opposed to this particular ordinance change. I think Mr. Mancuso has a very good point when he says, his property value isn't really what it should be. I think if every resident in the Town of Bethlehem had Main Square in their backyard, they would feel very similar to what Mr. Nozik and Mrs. Nozik feels tonight and I wish you would take that into consideration when you make your decision. Thank you.

Applause.

SUPERVISOR FULLER: I am going to ask for a motion to close the public hearing.

The motion to close the public hearing at 8:54 p.m. was made by Mr. Lenhardt and seconded by Mr. Johnson. The motion was passed by the following vote:

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

Noes: None.

*Kathleen A. Newkirk*  
Town Clerk

Supervisor Fuller convened the regular Town Board meeting following the close of the public hearing.

Supervisor said the issue is before the Town Board and said a vote can be called for. She said she thought each member of the Board should comment on how they feel about it. She felt from 7:30 to 9:00 p.m. was certainly enough time for public comment.

Councilman Burns noted she appreciated all the comments and was focusing very closely on everything said. She said she has to go back to Mr. Kelly, who twice used the word opportunity. She said she feels this is an opportunity for reasonable and positive growth in development. She said if you have a vision, as she does, that is how she looks at this. She wanted to address one of the words used, protect the residents, and she feels that everyone here has that as a number 1 priority. She thanked Supervisor Fuller.

Councilman Johnson thanked Mr. Flanigan for the work that was done on this project. He appreciates the concerns of the people in the neighborhood. He said knowing Mr. Flanigan and his department, he knows they will keep a close watch on this project. He said he thinks this is an opportunity for the Town to move forward and he supports this proposal.

Councilman Davis thanked everyone for their comments. She said it is always important for the Board to hear the comments of as many residents as possible including the students. She said we all live together, we are neighbors, we work together. She said she appreciates the comments from both sides. She said she fought long and hard about this particular issue. She said she was contacted quite a while ago by one of the individuals who are interested in changing the ordinance. She said she listened very hard to the arguments that were made and have thought about it ever since then, it has been a long time. Mrs. Davis said one of the issues that needs to be addressed right at the top is that -- and several people have mentioned this, if you had not, I would have reminded us of us -- that we represent the Town of Bethlehem. The Town of Bethlehem, although she lives in the center of Town and live very close to Main Square, she makes a very important point in always remember who the constituents are of the Town Board. That includes North Bethlehem, it includes Slingerlands, it includes Elsmere, it includes Delmar, it includes Selkirk, it includes Glenmont and it includes South Bethlehem. That's a very large geographical area and we have many businesses included in that geographical area that has to be remembered. She said this is significant and she knows that we all have neighbors. She noted all the neighbors are important and she does not want to forget any of the neighbors. She said if this approved, they are changing a code for the entire Town. She said the impact on quality of life is significant, and understands that but she also believes that a neighbor could neglect his property, who is a noisy neighbor and that affects everyone in the neighborhood as well. She said that may not be important to some people but it is important, she thinks, for the Board to consider that and to certainly consider it in this context. She said we need to move forward. We need to also remember, Mrs. Davis stated, that this can be monitored and if it doesn't work it can be revisited and regulations can be imposed, changes can be made. She said if this is approved, there is a change and they can modify this change as well. She said for those reasons and others she certainly thinks we need to try this and she will vote in favor.

Councilman Lenhardt said he assumed Councilman Burns voted in favor of this also based on her statement. Mr. Lenhardt said as his record shows, he has resisted a lot of zoning changes during his tenure. He said he is in favor of outdoor eating as well as everyone else here and he said as far as this code being broad, he guesses it is at this point but he feels it is a step forward toward that goal of outdoor eating and if there are problems that occur, he feels they can be addressed and refine the code and tighten it up. He said, therefore, he is in favor of the proposal.

Supervisor Fuller said she thinks that one thing she has to say is as the Town Board Members sit here, the most difficult thing for them to do is to make a decision that will benefit everyone. She

said it is one of the toughest things she has had to face in her years on the Town Board and prior to that her 13 years on the school board. But, she said no one is here to hurt anyone. She said she took the time last Friday to meet with Mr. and Mrs. Nozik even though it was for a short time and there weren't any tables outside for her to judge what the outside dining was going to be like, but she did understand their concerns. She said it does not lose sight of the fact that she also can understand on the other side of the coin, what the frustration is with businesses in our Town trying to have a place for people to dine outside, be it for an ice cream cone or a pita. She said she like everyone else on the Board, the number 1 responsibility is for the Town of Bethlehem. Supervisor Fuller said she will be supporting it.

The following SEQR resolution was presented to the Board for adoption regarding Local Law No. 7 of 1998 concerning an Amendment to the Code of the Town of Bethlehem, Chapter 128, Zoning, Definitions:

SEQR RESOLUTION  
NEGATIVE DECLARATION

WHEREAS, the Town Board of the Town of Bethlehem is considering a local law to make changes to Zoning Chapter 128 Article I Definitions 128 1 B; and,

WHEREAS, a completed Short Environmental Assessment For ("EAF") has been submitted; and,

WHEREAS, the Town Board has independently considered the information provided; and,

WHEREAS, the proposed change constitutes an "Action" pursuant to the New York State Environmental Quality Review Act ("SEQRA") and specifically the SEQRA Regulations provided in 6 NYCRR 617.1 (b); and,

WHEREAS, 6 NYCRR 617.6 (b) (4) indicates that for uncoordinated review of an unlisted action each involved agency may proceed as if it were the only involved agency when making its determination of significance before acting on the matter before it; and,

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby declares it is lead agency with respect to SEQR review of the proposed change; and,

BE IT FURTHER RESOLVED, that the Town Board has considered the action as defined in Sections 617.2 (b) and 617.3 (g) of NYCRR and hereby classifies the change request as an unlisted action which does not require coordinated review; and,

BE IT FURTHER RESOLVED, that based upon its review of the requested change after hearing discussion at a public hearing and comparison with the criteria for determining significance found in 6 NYCRR Part 617.7 (c) the Town Board finds that this action will not have a significant impact on the environment; and,

BE IT FURTHER RESOLVED, that this determination is based on the following facts and conclusions:

1. The change in the definitions are for uses that are permitted in Commercial and Industrial zones;

2. The expanded accessory uses are for existing businesses;

3. The outside accessory dining is a seasonal use and is restricted to size and times of operation;

4. the addition of the retail use definition will reflect the customary way business needs to operate today;

5. The Town Board is desirous of promoting Commercial uses and this change would not have any significant adverse impact on the environment;

BE IT FURTHER RESOLVED, that this determination of significance shall be considered a Negative Declaration.

