

TOWN BOARD  
MAY 23, 2007

A regular meeting of the Town Board of the Town of Bethlehem was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, NY. The meeting was called to order by the Supervisor at 6:00 p.m.

PRESENT: John H. Cunningham, Supervisor  
Daniel Plummer, Councilman  
Samuel Messina, Councilman  
Kyle Kotary, Councilman  
Joann V. Dawson, Councilman  
Colleen Hummel, Deputy Town Clerk  
James T. Potter, Esq., Town Attorney

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Supervisor Cunningham welcomed everyone to a regular meeting of the Bethlehem Town Board. He invited Steve Kroll and Rod Raynor to lead everyone in the pledge of allegiance.

The Supervisor in recognition of Emergency Medical Services week presented a proclamation to all of the workers in the Bethlehem Volunteer Ambulance Service and the Delmar Fire Department EMS of the Town of Bethlehem who have answered 3,000 calls for medical assistance during the year 2006 proclaimed the week of May 20-26, 2007 as Emergency Medical Services week.

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Supervisor Cunningham said before starting the public comment section, he made a special note that there will be a Special Meeting of the Town Board next Tuesday, May 29, 2007 at 9 a.m. in room 101 for the purpose of accepting the SEQR resolution and finding statements for the VISTA project. He noted that will be the only item on the agenda.

The Supervisor asked if there were any public comments on agenda items. Mrs. Marie Capone said the Board was replacing Mike Smith and asked if there was anything wrong with Mike Smith noting he has been doing the Police Department for maybe 10 years. Supervisor Cunningham said Mike Smith is still working with the Town. He said they are bringing in a different person to negotiate but Mr. Smith will still be doing the HR portion.

Mrs. Capone said there is the retirement of the Commissioner of Public Works after 3 years and asked if he could be replaced by this guy noting he always did all the work for the commissioner anyway. She said there would not be a need for a replacement because he knows it all. She noted he has an engineering degree from the University of Buffalo. Supervisor Cunningham thanked Mrs. Capone.

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Mr. Robert Jasinski thanked the Board for meeting at 6 p.m. noting he could digest his food and hopes everyone found it nice to have a little extra time and have a bite to eat and come.

Mr. Caleb Wistar wanted to make a few comments about the IPM Code the change to the amendments that are on the agenda. He said he wanted to make sure that this bill that is being discussed today involves the least toxic use of pesticides and that they would always be given priority. He said he understands that the Town is going to do pretty much the same type of process as on the Colonial Acres Golf Course, which won an Audubon award for low levels of toxicity. He said that was very important. He also wanted to underline that these children are also going to be playing on soccer fields and they seem to be more susceptible – they are lower to the ground, they are more vulnerable and their systems cannot get toxins out. He said some of the toxins, especially level 1 and 2 toxins, are very, very poisonous. He said even 3 and 4 toxins can have adverse affect.

Mr. Wistar said some other alternatives would be to consider adding playing fields so that some could be taken off line. He said a lot of time the healthy playing fields are ones that do not have many issues related to pests and other kinds of things. He said biological agents could be used in the case of grubs and that controls mole hills because the moles go in, eat the grubs and then make the hills that the kids trip over.

Mr. Wistar said he had a lot of suggestions and noted he was talking to Councilman Kotary earlier and he understands that this is less serious than some people thought when they read the Spotlight article last week but he wanted to hand out a letter and offer his assistance with this in any way he can.

Supervisor Cunningham thanked Mr. Wistar.

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Mrs. Scholes said she hasn't been to a Town Board meeting in years and it is nice to see all these new faces, especially her neighbor Dan. She said she lives at 9 Woodmont Drive, Delmar. She said she was one of the original founding members of Bethlehem Pesticide Watch and noted she sent an email to the Town Board Members. She gave her statement and emphasized that it was unfortunate that this pest management committee was never formed and it was in the original law. She said she thinks this problem with the grubs would not have come to a head like this if they had been having this committee formed. She said it is explained in the law including suggestions of who could be on the committee. She said she also emphasized that they spent a long and hard time writing up very carefully the wording for the pesticide ban and on the committee was Supervisor Sheila Fuller, Town Board Member Doris Davis, Kay McEneny the founder of Bethlehem Pesticide Watch, myself, Carol Nemore Board Member of Albany County Land Conservancy, Gregg Sagendorph Highway Department, Dave Austin Parks and Recreation and Judith Enk from NYPIRG who is now an environmental assistant to Governor Spitzer. She said this was a pretty high powered committee.

Mrs. Scholes said she hopes the language won't be watered down but will be even strengthened. She thanked the Board. Supervisor Cunningham thanked Mrs. Scholes.

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Mrs. Debra Vogel said this is her first meeting. She asked if that was just comment on the agenda itself as opposed to the content of the items. She asked if the Board goes through each of the items and ask for comments. Supervisor Cunningham said during the meeting itself, the Board will go through and vote. He said the Board may comment but the public cannot comment during the meeting. He said they give the public the opportunity to comment prior to meeting. Mrs. Vogel said she thinks there are several people who want to comment on the item that addresses the use of pesticide. She said there are a lot people, including a lot of folks she has spoke with, who do not even know this is before the Board and so many do not even know what stage it is at. She was wondering if they could find out actually what is on the table and what stage. Supervisor Cunningham explained there are amendments to the existing law and the public hearing process was done 2 weeks ago. He said tonight they were going to approve the amendments to the existing pesticide law.

Supervisor Cunningham noted the changes were available to the public and they are online. Mrs. Vogel asked how people were notified. The Supervisor said they were notified through public notice. He said when a public hearing is held, there has to be a public notice. Mrs. Vogel asked how that is done. The Supervisor said legal ads in the paper and it has been on the website. He said they do as much public outreach as possible even prior to the public hearing. He said the Spotlight did an article after the public hearing so people became aware of it after that point.

Mrs. Vogel said that was when most people she spoke with became aware of it. She said she thinks this is a very critical issue and it affects a lot of people, people with families and children. She said she thinks just posting – not everyone reads the website regularly, not everybody has a computer that can access the

computer and then not everyone would see a notice in the paper – she expressed a concern that something that has such a far reaching affect might need a broader dissemination of announcement. She said she cannot say that she has read the proposal but, personally, would be on record that she would oppose pesticides. She said they do not use them on their property and it is disconcerting when people around her use them. She said she knows there is a law and companies are supposed to notify that the State Legislature passed a law several years ago that lawn maintenance companies are required to notify contiguous and adjacent neighbors if pesticides are being applied. Mrs. Vogel said in her neighborhood they don't seem to be complying with. She said it speaks to the concern of the communities in the State and Bethlehem would be included in that as to the use of pesticides. She said she, personally, would oppose any application of pesticides. She said she agreed with the gentleman earlier, if the Board did research, there are several alternatives to pesticides use. She thought these would be much safer to apply in areas where there are children and family pets. She thanked the Board and Supervisor Cunningham thanked Mrs. Vogel.

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Another resident questioned and expressed concerns about the pesticide. She asked if the SEQR review was done with regard to repealing the law. Supervisor Cunningham indicated the law is not being repealed. He said there are amendments proposed to the existing law and noted it was not required. The resident said it may have some detrimental environmental impact and if the amendment or repealing could have some environmental detrimental impact, she asked if the assessment was required. Town Attorney Potter said he will check this again but he believes it is a Type 2 action, noting he will confirm that. The resident said that was her basic comment, could the Board wait on this issue.

The resident said the other thing; she asked if the Board has contacted the Cornell Cooperative Extension indicating they have an integrated pest management system. Supervisor Cunningham said they did. The resident said Cornell has alternatives to pesticide use. She asked if that was the system they would be using. Supervisor Cunningham clarified that the proposed changes will allow for level 3 and 4 pesticides. He said the plan is to use these as a last resort to managing pests in the parks. He said the issue currently is that we do get infestations and we've used some of these programs and they are not always effective. He said they will continue to use every measure possible that is not chemically based, however, they do want to have this arrow in the quiver to protect the parks because we have a park system that is being rendered useless by bugs and it is a danger to the children who are using it. He said, therefore, it is almost ridiculous to have the park if we cannot protect it. He said they are trying to find ways to better protect the fields so they are useable. He said he agrees with everyone in attendance that he would just as soon use no chemicals ever but there is a practical matter here. He said they need to protect the users of the park and they are trying to make the park useable, and they do not want them to be out there and non-useable. He said it is similar to having chlorine in the swimming pools. He said it is not desirable to have them there but again, we do need to protect the public. The resident said she understands that but she thinks a lot of parents in attendance want some kind of environmental study done to find out what impact, if any, would be caused by level 3 and level 4. She said that is their concerns and they do not know and they want to find out and noted they do not want the use of pesticides to be more dangerous than non-usage by the bugs and everything else. Supervisor Cunningham said Mrs. Lanahan and everyone else on the Board agrees also.

The resident said her last point is the neighbor whose child suffers from leukemia. She said she mentioned this a couple days ago and she was not aware, like Mrs. Vogel, of this amendment to the law and I wish that I had been. She said she is very concerned for her children and herself. She said she thinks their needs to be a study done before we go ahead and amend something that has been on the books for a long time for a good reason. Supervisor Cunningham said he wanted to assure that there has been a lot of work done on this. This is not something just pulled out and decision made to do it, according to the Supervisor. He said there is also the allowance in the current law to use pesticides in the park. He said it does not eliminate that possibility. He said they have tried to construct this in a way to

be very constrictive and make sure it goes through a lot of review before a decision is made that this is the last resort. The resident said she understands this but hopes that the Board will do the SEQR review before this goes forward. Supervisor Cunningham they will double check that. Town Attorney Potter also pointed out that this did come up before and several months ago it was referred to the Pest Management Committee and the committee studied it and then came up with the recommendation. He said this has been before the Town Board and the public for several months not just 2 weeks ago at the public hearing. He said it was the culmination of a long period of study.

Councilman Kotary said there is a Pest Management Committee implemented by Supervisor Egan about 2 or 3 months ago with all of the types of individuals that were outlined earlier. He noted that was a part of the process and reviewed and researched it and then took the proposal to the Supervisor and the Board. He noted he mentioned this for clarification.

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Supervisor Cunningham asked if there were additional comments. Nancy Heinzen offered some explanation and noted she lives on Glendale Avenue. She said when the Town first started to look at the existing pesticide law and the issues posed by the law once the Town assumed management of the Colonial Acres Golf Course Terri Egan, former Town Supervisor, asked her to serve on the Pesticide Committee. She said she mentioned additional Town issues relative to turf quality and field safety, as well as, the possible impact of pesticide use on the Town's evolving storm water management program. Mrs. Heinzen said she told the Supervisor there are others more familiar with pesticides but she would be willing to share what she could about the storm water regulations and was personally interested in the dilemma posed by management heavily used turf while protecting water quality. She said for about 3 months the committee met intermittently referencing the same committee and she did what she could to help out.

Mrs. Heinzen said the Pesticide Committee meetings were instructive and her inclination as a biologist and someone very familiar with storm water regulations is to eliminate pesticides, herbicides and fertilizers everywhere and improve the soil using compost and to accept a lower standard for turf management thus preventing any pesticides from reaching our ground water and storm water runoff. She said she is also a parent of an active athlete, familiar with safety issues posed by uneven playing fields and knowing that kids play hard in soccer and injuries to knees can be painful and enduring. She said what became clear was that the Town's staff, ever since the original no pesticide law, had been adopted had over the years as needed, tried non-invasive natural practices recommended by Cornell Cooperative Extension. She said the field conditions over time had deteriorated. She said short of taking fields off line, reconditioning all of the soil and replanting the turf, it was generally agreed that the fields would continue to deteriorate.