On a motion by Mr. Lenhardt, seconded by Ms. Burns, and by a vote of 5 for and 0 against, this RESOLUTION was adopted on May 13, 1998.

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The motion to adopt Local Law No. 7 of 1998, Amending the Code of the Town of Bethlehem, Chapter 128, Zoning, Definitions, 128-1B was made by Mr. Lenhardt and seconded by Mr. Johnson. The motion was passed by the following vote:

SEQR Resolution  
on outside  
dining zoning  
chapter 128  
article 1

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

Noes: None.

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The next item was a recommendation from O'Brien & Gere,  
Engineers, Inc. for a proposed test well.

O'Brien & Gere  
proposed test  
well

SUPERVISOR FULLER: As you know, we have all received a packet of information for our Board meeting tonight but what we need to do is go back to the August 19, 1997 meeting where we began to look at some options that we had which O'Brien and Gere have spelled out. One of them is what they are recommending this evening. I have asked Mr. Alessi to be here tonight. He is our counsel on this particular litigation. Bob, if I may turn it over to you for a brief update on where we are since this is the first we have been back... had you back to meet with our community bring an update as to where we are in the litigation and then we will hear from Bob as far as the proposal before us.

MR. ALESSI: Thank you, Supervisor Fuller, Members of the Board. To update you on the litigation first. The litigation is now fully joined and by that I mean, as you know, we commenced the litigation against J. Kenneth Fraser. J. Kenneth Fraser brought... started another law suit against Rust Environmental. As a result of J. Kenneth Fraser bringing in Rust, J. Kenneth Fraser has just recently decided that they are going to terminate their law suit against Rust and the law suit will line up and, I believe, very favorable position for us and that is the law suit now posits the Town against both Fraser and Rust. And, we have claims against both Fraser and Rust as of this moment.

The litigation next step is the... what's called the discovery process which is where each side asks questions, demands documents from the other. I have received a phone call quite recently from the attorney for Fraser and there has been discussions about sitting down and what I have asked of them is that they put a proposal together as to what it is they would like to talk about to make sure it is something that we would view as fruitful. I consider that to be very, very typical of litigation. I wouldn't put anything into that. We are going to proceed ahead as aggressively as we've started, we will continue. And, that is the update on the litigation.

With regard to what is before you, the way I would prefer to segway into that is to remind us of the tension that we have. The natural tension between a public body in litigation and those are the 2 words -- public body and litigation. And, I have cautioned this Board and I will do so again as it is my duty, that this is not a forum in which to debate litigation strategy. I believe Supervisor Fuller has indicated that she will conduct decision making in the open where appropriate and as much as possible. I have recommended and I will continue to recommend that the discourse not be deep. We have a litigation position to protect here and we need to make sure we do it and we need to balance that with making sure the public is informed about what we do. There are other fora to deal with discussions as between an attorney and their client. And, I think so far we have been able to navigate this along so that everything to date has been in an open meeting.

Now, to where we are tonight. With regard to how this fits in, way back in August O'Brien and Gere presented a memorandum that addressed the issues and their approach. What is before you tonight is one step in that particular process. In terms of how it fits in, we have to keep in mind that there were 2 prongs we identified early on -- why is there a problem? What did Fraser and Rust do wrong? The other prong is -- can what is wrong be fixed? And, if it can be fixed, how can it be fixed?

Tonight we are dealing with the second prong. Can it be fixed and if it can be fixed, how can it be fixed? We are not dealing tonight with what went wrong. That's not O'Brien and Gere's role. In terms of whether or not it can be fixed, the process that began August 10th, it is fully layed out, recommended and tonight before you is 2

1/4 pages, it is mostly costs, but it is pretty straight forward. It is to get at the question can it be fixed. The first step in that is to determine how much water can this aquifer produce. And, some of you may be wondering, why is a lawyer standing up talking about engineering issues. And, I am going to tell you why. The same lawyer has to make this presentation to a jury. The same lawyer has to make this presentation to a judge. And, I am also concerned about making sure we have an appropriate balance between protecting our litigation position and providing information foremost upon which this Board can make a decision. And, secondly, so that the public can see as much of the process as is prudent under our litigation position.

So, the question tonight is not really a deep technical question. The issue is, in order to determine whether this aquifer is capable of producing the amount of water that we need, there has to be testing done. The testing, one might say gee, hasn't there been a lot of testing already in this system? Haven't we paid a lot of money? The answer is, yes there has been a lot of testing. Been done wrong. It has been done wrong and so what we have to do is to do it right to get at the answer to that thresholds question. If that answer to that question is that this aquifer is not going to produce what we need, then that's going to be a very significant point in what we do. If this aquifer produces enough water that we believe, and most importantly you believe, that it can move forward. This is a necessary step in a way. And, I say in a way because there are alternatives to this but we are presenting this alternative as the matter that is before us that we think will advance our litigation position.

So, the question in O'Brien and Gere's proposal that I respectfully believe is for the Board is -- this test will help address whether this aquifer can produce water. To me, everything else follows from that. Every other step if there is going to be another step, follows from that. With regard to how that helps us, I believe, that the point of looking at a test well -- and this can become a production well and that is really the final engineering point -- in order to answer the question. We put in the test well for cost purposes and for value added, this is the type of well that can be turned into a production well. The difference in terms of cost between just a test well and a production well is quite small -- \$12,000 to \$15,000. When I say quite small I realize that's a lot of money but in the scheme of things and in order to address this problem, and in terms of protecting your litigation position, that is why the proposal is before you.