Mrs. Heinzen said taking the fields off line was an option discussed within the group but not seriously considered given the size of the soccer program therefore creating a legal mechanism for the Town to use integrated pest management at appropriate sites seemed like a reasonable, if personal troubling, for a needed path to pursue. She said she is accepting of integrated pest management, she is also a generation that remembers the horror we all felt when the bald eagle population began to die off due to DDT. She said she remained skeptical of the pesticide industry and doubtful that regulatory agencies have the capacity now to truly judge using the best science to safety risks of current pesticides. She also believes that since DDT pesticide technology has improved and that with careful thoughtful applications the negative effects of pesticides could be minimized. She said others she knows are not that trusting.

Mrs. Heinzen said she truly wants the staff to count the grubs in a 1 by foot plot before choosing the pesticide or synthetic option and that the Pesticide Committee is brought into that decision along with the Parks and Recreation staff and the Town Supervisor. She said that is currently what is in the amended law. Pesticides need to be applied at the correct point in the insect life cycle, according to Mrs. Heinzen, and commented please read the weather forecast before applying

the pesticide. She said rain could carry the pesticide into an adjacent wetland or creek or ground water thus unintentionally killing off insect life of value to those ecosystems.

Mrs. Heinzen said furthermore she strongly urge the Town to capitalize on the existing experience of Colonial Acres staff in using integrated pest management at that site. She said they are very lucky to have someone as knowledgeable as Pat Floom, available to provide guidance and suggestions along with the Audubon International Cooperative Sanctuary staff based in Selkirk. She said few towns have such easily available and informed staff when it comes to turf management.

Mrs. Heinzen said finally the Town should consider incorporating turf management education into the Colonial Acres golfing experience. She said signage and workshops sponsored by the Colonial Acres facility could be a helpful addition to the Town's storm water management program and conceivably of benefit to wider audience of golfers from municipalities outside the Town of Bethlehem. She said that completes her remarks and asked if there were any questions. She gave a copy of her statement to the Board.

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Supervisor Cunningham asked if there were any other public comments. Ms. Delaney Weber asked for clarification of what the pests are that are invading the Town park. Administrator Lanahan said mainly grubs. Ms. Weber asked what they were doing. Mrs. Lanahan said they are eating the other vegetation in the soil thereby creating problems there and then the crows, skunks and other wildlife are feeding on the grubs and by doing that, they are tearing up the turf so there is a lot of ruts, holes and torn up grass and it makes it easy to twist ankles and bad falls. Ms. Weber was wondering if the pesticide that might be used would have an impact on the wildlife there, like the grasses. Supervisor Cunningham said the pesticides are designed to eliminate the pests, they should not harm the grass. Ms. Weber said okay and asked right now are the grubs or pests doing anything. Supervisor Cunningham said currently there is no grub problem. Administrator Lanahan said not at the moment because they had to take a couple fields off line to get them repaired and get them back in shape to be playable again. Ms. Weber thanked everyone saying she was just wondering.

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Mrs. Melinda Costello next spoke asking how long the environmentally friendly approach has been tried. Supervisor Cunningham said the current law was in effect for 7 years. Mrs. Costello asked if that approach has been used for that long. Administrator Lanahan said in the attempts that they have made, it usually has not been effective. Mrs. Costello said it takes up to 5 years for it to be effective, it is not immediate. She thanked everyone.

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Mrs. Virginia Ortali came forward to make a comment about what she has heard this evening. She said she has not been to the other meetings. She said as someone interested in trees and shrubs and greenery, she has understood that the Town was toxic free. She said at first that was a terrible burden to her and the members of the Garden Club, noting she is not speaking for them. She said also she thinks probably the budget and all the people who help keep the Town clean and up and running – the roads, hillsides, etc. – it's not just a matter of wanting to get a pesticide out there and then maybe an herbicide, she can see all kinds of difficulties now that one owns the golf course. She said that is going to be a gigantic challenge to all of the Town. She said since the Town does not own it for a great length of time, she does think this may be deserving of further study to see how it will be worked out. She said what are the problems to be perceived owning the Town golf course.

Mrs. Ortali said what are the problems to be perceived owning the Town golf course. She said these are adults and certainly we have children playing soccer and the big issue is, perhaps, is a mole and if you've all noticed when you went to work, there are mole hills astonishingly to see probably 20 or 40 mole hills in front of Town Hall. She said someone knows how many times she has called about the

moles because it was almost impinging on the garden. Although they know moles to eat grubs, she said, when they are desperate enough they will go and eat the plants. She said she researched in Cornell Extension and marched myself up unwittingly to 5 Rivers with mole tracks because neither myself or another adult male could not set the trap for this mole. She said it is a whole science in itself to catch a mole.

Mrs. Ortali continued that although the pesticide seems like a solution and herbicides, she knows to continue with the white vinegar and the flame torch. She said these are wonderful cultural methods of the Cornell Extension and of the world and of whatever but she thinks having listened to so many people, she does think we need further study because you are going to end up with a golf course and issues there. She said it is not just kids but adults also. She thanked the Board.

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Supervisor Cunningham asked if there were other comments. There were none and he thanked everyone.

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The next item was to approve Town Board minutes of April 25, 2007.

The motion was made by Mr. Plummer and seconded by Mrs. Dawson to approve the Town board minutes of April 25, 2007 as submitted. There motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.

Noes: None.

Absent: None.