So, I will stop there and be prepared to answer questions that the Board has. Mr. Geiss from O'Brien and Gere is here tonight. With regard to, if the Board feels that there are questions that need to be answered by Mr. Geiss, he is available. My recommendation to you would be to indulge me to provide you with guidance as to what questions may be appropriate for this forum and what questions may be appropriate for another forum. And, what I mean by another forum is executive session. And, I think if you look around in any governmental body, you won't find very many that debate litigation strategy in the open. And, I think this Board has gone as far if not farther than most Board's I have seen in that regard. So, it is your decision in the end but I would urge the Board to have a discourse that is appropriate given your litigation situation. And, Supervisor Fuller, that's as much of an introduction that is appropriate for the circumstances.

SUPERVISOR FULLER: Thank you. The issue before us tonight is the decision to go forward with investment totalling roughly \$52,000 for the answer to our problem. I, whoever, felt the need to whistle in the audience had reacted similarly but I believe that this is difficult pill to swallow but yet in the reality, this is a 13 million dollar project that owes the community 6 million gallons of water per day that we are not getting and hopefully, the \$52,000 further investment will help as we go through with this litigation. It is a pump testing. My understanding is that we will have a good idea of what the aquifer is capable of. The questions, I am sure, everyone has, I have some myself as to -- we did all the testing before, why do we have to do it again and I think Mr. Alessi

addressed that up front. We have to do it again because the testing was not done properly.

Are there questions from the Board Members?

COUNCILMAN LENHARDT: I have a question for Mr. Alessi, it probably goes without question but I have to ask it anyway. Are you confident that this expense can be recovered in the process of litigation from the defendants?

MR. ALESSI: I am confident that if we succeed in the litigation that we will recover this expense. This expense has been caused, cost incurred, has been caused by the engineering errors of the defendants. A jury ultimately is going to determine, if we have to go that far, whether the engineering firms deviated from accepted practices and committed other errors. Assuming that they conclude that, which I would expect based upon the facts as I know now... I now know them, a jury would. We would recover these costs. If the jury for some reason feels that there was not engineering malpractice here, we would not recover these costs.

COUNCILMAN LENHARDT: Thank you.

SUPERVISOR FULLER: Any other questions, comments from the Board?

COUNCILMAN DAVIS: I have a question, Bob, but I don't know if this is a question for you or for Mr. Geiss. How... do I address you... the question to you?

MR. ALESSI: It depends upon your question. You know, you are the ultimate person who determines who you want to answer it.

COUNCILMAN DAVIS: Okay. I have asked this question previously, but I feel because our meeting is open I would like to ask this question publicly also. We've had the test wells previously, what makes where the test well will be put or dug or whatever is done with the test well... what makes where it will be different than where the previous wells were placed?

MR. GEISS: The test well as we propose it is in a new location to the south of the existing infiltration trench which is your existing ground water facility down there. We have done geophysical work to look for... or to look at the aquifer and we have determined that that is the available area to look for water to the south of the trench. And, so, this is a new area that we are looking at and a new test well would be required in this area. Does that answer your question?

COUNCILMAN DAVIS: No, I guess, I still would like you to tell me why you think that area is better than previous.

MR. GEISS: Is that better than the area where the infiltration is, that I cannot say. The test well is a different type facility. It is a normal well which will have... I guess the aquifer will be available from all sides in lieu of the infiltration trench which had a cut off wall. So, this area in lieu of going to the other side of the cut off wall, going to the north, the aquifer is shallower. To the south the aquifer is deeper and would available more supply. So, this is the reason we have chosen to go to the south of the existing facility.

COUNCILMAN DAVIS: Thank you.

MR. GEISS: Okay.

SUPERVISOR FULLER: Susan.

COUNCILMAN BURNS: All right. I have a few questions, I am not sure... probably be Mr. Geiss who may have to answer these. I understand what Mr. Alessi was saying as far as balancing what is said here tonight and I also understand that... I want everyone else to understand that I need information to make decisions on the Board and that is why I am going to be asking questions.

MR. ALESSI: Ms. Burns, I didn't mean to say any Member of the Town Board can't get answers. There is a reason why you have Executive Session and so this may not be the best forum to answer all the questions. We are trying to see our way through as we go along. So, I don't want anyone to think that their questions can't be answered, it's just a matter of which ones are appropriate for a meeting where our opponents will get tapes and transcripts of what we say as opposed to executive session if that is more appropriate. So, the Town Board should rest assured that any question they have, any question, can be answered.

COUNCILMAN BURNS: I have a question, this well is a typical well, it is not a different design or... than the others.

MR. GEISS: Excuse me.

COUNCILMAN BURNS: It is a test well that can be used later.

MR. GEISS: It is a test well built to final production well standards, is what it is. Now, test wells can be of small diameter or you can build them to the larger diameter that then would be useful to the final well construction. And, what we are proposing is that a test well to final standards be installed here.

COUNCILMAN BURNS: All right. And, it's in the same aquifer that the other wells are located in?

MR. GEISS: Yes, in the same aquifer, meaning it is in the area that the water... the availability of water.

COUNCILMAN BURNS: And, um, what the outcome that... what is to be determined, what is the outcome that you may be looking for?

MR. GEISS: We will be looking for the yield from this well which is the volume of water and also the water characteristics that would come out of the well, as well as, confirmation of the aquifer characteristics.

COUNCILMAN BURNS: And, if there already has been previous testing and that there is other data, would you compare it to that data?

MR. GEISS: There was other... they did other testing which was in a different location and a different type of testing than we are proposing for this area to the south of the trench. Small diameter wells were drilled. Small test wells in the trench and then the trench was pump tested. We are proposing a well test here at this location which is different than what was done before.

COUNCILMAN BURNS: Okay and how... how long a testing period do you anticipate?

MR. GEISS: The well will be drilled and installed and then we would propose that a 72 hour pump test be performed which would then be able to give us the characteristics or yield of the well and also the aquifer characteristics. What we call our, how does the aquifer feed water to this supply route and then also, what is the capability of supporting it. It would be pumped and if 72 hours doesn't get it to a stable point, we would even carry it further than that. But, we want to get it to the stable or yield point in the well. In other words, you don't just pump it for a minute and then stop. You want to pump it until you get a stable ground condition... underground condition.

COUNCILMAN BURNS: Yes, um, what is the time frame for all of this, other than the 72 hours from the time you build it and conclude?

MR. GEISS: Well, once you get it install... or drilling the well is the initial step. Then you need to do well development which... what that is, is you need to... a well itself, isn't the hole you put in the ground but the whole area around the well because you want to let water flow into the casing itself. So, you develop the well and that can be done by many methods, surging or other things to look at being able to get water in. At that point then, a test pump would be installed in the well and you would do the 72 hour pump test. The

total duration for doing this, once the well is installed, it could take maybe 2 or 3 weeks once the well is installed to get everything in order and get the equipment there. The... you got a portable pump that has to be brought in with either run off generator or run off diesel drive so that once you get done with the installation and the development, then that equipment is brought in. So, it doesn't happen 1, 2, 3, 4, 5 days. It would be in a 3 week period.

COUNCILMAN BURNS: Um, okay, as far as, I'm not being an engineer and I'm not sure what river bed or no other term coming to mind residue, would there be any of that that would be removed and if so, where would that be put?

MR. GEISS: We are not removing anything from the river bed. We would be drilling a hole in the ground. The, I guess, the material taken out of the hole would be remain and deposited right in the area of the drill hole. Nothing from the river bed will be removed during this test.

COUNCILMAN BURNS: Okay. Um, and as... how or how in the big picture of things, back several months ago we talked about dredging and the siltation problem as a major component of all of this, how does that fit in with this?

MR. GEISS: The dredging and the siltation are being reviewed at this time and that is looked at as what the... how we can possibly increase or affects the capacity of the existing trench and what happens when siltation comes back in. And, we are currently working on that portion of the project. That was also a recommendation back in the August 10th submittal and that is being worked on as is the other item which was optimizing pumping. Those are ongoing operations right now.

COUNCILMAN BURNS: Okay and speaking of that August 10th memo, there were recommendations here 4 of them. I just wondered... it says install additional length of infiltration trench or vertical well to provide additional water supply. Has that... has that...

MR. GEISS: We have not... we looked at the primary one with the vertical well. We did not look at the additional trench or modifying the existing trench in any way because of the litigation that is ongoing. We are looking at what the aquifer would be good for. The well we are proposing is going to be able to give us a quantity of water that we can get out of the aquifer. That can be then related to whether it can be trench or additional wells, is what would come out of this. Okay. But, we are not looking at doing any extension of the existing facility or anything. We're looking at what the aquifer can supply.

COUNCILMAN BURNS: All right, that's the yield. How about the quality? Are you looking at that?

MR. GEISS: We will be looking at the water characteristics, as well. As we do the pumping, we will be taking water samples, especially once we have stabilized the draw down on the well. We will be taking samples at that time and doing testing on them for the water characteristics.

COUNCILMAN BURNS: All right. In this memo also on page 5, it's stated that any options for increasing ground water production should be further evaluated to consider potential cost, yield, water quality, and regulatory constraints. You... um, addressed the potential cost, obviously it is going to be costly and just want to mention that we don't even at this point in time, know if we are going to have to be purchasing additional water for the summer on top of this. You addressed the yield, you are going to be looking at that. The water quality, you are going to be looking at that, right?

MR. GEISS: Yes.

COUNCILMAN BURNS: What about the regulatory constraints?

MR. GEISS: I believe, Bruce has contacted both the DOH and the DEC concerning regulations on the testing. Again, we are in a testing

mode, not a permit stage as yet for this facility. So, we have not submitted for any permits but at this time, the regulatory people have no problem with the testing that's being proposed.

COUNCILMAN BURNS: Who will be overseeing or managing this project?

MR. GEISS: We as... we the engineers will be overseeing the work that is being done there by the driller and then we will be developing a final report for submission to you, the Town Board under your Town guidance and the Department of Public Works.

COUNCILMAN BURNS: Okay, that's for now all I have. Thanks.

MR. GEISS: Thank you.

SUPERVISOR FULLER: Any other questions from the Board, comments?

COUNCILMAN BURNS: I have something here I wrote down I forgot. Maybe this is for Mr. Alessi. You said there were other alternatives, I just wonder if you could elaborate on that?

MR. ALESSI: Sure. You can do nothing is the other alternative. That's it. You could either find out... if the goal is to find out whether this aquifer could produce more water, you can either do a test, find it out or you can do nothing. And, try to reach a conclusion on that based upon existing data.

COUNCILMAN BURNS: And, 2 other questions, are... if the testing before had been wrong, how are going to assure that the testing now will be right?

ATTORNEY KAPLOWITZ: You would have another law suit.

MR. ALESSI: This is no different than anything else that happens a million times a day all across the world. You select people that you believe are qualified. You ask questions about what they are doing. In the end, you are relying on their expertise. That's what we are doing here. What we do, the State government does every day when they build buildings. They rely upon their contractors, their engineers. We are no different and we have no really other avenues of approach than that and really nobody else does. And, that's just a reality of what's before us.

COUNCILMAN BURNS: And, my second questions, I said I had 2 -- you said previously that everything else follows from this. Back when we were talking about dredging, it seemed that everything else was going to follow from that. Could you just explain what that means, everything else is going to follow from this.

MR. ALESSI: Well, last time, dredging included, this component. Testing of the aquifer has always been part of the analysis. In terms of the process, it is an interactive one, meaning it is step wise. And, we had a window -- as you recall -- to get out into the river. We couldn't make that window.

In terms of what follows from this, this is in my judgement a fundamental question. This aquifer produced water. Everything else goes from here and what I meant by that is, these tests results come back and we look at them and our engineers look at them and we don't get a good yield out of this, we may be facing closing down and just pursuing the litigation and going after all the money. If this produces a sufficient amount of water and we believe that the results allow us to move to the next step in the analysis. In other words, assuming it produces water, can't be fixed and at a reasonable price and at a reasonable likelihood it will produce enough water to satisfy this Board, then we move on to the next step. And, that is why I say everything goes from here.

COUNCILMAN BURNS: Okay.