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The next item was to approve the appointment of Tom Wigger as Negotiator for Police negotiations. Supervisor Cunningham indicated it is at a rate of \$85 per hour.

The motion was made by Mr. Plummer and seconded by Mr. Kotary to approve the appointment of Tom Wigger as Negotiator for Police negotiations. The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.

Noes: None.

Absent: None.

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The following item was to accept the notice of retirement from Commissioner of Public Works, effective June 15, 2007.

The motion was made by Mrs. Dawson and seconded by Mr. Kotary to accept the resignation of Oliver Holmes, Commissioner of Public Works for retirement effective June 15, 2007. The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.

Noes: None.

Absent: None.

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Supervisor Cunningham said he had an additional resignation to be added. He said it is to accept the resignation of Tom Cotrofeld, Jr., Delmar, NY from the Planning Board of the Town of Bethlehem effective this date.

The motion was made by Mr. Plummer and seconded by Mr. Messina to accept the resignation of Tom Cotrofeld, Jr., Delmar, NY from the Town of Bethlehem Planning Board effective May 23, 2007. The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.

Noes: None.  
Absent: None.

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The next item was to consider adoption of a proposed Local Law amending the Code of the Town of Bethlehem, Chapter 87, Pesticides. Supervisor Cunningham asked for a motion.

The motion was made by Mr. Plummer and seconded by Mr. Kotary to adopt Local Law No. 5 of 2007, amending the Code of the Town of Bethlehem, Chapter 87, Pesticides. Supervisor Cunningham asked for comments.

Councilman Messina said with respect to the comments made earlier, letters and emails that came in and also the will of the Board at the last meeting, he said to take a little time with this was time well spent and worked out well. He said he knows of some changes that were made to the amendment and after talking with Mrs. Lanahan and a couple members of the Pesticide Committee, and Board Members, introduced some things that he thinks will help. He said they are certainly being sensitive to the issue of timing and to the maximum degree possible if they ever have to apply pesticides to do that in a way that will be far removed as possible from play on the field. Mr. Messina said, another item, which was an interest of the committee, was to introduce a mandatory report, as well as, the recommendations of the committee to the Supervisor. He said the report would come from the Parks and Recreation Administrator. He said level 3 and 4 are clarified but the bottom line is, he agrees with the Supervisor, that he wishes that we never have to put any herbicide or pesticide on the ground.

Councilman Messina said the Colonial Acres issues are different and being that it is a golf course it requires a different approach. He said the statute provides for a different approach. To continue it, Mr. Messina said, in the vein of an EPA award winning methodology to maintaining a golf course. He said that is in place and now they are dealing with maintenance issues and the maximum safety there. He said while he asked Board Members to wait on this one a bit for further input, he is comfortable with the changes that have been in terms of strengthen it.

Councilman Kotary also commented that as a member of the Pesticide Management Committee, he can say that there was an opportunity to clarify some misconceptions that were out there. He said unfortunately – he would review a couple and then add a couple more – first that there is a misconception that there currently is a total Town wide ban and really, what they are talking about, there were restrictions with exemptions to Town owned property. He said what is being talked about is really 2 things that prompted this discussion and prompted the previous Supervisor to actually create what was in statute in the Pest Management Committee to review this, to not only pull in outside resources but also a lot of conversations with Pat at the Colonial Acres Golf Course.

Mr. Kotary noted Pat is someone who has been called the Superman of the environment and has a reputation as being one of the nation's premier experts in golf course management, particular using natural resources. He said he, personally, has had several conversations with others, including Pat, to ensure that assuming that we do bring in the golf course that they not only be able to maintain the standards that they have which, again, he has 3 pages of awards they have received, not only the Audubon accreditation but the various awards that they have received particularly over the last 7 years for using natural applications. He said Pat indicated if you have a golf course, you have to use some sort of synthetic controls. He said they do, in fact, use level 3 and level 4 controls and the changes and modifications made will allow them to continue to do so. He said they also have a great integrated pest management program which he is pleased with that should Colonial Acres Golf Course come on board, they will have somebody like Pat and will have a program that we can then use for parks and other lands.

Mr. Kotary said with regard to the other aspect, again they are suggesting an amendment that was to address a problem brought by soccer club, poor condition of fields, which create not only a safety issue, as well as, not being able to use the

fields. He said they are talking about a few parcels of land. He said also they are actually strengthening the Code in some ways. He said under the exemptions that are currently there, they notice that it does not say anything about the category of pesticide that can be used. He said currently where exemptions exist, any level of pesticide categories 1 through 4 could be used. He said they have actually narrowed that or made that more stringent and only where they have come again, as the Supervisor said, as a last resort – after they have tried all natural means – and they will implement an IPM for the rest of the facilities, not only the Colonial Acres – and if they have to use some sort of synthetic control, the new code specifies it can be no greater than a level 3. He said a level 1 is highly toxic for those who do not know. He said the level 2 is not as toxic and between level 2 and 3 is where the big cutoff is. He said 3 is cautionary and 4 does not have any EPA restrictions as to labeling. He said they are a little bit stronger than what you would get using natural and other means.

Mr. Kotary said he thinks the Board has done their due diligence, created more stringent controls in some cases, and increased the thresholds and the process by which they will come to that potential conclusion as well. He said he agrees with Councilman Messina to move on this and moving this tonight does not mean that anything is going to be done tomorrow. He said there is plenty of time to continue to work with the Cooperative Extension, Parks and Recreation staff and should Colonial Acres come on board to work with our environmentally award winning staff over there to ensure that this is done as a last resort. He said he would just add one other thing, he is a parent of 3 young children – 1 who actually plays in the Soccer Club – and the other 2 play on the fields during practice and the Soccer Club at the soccerplex also uses again a very controlled, timing being an issue at times, category 3 and 4 pesticides. He said again, done properly and effectively those can be safe. He said he would not do anything to jeopardize his children or anybody else's in Town. He said he feels comfortable with the changes and supports going forward with the changes tonight.

Supervisor Cunningham asked if there were any other comments. The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.  
Noes: None.  
Absent: None.

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

The motion was made by Mr. Plummer and seconded by Mr. Messina to approve the appointment of seasonal personnel as listed on the Memorandum dated May 23, 2007 at the titles and salaries indicated and requested by Nan Lanahan, Administrator, Parks and Recreation Department. The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.  
Noes: None.  
Absent: None.

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The next item was a request from Assistant Director, Michael Morelli, Economic Development and Planning, for receipt of Planning Board recommendation regarding Vista Master Plan and set a public hearing for June 13, 2007 to solicit public comment on the Vista Master Plan. Supervisor Cunningham noted he was taking this item out of order.

The motion was made by Mr. Plummer and seconded by Mr. Messina to acknowledge the receipt of the Planning Board recommendation on the Vista Master Plan and to set a public hearing for June 13, 2007 at 6:15 p.m. to solicit public comment on the Master Plan as requested by Assistant Director, Michael

Morelli, Economic Development and Planning Department. The motion was passed by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary, Mrs. Dawson.

Noes: None.

Absent: None.

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The following item was a presentation of the Annual Stormwater Management Program Report. Supervisor Cunningham noted Town Engineer, Erik Deyoe, will present this information.

Town Engineer Deyoe thanked the Town Board and Supervisor Cunningham for giving the opportunity to give an update of the Stormwater Program development. He thanked, especially, J.J and his staff for getting the mike fixed so he does not have to scream his head off.

Mr. Deyoe said as everyone knows, there is a permit with DEC, which requires the Town to develop a storm water program compliant with the Phase 2 regulations. He said as part of the program requirement, they are obligated to put together an annual report for DEC and along with it a presentation on the status of our program development. He introduced Paul Penman and Monica King from the Engineering Division noting they have been very helpful and very influential in developing the program this year. He said they did increase ... with their help.

Mr. Deyoe with respect to tonight's agenda, Mr. Penman will cover some background information with regard to the Phase 2 storm water regulations. He said both Mr. Penman and Mrs. King will discuss the required elements and the current status of our program along with future proposed development efforts. Mrs. King will then going to discuss local law development. He said there are 2 local laws required to be passed and enacted by the Town Board as part of this effort and then he would finish up with some organizational impacts. He said he will also address future and current costs, funding opportunities and how the residents can help.

Paul Penman, Engineering Division, thanked Mr. Deyoe. He said the Phase 2 storm water regulations originated from the Clean Water Act and it requires regulated MS4 to develop, implement and enforce the storm water management program. He said these are not new, however, they are being passed down to the local level. He said traditionally it was DEC and EPA that has enforced them and regulated the requirements. Mr. Penman said it is unfunded mandate passed down by EPA with the goals to be reduced discharge of fluid into the water bodies, check the water quality and meet the water quality requirements and control the quantity of storm water discharge.

Mr. Penman explained an MS4 is a municipal separate storm sewer system. Currently, he said the Town has 2 separate sewer systems – the sanitary sewer system which is all the household waste which goes down to the treatment plant and that is a regulated through a different permit. He said this is all the storm sewers that discharge to all the different streams and water bodies around Town. He said what constitutes an MS4, it is an urbanized area as determined by the census data. He said this is traditionally done in the higher built out areas of Town and once an MS4, always an MS4. He said this means as the Town grows, you will see more and more of the Town become an MS4. Mr. Penman exhibited a map showing the current boundary of the regulated MS4 limits and as development occurs throughout the Town, that boundary is going to increase even if the census data decreases, once it is an MS4, it is always an MS4.

Mr. Penman said with the Phase 2 storm water regulations, the first permit deadline is coming up on January 8, 2008. He said by that deadline, they have to have 2 local laws enacted. Mrs. King will be going over the details of those local laws later in the presentation, Mr. Penman noted. He said one of the big questions is why do we have to do this, what happens if we do not do it. He said if this is not done, the DEC could fine the Town up to \$25,000 per violation per day. He said on top of that they can file a civil suit in State or US court and if it is criminal

violation, fines and prison time can result. He said on top of all of this, citizens could start litigation against the Town.

Mr. Penman said as part of the program, there are six (6) minimum control measures. He said those are elicit discharge protection elimination; construction site runoff control; post construction runoff control; public education and outreach; public involvement and participation; and pollution prevention and good housekeeping. He said the first one of those is elicit discharge protection and elimination. He said what the Town is required to do is to map location of all outfalls and receiving waters and adopt a local law which makes it illegal to discharge storm water pollution in to the storm water system. He said an outfall is an actual location where the storm water goes into the receiving body.

Mr. Penman said what they have done so far this year is located a map of approximately 130 outflows. He said they believe that is the majority of the outfalls in Town, however, as part of year 5 they plan to make a map of the remaining outfalls and they anticipate there may be up to 50 more out there. He said on top of all of that, they scanned all the existing storm sewer mapping and as they got the outfalls, they took baseline water quality tests of the water coming out of each outfall. He said they have also developed a database that allows them to track the water quality and the inspection of the outfalls in the future.

Mr. Penman said this year the goal is to enact a local law and ordinance. As he said, they are going to locate the main outfalls and continue development of the map but then also start follow-up water quality tests on those that have already been tested. He said on top of that, they are going to start importing the scanned map into GIS. He said this would allow in the event of an illicit discharge they are investigating, they can go into GIS and actually click on the area and any existing map will come up on GIS.