MR. ALESSI: It's trying to get at this in a cost effective way on the one hand and from a litigation perspective one might say, well, why can't we just use existing information and reach a conclusion. My analysis is, is that what has been done before, is not accepted

scientific method. And, to get into court, as a plaintiff where you carry the burden of proof, you need to have your opinions supported by an accepted scientific method. If our opinion is going to be in court, that this aquifer is just not capable of producing enough water, we have to be able to support that with an accepted scientific method. That scientific method does not exist as we sit here tonight. And, if we go forward and we can produce enough water and the Board thinks its reasonable to go to the next step, we'll have to continue to follow the scientific method. And, that is what this is about. So, some people might have an opinion one way or another on the ability that aquifer produce water but a scientific method, a proper one, has not been followed yet to come to that conclusion to make our presentation in court, in my judgement, valid.

COUNCILMAN BURNS: Thank you.

MR. ALESSI: You are welcome.

SUPERVISOR FULLER: Any other questions from the Board?

COUNCILMAN BURNS: I do have one here. Has any preliminary work been done in anticipation of putting this well in?

MR. GEISS: Yes it has. We have done preliminary geophysical work which is above ground work to look at what the aquifer is. What it consists of and how it is... the consistency of the aquifer in the area that we're proposing. This is... I guess... I will use terms here that I'm... I didn't do the work directly so... electrical and soundings of the ground to tell us what is down there. The thickness of the water bearing layers has been confirmed before we are proposing what we are doing now. That has been completed.

SUPERVISOR FULLER: May I have a motion to approve the recommendation from O'Brien and Gere and our Counsel.

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to approve the recommendation of O'Brien and Gere and Counsel, Robert Alessi, to proceed with the work pertaining to a test well. The motion was passed by the following vote:

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

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MR. DAVIES: Sheila, may I ask one question?

SUPERVISOR FULLER: Yes.

MR. DAVIES: At the end of the meeting, comments are to be received?

SUPERVISOR FULLER: Sure.

MR. DAVIES: And, could I ask, will Mr. Alessi and O'Brien and Gere representatives be here or will have left? Otherwise I will communicate by letter.

SUPERVISOR FULLER: I am sure they are probably anxious to go home.

MR. DAVIES: Okay. Then I will do it by letter, fine. Thank you.

MR. KELLEHER: Just in case, I will give you mine... my comments right now.

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The following item was a request from Gregg Sagendorph, Highway Superintendent, to dispose of vehicles at auction.

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the disposal 2 vehicles -- one, 1990 Chevrolet/Cavalier automobile and one 1991 Ford Van at auction to be held at Northway

Highway Super-  
intendent dispose  
of vehicles at  
auction

Auto Exchange, Inc. of Clifton Park, New York. The motion was passed by the following vote:

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

Noes: None.

Superintendent  
of Highway  
re-award  
bid for  
topsoil

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The next item was a request from the Highway Superintendent to re-award the bid for topsoil to Carver Construction, Inc., Altamont, New York. Supervisor Fuller asked Mr. Sagendorph to explain this re-award. Mr. Sagendorph explained at the meeting a few months ago, he mentioned the award of contract was to R.J. Valente for top soil in 1996. That was taken away from this company, according to Mr. Sagendorph, because he could not provide a suitable soil. In a conversation with Attorney Kaplowitz it was decided to give them a second chance. Mr. Sagendorph said they were low bidder in 1998 and the second chance was given. He said they were once again unable to provide the suitable soil needed. He said they do supply gravel and have excellent gravel. They have a difficult time, he said they want to give gravel for topsoil. He said he was again asking to rescind the award to R.J. Valente Gravel Co. and award the bid for topsoil to the second lowest bidder Carver Construction. Attorney Kaplowitz asked if Valente acknowledged the fact that they are not giving quality soil. Mr. Sagendorph said they have and they are willing to give up this contract. Attorney Kaplowitz asked if Valente gave a reason for this problem. Mr. Sagendorph said they do the best they can but they sell soil for larger projects where we are fixing plow damage in the spring of the year and fixing front lawns of houses. He said they are doing more commercial developments with their topsoil. Attorney Kaplowitz said it was difficult that they are low bidder to turn them down. He said if they acknowledge that the product isn't there, he would not worry about it. Mr. Sagendorph said they are willing to back out.

The motion was made by Mr. Johnson and seconded by Mr. Lenhardt to rescind the award of bid for topsoil to R.J. Valente Gravel. The motion was passed by the following vote:

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

Noes: None.

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The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the award of bid for topsoil to Carver Construction, Inc., Altamont, NY at the price quoted in their bid document. The motion was passed by the following vote:

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

Noes: None.

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Councilman Johnson said this is another example of great high quality standards and thanked Mr. Sagendorph. Mr. Sagendorph said he tries.

Highway  
Superintendent  
to purchase  
road materials  
from State  
Contract

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The following request was from Gregg Sagendorph, Highway Superintendent, to purchase road materials from State and County contracts.

The motion was made by Mrs. Burns and seconded by Mr. Lenhardt to approve the purchase of road materials -- liquid bituminous materials, cold in-place recycling, microsurfacing, plant mixed bituminous concrete and in-place bituminous concrete - from New York State and Albany County contracts. The motion was passed by the following vote:

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

Ms. Burns.

Noes: None.

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The following item was a request from Highway Superintendent, Gregg Sagendorph, to purchase highway machinery from the Equipment Reserve account and request for approval to go to bid for this machinery. Advertisement could be on May 20, 1998 and bids could be opened on June 5, 1998 at 3:00 p.m. and 3:15 p.m. respectively. Supervisor Fuller noted there is a 30 day permissive referendum allowing the Highway Department to purchase 2 specialized pieces of road construction equipment from the Highway Department Equipment Reserve Account.