Mr. Penman said construction runoff control, has to do with all the construction sites that are going on right now. He said they are required to develop a law, which oversees the storm water management on construction sites. He said right now they have not done a lot on this because not much can be done until the local law is enacted. He said so far they have identified who is going to be responsible, what kind of organization change will be required and on top of that, and extensive training of the staff for inspections has been done. He said in the subdivision review process, they have started looking at storm water management and treatment on the different applications.

Mr. Penman said year 5 falls, enact local law and ordinance, a separate law for elicit discharge and Mrs. King will get into that. He said part of the local law process will probably have to revise the grading and erosion set provisions in the Zoning Law and might have to modify the site plan and subdivision review process to incorporate the storm water management aspects into it. He said as part of the application they will be requiring a storm water prevention plan which is otherwise known as a SWP and they will continue their field inspector training.

Mr. Penman said once the sites are built and constructed there are some requirements to follow-up on that. He said the requirements are again developed along which addresses storm water runoff from the development projects and establish maintenance requirements and authority to inspect it. He said year 4 they created 3 drainage districts – Milltowne Plaza, Carriage Hill, Trinity Manor – with those they started maintenance agreements with the owners of the treatment systems and been requiring structural management. He said this is storm water retention ponds, sand filters and other ways of treating the storm water on the site. He said again, they are providing further training for the inspectors.

Mr. Penman for the coming year, the plan is to get an actual law and ordinance to ensure that all new systems that come on line have long term maintenance and operation agreements and then create a system so all of this can be tracked. He said all the systems will have to be inspected on an annual basis. He said they will continue to create drainage districts with the new developments.

Mr. Penman handed the presentation over to Mrs. King. Mrs. Monica King said the next minimum control measure is the public education and outreach efforts. She said with this they hope that people will appreciate their water resources, help them understand what they in their communities can do to protect them. She said therefore they provided information in the spring at the household hazardous waste flier and also publicized their annual report. She said they had a storm water display and some storm water fliers. She said they also had a storm water report and utilized utility bill insert and started their storm water website.

Mrs. King said in permit year 5 they hope to repeat permit year 4, and they hope to start up some tributary signage. She said studies have shown that if people are aware of what water bodies are near their house, they kind of take ownership of them and they start to care about what is being dumped into them. She said they want to install curb markers, similar to one displayed, that says do not dump, drains to the Normanskill. She said the goal is to make people aware of what you dump down the storm drain, does not get treated. She said it does not go to a magical treatment plant that takes all the pollutants out. Mrs. King said they hope to have another storm water ... and utilize more utility billing inserts, also plan to track the amount of traffic that the storm water website is receiving.

Mrs. King said the next minimum control measure is public involvement and participation. Involving people, she said, yields better programs, improves compliance and rich partnership. She said in permit year 4 they made their annual report available for public review and comment. She said they held the household hazardous waste day which allowed residents to properly dispose of their household hazardous waste free of cost. She said they had a presentation at the Town Board meeting similar to this and ordered storm drain stencils with the Albany County MS4 Intermunicipal Community. In permit year 5, Mrs. King said, they hope to repeat their permit year 4 goals and want to promote the storm water hotline and the online complaint submission forms. She said most of these come directly to her. She said she gets to read and respond to them as soon as possible. She said this is another way for the residents in Town to have direct communication with the Town.

Mrs. King said they look to install a rain garden with support from the Bethlehem Garden Club. She said they are going to try and install some of the curb markers with volunteers to help get residents involved in the storm water program. She said they are going to track the storm water website traffic as mentioned and conduct a storm water survey. She said some residents may have received them in their water bill. She said they started this in February and had an amazing response to the survey.

Mrs. King said under pollution, prevention and good housekeeping, they developed a plan to reduce and prevent pollution from Town operations. She said in permit year 4, they held their household hazardous waste collection, had street sweeping program which was actually being conducted prior to the storm water management program but they get credit because this program helps keep debris out of the storm sewers. She said there is leaf and brush pickup, again helps keep the debris out and DPW, Highway and Parks has undergone extensive training and the recycling program and continued the pet waste ordinance.

Mrs. King said in permit year 5 they want to continue permit year 4 activities and continue to train the staff as necessary. She said they want to establish standard operating procedures or SOPs to confirm that the Town is doing exactly what they are encouraging residents to do which is to keep things out of the storm water system. She said they also plan to assess internal operations and facilities making sure that all of the departments and divisions are following good SOPs and continue the bi-weekly storm water staff meetings in which several departments sit down and make sure they are progressing with their storm water efforts and every division and department is on the same page.

Mrs. King next spoke about the local laws that are required to be passed. She said the responsibility of enforcing storm water management will need legislation to empower the Town to regulate and enforce storm water activity. The

Town Board can add 2 local laws. One will be the illicit discharge and detection law, according to Mrs. King, and the second will be the storm water management and erosion, sediment control law. She said DEC passed down this unfunded mandate. She said they gave a template that could be reviewed, tweaked and work with to work it into the current laws. She said they gave a model log and modified it. She said the modification also has to be done for existing codes and laws. She said it will not come in by itself but a team player with the zoning code, dumping section of the Town Code and with the sewer code and subdivision guidelines.

Mrs. King said the schedule is to have a draft plan to the Town Board by August of 2007, laws enacted by late September 2007 to go into effect in January 1 of 2008. She said there is long term program compliance noting this is something that is not going away. She said they need to continue with their water quality monitoring of outfall. She said as mentioned earlier by Mr. Penman, the locations have been found, started some testing at the outfalls to give a baseline and will continue to monitor several testing perimeters to see if they are getting worse so they can see if the storm management program is successful. She said they are tracking and locating illicit discharges using a pc and gps to locate and track the outfall. She said currently they test for is ph, temperature, chlorine, ammonia and phosphate. She said they are hoping over time they will be able to see and confirm if ammonia levels are going up, hopefully not.

Mrs. King said enforcement of illicit discharges and construction activities, is going to help them to identify violators, notice of violation given to violators, and possibly stop work orders depending on the severity of the violation. She said violators who come into compliance will just be recorded and kept in a record. She said violators that remain non-compliant will either face fines or court hearings.

Mrs. King said they will be reviewing storm water pollution prevention plan, which might have been mentioned as SWP. She said they are going to be confirming that construction site inspection is being done properly. She said at the Albany County Storm Water Committee which the Town has been involved with and is a great committee that has given them an opportunity to work with surrounding municipalities that are dealing with the same thing the Town is. She said this committee may develop into an organized coalition.

Mrs. King said the annual inspection of the storm water treatment facilities will need to be conducted with routine maintenance of public storm water treatment facilities. She said continued effort of program development for each required program element. She referred the presentation back to Town Engineer Deyoe.

Town Engineer Deyoe said in respect to organizational impacts, it is pretty clear that this is a very broad reaching, large and complex program. He said it is relatively new to the Town and it requires a focused and dedicated effort. He said they have made great strides in the last 2 years developing the program. Unfortunately, he said they are doing it on a part time basis, looking at the team that is working and with Gregg Sagendorph and Howard Hyer of the Highway Department to assist with some of the efforts but it is being done in somewhat of an unfocused way. He said they are making progress but not as effectively as they could be.

Mr. Deyoe said effectively this program is expanding the regulatory enforcement obligations. He said basically they are being mandated to do what DEC does currently with respect to storm water regulations. He said as suggested during budget preparation last year, it is important that it move forward and there needs to be the creation of a position in engineering to continue and carry the torch forward to maintain this program. He said the position potentially titled Storm Water Program Coordinator. He noted the Town of Colonie has created a similar position already whose responsibility it is to continue the storm water program and the maintenance of the program, reviewing storm water pollution plans and issuing and reviewing associated permits. He said there is going to be a permit, similar to the zoning code now as part of the new local laws. This person will be responsible for inspecting construction sites and enforcing the regulations and the SWPs as they are approved, conduct field inspections, tracking and enforcement on the

illegal connections – basically tracking where the violations are and issuing citations and enforcing the regulations as they are drafted. He said field inspections of storm water treatment facilities. He said as we move forward, the Town will take ownership of some storm water treatment facilities be it pond or wetlands or storm water of some kind. He said there will also be private facilities out there and they will be responsible to make sure that the private facilities are maintained and operating as they are intended. He said overall this position will be required to maintain compliance with the MS4 permit with DEC.

Mr. Deyoe said beyond the organizational impacts on engineering, they will need assistance from other Town departments to move forward. He said they continue to work with EDP to include the SWP submission process with their development, site plan and subdivision review process. He said they would lean a little bit on building and code division to do some cursory level inspections of building site projects so as a residential property is constructed, they make sure the building and codes plans evolve they are aware and looking at what is going on outside the building to ensure that storm water issues are being addressed. He said if they are not, they would expect them to contact the Storm Water Program Coordinator to follow up with an inspection. He said Highway Department would as more of these public treatment facilities on be required to maintain the facilities, with the ponds, dredging may have to be done periodically, weed wack and mow the perimeters on these facilities and make sure they are maintainable. He said beyond that, Highway, DPW and the Parks and Recreation Department will all be going through some level of audit to look at their internal operations, our existing operating standards procedures to see what needs to be done to comply with the phased in regulations.

Town Engineer Deyoe next addressed cost and said this summary is the best he can put together of the cost expected in 2006 with respect to the program. He said some of the effort is part of normal business and are attributable to storm water and if they were not doing them, they would have to do them otherwise. He said they are getting credit for what is already being done.

Mr. Deyoe said in 2006, they expended \$48,500 in the household hazardous waste collection day. He said the Highway Department staff expended over 30,000 hours doing street sweeping, leaf pick up, leaf vacuuming, brush pick up and so forth. He said collecting all this debris is good because this would otherwise be collected in the storm sewer and cause problems in the storm drainage system. He said the engineering division spent over 1100 hours in program development efforts. He said this is a significant effort and opportunity cost to the Town. He said they are expending extraordinary effort and time to try and develop this program. Beyond that, he indicated they have attended numerous storm water training session as well. He said the Building Department has gone through over 75 hours of training for their own inspectors to try and bring them up to speed with new regulations. He said they have also gotten support from the Town Clerk, DPW administrative staff and the Supervisor's office in taking care of some of the storm water initiatives like the Spotlight advertising, storm water survey collection that Mrs. King mentioned.

Mr. Deyoe exhibited a slide about program costs and a range is based on the number of residences in the community and the range goes from zero dollars to about \$100,000 and the moderate range program could cost anywhere between \$100,000 and say \$410,000 a year. He said what this means is that there probably was not a lot of control on the study because it is outdated but beyond that it is a way to see what has been expended in the past. He said no one has experience with this and the only place to look would Phase 1 communities which were the first round of the storm water program and that really was large communities. He said he thinks the only places affected by the Phase 1 were New York City and the Burroughs. He said consequently because of the difference in scale, there is no really good benchmark with respect to the Phase 1 communities.

Mr. Deyoe said he took a look forward, given the money being sent currently and the effort that will be expended in the future with respect to these new regulations and what are the needs in the future. He said this is somewhat similar

to what was talked about in the budget cycle last year. He said the additional staffing, estimation plus fringe is a \$70,000 impact, still be continued efforts from some level of engineering staff and represents an opportunity cost noting these staffers are already budgeted in the budget so it takes away from being able to do something else and is about \$30,000 opportunity cost effort. He said they would have to supply the new staff person with office equipment, tools, test kits to go out and verify water quality, computer costs and that is estimated at about \$10,000 since that is an upfront cost with a lower maintenance cost going forward. He said there would still be extensive training costs to get this person up to speed with respect to field inspections and water quality testing and there will likely be some consulting services required to fit additional technical expertise they would need to move forward either developing storm water pollution prevention plans on the Town projects or providing some technical guidance for where the staff may not be strong yet. He said that is all about \$105,000 in additional real costs annually.