Highway  
Superintendent  
to go to bid  
for machinery  
and resolution

Councilman Burns asked Mr. Sagendorph what other equipment has been purchased this year. Mr. Sagendorph said there are 3 single-axle dump trucks. One truck with plow equipment and 2 trucks only. He said they put on their own plow equipment. He said 1 pickup truck has been purchased and he thought a small mower. He said that would come out of the Highway Department operating budget. Councilman Burns said these are the first pieces to come out of this account. Mr. Sagendorph said that was correct. He said this is the first purchase they have ever made out of the equipment reserve. For information, Mr. Sagendorph said, the equipment reserve was set up not so much from funds from the operating budget of the Highway Department but any time we have a disaster. He said not that we want them, but each time there is one, the Town has the expertise and the equipment to handle them -- the blizzard of 1993, the winter flooding of 1996. He said a lot of the damage is handled in house. Other municipalities, Mr. Sagendorph explained, go out and contract to have everything remediated. When funds are received back from the Federal and State government, they are placed into the equipment reserve account. He said as an example, in the October 1987 snow storm, approximately \$180,000 in Federal and State funding with the exception of purchasing a wood chipper and renting a couple loaders to pick up debris for 2 months after the storm, the money was utilized to buy a bulldozer. They bought a front end loader and they built the sidewalks on Kenwood Avenue near the middle school. Mr. Sagendorph said these funds that are acquired are going to good use. He said it would be almost impossible to fund these purchases from the yearly operating budget of the Highway Department. He said his total equipment purchase budget each year is \$190,000. Mr. Sagendorph mentioned the Household Hazardous Waste Day and thanked everyone who helped, but the fleet of trucks, 30 vehicles -- 25 of those plow snow in the wintertime. He said they are very similar to car, they are even worse than a car because they are in a corrosive atmosphere for 6 months of the year. They have sanders and salters on them. He said they are out in the worst of conditions, these pieces of equipment need to be replaced every 12 to 14 or 15 years. He said he has to replace a minimum of 2 of those 2 large trucks every year. He said that takes \$100,000 of that \$190,000. He said there is also the rest of the fleet. He said that was the reason for the reserve account. He said there have been some major difficulties and therefore, it is necessary to spend this money at this time.

Councilman Burns asked if the paver is one of the machines with the big roller on it. Highway Superintendent Sagendorph said it was not that would be the roller that follows the paver. He explained the paver is the lay down machine that lays the blacktop. The roller comes behind this machine and compacts it, Mr. Sagendorph said. Councilman Burns thanked Mr. Sagendorph.

The following resolution was presented for adoption by the Board.

#### RESOLUTION AND PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem in the County of Albany, State of New York has on the 13th day of May 1998, duly adopted, subject to a permissive referendum a resolution as follows:

WHEREAS, the Town Board of the Town of Bethlehem has determined that it is necessary to replace certain pieces of Highway Department road construction machinery, and

WHEREAS, it is estimated that the cost of said equipment will be approximately \$340,000. and

WHEREAS, in recognition of these needs, funds for such purpose are in the Highway Department Equipment Reserve account, and NOW, THEREFORE, BE IT RESOLVED that it is in the public interest to purchase this new machinery, and

BE IT FURTHER RESOLVED, that the Town Board authorized the expenditure of the reserve moneys to fund this purchase up to a maximum amount of \$340,000 in said reserve fund; and

This resolution shall be subject to a permissive referendum, as permitted by law.

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

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

Noes: None.

Absent: None.

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

WHEREAS, the Town desires to advertise for bids for the purchase of one (1) rubber-tired asphalt paver and one (1) rubber-tired hydraulic excavator, for the use of said Town, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 20th day of May, 1998 and that bids be received up to 3:00 p.m. and 3:15 p.m. on the 5th day of June, 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, Ms. Burns.

Noes: None.

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The next item was a request from Chief of Police, Richard LaChappelle, for acceptance of resignation of per-diem Telecommunicator.

Chief of  
Police  
resignation  
per-diem  
Telecommunicator

The motion was made by Ms. Burns and seconded by Mr. Lenhardt to accept the resignation of Robert L. Griffin as per-diem Telecommunicator effective April 29, 1998 due to his relocation. The motion was passed by the following vote:

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

Noes: None.

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The following item was a recommendation from Terrence Ritz, Engineering Division, Dept. of Public Works, for award of bid for Iron Castings to Syracuse Castings, Cicero, NY.

Public Works  
award of bid  
Iron Castings

The motion was made by Mr. Lenhardt and seconded by Ms. Burns to approve the award of bids for Iron Castings to the low bidder, Syracuse Castings, Cicero, NY. The motion was passed by the following vote:

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

Noes: None.

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Public Works  
award of bid  
Precast Reinforced  
Concrete Manhole

Recommendation from Terrence Ritz, Engineering Division, Dept. of Public Works, for award of bid for Precast Reinforced Concrete Manhole Sections to The Fort Miller Company, Schuylerville, NY.

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to approve the award of Precast Reinforced Concrete Manhole Sections to the Fort Miller Company, Schuylerville, NY. The motion was passed by the following vote:

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

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The following item was to authorize the Supervisor to sign the Agreement with the County of Albany for the Advanced Life Support Program. Supervisor Fuller said this is in the third year and the amount of \$228,563 which is a reduction from the cost in 1997. The cost in 1997 was \$296,933.

Authorize  
Supervisor to  
sign agreement  
for Advanced Life  
Support Program

The motion was made by Ms. Burns and seconded by Mr. Lenhardt to authorize Supervisor Fuller to sign the Agreement with the County of Albany for the Advanced Life Support Program. The motion was passed by the following vote:

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

- - -

Councilman Davis said it is one of the programs that the right decision was made. She said she has heard nothing but positive comments from the community. Supervisor Fuller said she experienced it first hand, fortunately or unfortunately, and was very pleased to have the 911 attention immediately for her grandchild. She explained everything is fine but certainly she appreciated it, personally, for the first time. She said she can't say that she doesn't want to use it again, but she does not. She said it is good to know they are here and very good. Councilman Johnson agreed that it is a wonderful service for our community.

Supervisor Fuller said it is just amazing to her as to everyone else she is sure, as we look throughout the community at all of the emergency services that we depend on them and yet we cannot recognize them enough for all that they do for each and every one of us.

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The following item was a recommendation from Judith Kehoe, Comptroller, for acceptance of bequest of \$20,000 to be placed in T-85 account for purchase of Senior Van. Supervisor Fuller said the Town has been bequeathed a generous gift of the estate of Louis B. Kyle in the amount of \$20,000. This gift was designated toward the purchase of a senior van. She said the statutes require the Town Board grant its approval for the Town to accept the gift and upon this action, the Town may take receipt of the bequest. She said the funds will be placed with restricted gifts, T-85 account, pending expenditure within 12 months.

Comptroller for  
acceptance of  
bequest of  
\$20,000 placed  
in T-85 to  
purchase Senior  
Van

The motion was made by Mrs. Davis and seconded by Ms. Burns to accept this generous gift from the estate of Louis B. Kyle in the amount of \$20,000 with thanks to be placed in a T-85 account to designated to be used toward the purchase of a senior van. The motion was passed by the following vote:

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

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The next item was a request from Town Clerk, Kathleen A. Newkirk, for appointment of part-time Records Clerk. Supervisor Fuller noted this would be at a salary of \$7.06 per hour. The appointment is Meredith McNeil and she has been a part time employee of the department working on the microfilm indexing in the Building

Town Clerk  
appoint part-time  
records clerk

Department and records indexing in the Town Clerk's office. She explained Ms. McNeil will be working during her break from attendance at LeMoyne College.

The motion was made by Mr. Johnson and seconded by Mr. Lenhardt to approve the appointment of a part time Records Clerk at a rate of \$7.06 per hour. The motion was passed by the following vote:

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

Noes: None.

- - -

Councilman Burns asked if the part time position is half time or does it vary per week. Town Clerk Newkirk explained Ms. McNeil comes in on her vacation time. She said this amounts to full time, full days while she is on vacation. It is not a half-time person, she does not work a half of year with the office, however, it is while she is on vacation from college. She said she is working on a full day basis but only while on vacation.

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Parks and  
Recreation  
approval  
seasonal  
personnel

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

The motion was made by Mr. Lenhardt and seconded by Ms. Burns to approve the appointment of seasonal personnel as listed on the Memorandum from David Austin, Administrator, Parks & Recreation Department, dated May 13, 1998 at the titles and rates indicated. The motion was passed by the following vote:

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

Noes: None.

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Engineering  
Services  
acceptance  
of deeds

The next item was a recommendation from Engineering Services Administrator, Michael Cirillo, Department of Public Works, for acceptance of deeds for Trinity Manor, Section 2.

The motion was made by Mrs. Davis and seconded by Ms. Burns to accept deeds for Trinity Manor, Section 2. The motion was passed by the following vote:

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

Noes: None.

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Appoint  
Michael J.  
Smith council  
negotiations  
Bethlehem Police  
Union

The following item was a request from Supervisor, Sheila Fuller, to appoint Michael J. Smith, Esq. as council for negotiations with the Bethlehem Police Officers Union. Supervisor Fuller explained the salary will be \$125 hourly.

Councilman Burns asked about the January 2, 1998 meeting and Joshua Efron had been appointed to the Police Department at a salary of \$12,238 and she wondered why this appointment is necessary. Attorney Kaplowitz noted Mr. Efron is the Police Prosecutor. He said he prosecutes on behalf of the police, anyone who gets a ticket and says they are not guilty. He said it has nothing to do with the negotiations, it is a completely different job. Councilman Burns said that was what she wanted clarified. Supervisor Fuller said Attorney Smith is on the list as the Highway Counsel to the Town Attorney. She said he has expertise in the labor law and some of the issues being dealt with. She said she wished to appoint him as the negotiator and the rate of pay is different that being the Highway counsel.

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve the appointment of Michael J. Smith, Esq. as Counsel for negotiations with the Bethlehem Police Officers Union.

Councilman Burns noted this is approved at an hourly rate of \$125 per hour. Supervisor Fuller said this was correct, for negotiation purposes only. She said Mr. Smith did let the Board know that his hourly rate is \$195 per hour and \$165 per hour constituting his discounted rate and he is willing to handle the Town's negotiations at an hourly rate of \$125.

The motion was passed by the following vote:

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

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The following item was to acknowledge receipt of Conditional Approval of Final Plat for the Weisheit Subdivision, Wemple Road, Glenmont, from the Planning Board for information purposes.

Receipt of  
Conditional  
approval of  
Final Plat  
for Weisheit  
subdivision

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The next item on the agenda was to approve the Town Board minutes of March 11, March 25, April 8, and April 22, 1998 as submitted.

The motion was made by Ms. Burns and seconded by Mr. Lenhardt to approve the Town Board minutes of March 11, March 25, April 8 and April 22, 1998 as submitted. The motion was passed by the following vote:

Approve Town  
minutes 3/11,  
3/25, 4/8 and  
4/22 1998

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

- - -

Supervisor Fuller noted Mr. Smith had been in attendance earlier but had to leave.

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Supervisor Fuller asked if anyone wished to address the Board this evening.

Mrs. Capone said she wanted to talk about an article that appeared in the Spotlight 2 weeks ago. She said it is about the Police Department. She said the Board said the only people who have complained to the Supervisor about the Police Department that there are not enough officers, she said she has been after it for 15 years. She said she went after Mr. Kaplowitz when Mr. Koonz was President of the PBA. She said the people with stop signs that come in and the Board gives stop signs away and you know there is no cop in the back to enforce them. She said there is a woman 10 years ago said to Mr. Kaplowitz if you are going to invite people to this Town make sure you are prepared for it. She said the Board if inviting people to come in the computer shop and here but you don't want to increase the police force. She said the Board wants a company to come. She said the Building Department is increasing by one Building Inspector and increasing the building but the Police Department has got to stand still. She said Mr. Kaplowitz said after the grant money runs out, the Town is stuck with the officer. Mrs. Capone asked Mr. Kaplowitz to wake up. She said she remembered when Mr. LaChappelle came to the Board and asked for money for the grant on a Wednesday night because he did not get the paper until 2 days earlier and there was a Town Board member who objected to it. She said after the last Town Board meeting a woman told her that she resented that a Town Board member attend the DARE class. She said the DARE class is made for a communication between the officer and the kids and they don't want older people in the room. She said it is just the kids and the officer. She said if he cannot take care of it, the Democrat

Discussion Mrs.  
Capone about  
Police Officers

will. She asked how much the Town spent on Feistejik. Supervisor Fuller said the Town did not spend any money. She said it is supported by many businesses. Mrs. Capone said Officer Arduini feels that the Town Board is frustrated with the Police Department because it cannot get rid of the dead wood. She said she knows it is because it is the only department in Town that is unionized. She thanked the Board. Supervisor Fuller thanked Mrs. Capone.