Mr. Deyoe said basically what they are proposing to do is take a look at a series of fees and additional outreach into our general highway fund as they have done in the past. He said right now the entire program is supported by the general highway funds. He said they would propose to review the current plan review fees. The engineering division right now charges some fairly nominal fee for the review of plans, projects through the Department of Economic Development and Planning. He said these fees could be modified those fees to accommodate some review efforts. They would still need to provide a fee structure, according to Mr. Deyoe, around the new radio road control permit and include field inspection fees. He said right now the engineering division does field inspections for subdivision construction. He said they will probably take a similar approach with regard to storm water and charge a fee for their field visits to review the projects and additional fees to deal with re-inspections of non-compliant sites.

Mr. Deyoe said proposed fines would be included in the local laws for storm water violations. He said they would continue their efforts to create drainage districts. He said unfortunately the drainage districts can only capture the future maintenance costs of the created storm water facilities. He said there is no way to capture the more global program costs but there is a mechanism that allows the Town to recoup some costs for the maintenance efforts. He said they would still probably need to reach into the general highway funds and apply for any available DEC grants going forward. He said the Town currently is a member of the Intermunicipal Coalition that Nancy Heizen had done. He thanked Mrs. Heizen and said they have worked diligently with the County on that and reaped some good results with respect to additional training and outreach to address the issue in other communities.

Mr. Deyoe said with respect to future opportunities, DEC is actually looking at all the possible funding options for communities – be it a village, town or city – to see what is available to us in terms of fees, fines and district formation and so forth to see what is available out there. He said one of the things that has been talked about quite a bit is potential creation of storm water utilities noting it is somewhat different than a district in that it's structure is not benefit based so it requires some changes at the State level, Legislature in order for the Town to consider that in the future. He said they certainly are not recommending that at this point in time, noting we are long way from that point. He said that may be a future opportunity.

Mr. Deyoe next addressed how residents can help out. He said there are just a couple listed items but clearly volunteering for storm water activities as they continue to move forward, they are looking for help. He said strong arms and volunteers to help out would be appreciated. He said maintaining and inspecting your septic systems, treating and storing chemicals appropriately, dispose properly pet waste. He said these are just a few efforts that can be done to help out.

Mr. Deyoe said anyone can call Gregg Sagendorph, Highway Superintendent, indicating he is the resident expert with regard to storm water. He said anyone in the engineering or highway department is becoming well versed in this effort and they have a great reference in their storm water website. He said the

EPA and DEC are good references. He said DEC just updated their website and Capital District Regional Planning Commission has a great website with respect to water quality as well and he thanked them for providing some of the presentation board in the back of the auditorium.

Mr. Deyoe said that was the end of the show. He said if anyone had any questions, he would be willing to try and answer them.

Councilman Messina said he had one question and that was when Mrs. King was doing her part, the use of model laws from DEC was discussed and asked if there is no history out there what was his sense of how close the model will be applied versus how tailored and how controversial it might get. Mr. Deyoe said they are trying to stay as tight to the model law as they can. He said many communities around Bethlehem are going to adopt the model law without a lot of modification. He said they are trying to follow that same format. He said the only tweak they may see would be to align it with existing zoning law where they currently have some different thresholds for creating an erosion permitting under a section of the zoning law. He said they would tweak the model law to match our existing zoning. He said really effectively, the residents would see no change with respect to the different thresholds. He said otherwise, they are not proposing any significant modifications. He said the bigger look is to look back at the existing laws to make sure that there are not inconsistencies or inaccuracies that get created as they move forward in the law. Councilman Messina thanked Mr. Deyoe.

Supervisor Cunningham asked if there were any other questions from either the Board or the general public. He thanked Mr. Deyoe, Mr. Penman and Mrs. King noting they did a lot of work on this along with Nancy Heizen and looking forward to all the grant money Mrs. Heizen will get the Town.

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The next item was public comment on non-agenda items and the Supervisor asked if there were any. Mr. Robert Jasinski said Mr. Deyoe did a wonderful job but he had a question. He said at the last meeting of the Town Board there was concern about the main sewer line that was running from Rote 144 down to the plant, he asked if there is any news on this. He said it was flexing and quite a problem and with Commissioner Holmes retiring he wondered what will be done. Supervisor Cunningham said they are still working on it even though Mr. Holmes is retiring.

Town Engineer Deyoe said they have gone through an evaluation with the consulting engineer on the loads that the pipe actually would put onto a bracing system. He said they have had to change plans somewhat and they cannot go with a standard shoring system, they are going to build a custom system to support the pipe while they develop the final design on a bypass to bury a pipe and get rid of the elevated pipe line in the future. He said they are expecting prices back from a contractor on the bracing system and hope to move forward on that as soon as possible. Mr. Jasinski asked if that will go out to bid or is this an emergency. Supervisor Cunningham said this portion of it is an emergency that will be bid on. Town Engineer Deyoe said the bracing system is by emergency action and they will move forward with the bypass under a design bid build conventional process. Mr. Jasinski thanked Supervisor Cunningham and Town Engineer Deyoe.

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Supervisor Cunningham asked if there were any other comments. There were none. He asked for a motion to adjourn.

The motion was made by Mrs. Dawson and seconded by Mr. Plummer to adjourn the regular Town Board meeting at 7:20 p.m. The motion was carried by the following vote:

Ayes: Mr. Cunningham, Mr. Plummer, Mr. Messina, Mr. Kotary.  
Noes: None.  
Absent: None.

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Deputy Town Clerk

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