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Discussion  
Mr. Davies  
on water issue

MR. DAVIES: Good evening. My name is Sherwood Davies. I sat here and I've observed what I perceive to be the fleecing of Bethlehem tonight. I am sorry to say it. Bethlehem's water supply problem is a financial windfall to engineers and attorneys. Since 1992, the Town has employed 6 engineers to look at this water problem, six. We now have 3 law firms involved in the law suit. We have already paid O'Brien and Gere \$7500 to study the well yield. Now, the Town Board tonight has approved \$52,000 to drill a test well in Schermerhorn Island. This duplicates a study made in 1978 by Myrick and Chevalier Engineers. They made a hydrological investigation, an exploration test drilling of the Hudson River flood plain deposits, September 28, 1978 is their report. I believe the responses that some of the Board Members asked the engineer and Mr. Alessi tonight related to the work done in 1991, 1992 not this prior report, because I refer to this prior report -- you remember O'Brien and Gere referred to a 72 hour pump test? I think somebody asked that question. Let me just read. Water quality analysis samples were taken after 72 hours of test pumping from well number 24 at 310 gallons per minute, about 1/2 million gallons a day. This is work done in 1978. The engineers indicated that 1 well could produce about 1 million gallons a day and that you could put in more than 1 well but the water quality was the question relating to extremely hard water, extremely high iron, 13 parts per million, some 2-3 times what we have down there now, high manganese, etc. The question that Mr... the engineer should have been asked is with this high concentration of iron, how long can we depend upon a yield of 1 million gallons a day from one of these vertical wells without having to treat it with acid to remove iron deposits. This would be very important for a long term maintenance, long term operation but nobody had an opportunity to question them. And, I think it is very important.

I had tried and tried to find out what the Town of Bethlehem and Mr. Secor had asked O'Brien and Gere to do in terms of a study, was it just well yield. I find that there were 2 agreements, now I have to make a FOIL request for them although I have asked at least twice before for this information. Was unsuccessful in getting it.

It seems ludicrous to me to duplicate some prior studies without the engineer specifically referring to what studies he had made and what was inadequate.

I want to... Bethlehem residents received this insert to the Bethlehem quarterly report. There are some errors in here particularly with regard to Clapper Road water. It would be very interesting for an engineer to take a look at some of this data in light of what we can expect from this new well.

I also recently received a letter from the State Health Department in regards to emergency response plans. This is 8 years overdue, 8 years. I think that is quite a while and what is important about emergency response plan if we do have water shortages, how do we deal with it. Do we just limit sprinkling of lawns? Do you shut down industry? Do you shut down car washing? What do you do? The requirement is that the emergency plan be prepared, published in the media and a public hearing. I would hope that this will be forthcoming shortly. A real positive sign was that I understand that the Town of Bethlehem is seeking to talk with the City of Albany to increase the amount of water that we can get, which we will surely need.

The last thing that I want to mention is on the ozone equipment which I believe is a part of the water treatment... it is a part of the water treatment plant. The State of New York has not approved... given a complete works approval for the Clapper Road water treatment

plant because data has not been submitted in regards to the ozone unit. The ozone unit may be needed if trihalomethanes continue to increase.

I would hope that the Board would look at some of these comments that I am making and raise questions with both the attorney and with the O'Brien and Gere. I don't think these comments have anything to do with pending law suits. Thank you.

SUPERVISOR FULLER: Thank you.

MR. KELLEHER: I am Bill Kelleher. I have a statement I will submit to Kathleen.

TOWN CLERK NEWKIRK: Thank you.

MR. KELLEHER: Believe it or not I am in favor of this new test well if there is a proper study and the proposal by O'Brien and Gere is not a proper study. I knew from the very beginning from day 1 when I looked at this design in the library that this well was going to clog up with iron hydrate. And, it has. The well yield has slowly but continuously gone down exactly as you would expect. O'Brien and Gere study has nothing what-so-ever to do with that. And, I guarantee you this, if by some chance the well is successful and it is a long shot, but I have to go along with doing it. I have to... I agree with doing it because we are facing from 10 to 15 million dollar loss and what's \$50,000. But, if you are not going to evaluate the clogging with iron hydrate, the study is no good period. And, they are going to be back here 4 or 5 years with the same thing happening. So, I am recommending... I am strongly recommended here you better do it by an expert who knows something about the clogging of aquifers, the clogging of wells and the clogging of sand filters with iron hydrate. They are out there. And, you know who referred me to the best expert in the world, Mr. Fraser. He told me publicly in the Spotlight to go talk to Ranney Well Company which I did. And, I found out that they still recognize iron hydrate as being a major problem and they would never even consider putting one of their wells in Schemerhorn Island. It is ridiculous. Now, this study may... this study may prove that the design was so poor that there is no way you can even get 6 million gallons a day with the 72 hour pump test. Hey, that's fine. But, it is going to... you are going to come up with something. Maybe you are going to come up with 2 or 3 million gallons a day if you extend the wells out or you put 4, 5 additional vertical wells in. But, I guarantee you that 4 or 5 years... if you pump at 3 million gallons a day with all these new wells, that after 4 or 5 years, the well yield would be down to 1/2 million gallons a day when the water treatment plant is completely useless. So, Mr. Alessi is not correct, the study as proposed will not determine what the long term capacity of this aquifer is.

Mr. Kelleher  
on Water

SUPERVISOR FULLER: Anyone else wishing to address the Board this evening? There were none.

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The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to adjourn the regular Town Board meeting at 10:17 p.m. The motion was passed by the following vote:

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

Noes: None.

*Kathleen D. Newkirk*  
Town Clerk