

TOWN BOARD
NOVEMBER 16, 1992

A special 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 4:00 p.m.

PRESENT: Kenneth J. Ringler, Supervisor
Frederick C. Webster, Councilman
M. Sheila Galvin, Councilwoman
Charles Gunner, Councilman
Sheila Fuller, Councilwoman
Bernard Kaplowitz, Esq., Town Attorney
Kathleen A. Newkirk, Town Clerk

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Remove From Table - Kruger Contract and Consider Adoption of Resolutions

SUPERVISOR RINGLER: Good afternoon, call the special meeting of the Town Board to order. First item on the agenda is to remove from table and consider adoption of resolutions regarding the Kruger Contract. Entertain a motion to remove that from the table.

The motion was made by Mrs. Fuller and seconded by Mr. Webster to remove from table consideration of the resolutions regarding the Kruger Contract. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin, Mrs. Fuller.
Noes: None.

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Okay, I understand at last weeks meeting some questions came up on this and Mike, perhaps you can address those at this point in time.

MR. SMITH: Yes, in response to questions from Mr. Gunner and Ms. Galvin, I went back checked out the notices that were published in connection with the RFP and the draft RFP and Sheila, I understand that Gregg got the copies of the Times Union publications to you or that Mr. Nealand will.

COUNCILWOMAN GALVIN: No.

Discussion Kruger Contract

MR. SMITH: Okay. I also sent to Sheila basically the executive summary that was prepared by the Nixon, Hargrave people from the City of Albany.

COUNCILWOMAN GALVIN: Yes, I have some questions about that when you are through, Mike.

MR. SMITH: The notices are very difficult to read and that is why, Sheila, they weren't faxed. They are very, very broad. The June '91 drafts, notice of the draft RFP and it was followed up by November 1991 notice of the RFP. In speaking to the attorneys, the office -- Nixon/Hargrave folks -- today, following up with a number of conversations last week, with the paralegals handling the closings and also speaking to George Nealand today, I was told that the language that is contained in the draft RFP was contained in the RFP itself. Which is that -- the way the notices are published, it is very, very broad.

COUNCILWOMAN GALVIN: You can't tell.

MR. SMITH: No, it is very, very broad and the language is... the print is very, very poor. The notices were, according to the City, intentionally broad. They were seeking to provide, if they could get it, soups to nuts type coverage. They would like to have had, if at all possible, one company doing everything -- now, both the commingle container and the paper. The draft RFP, and I am told the RFP, contained however specific references allowing a bidder to... or a proponent to seek only one of the options -- either only on commingled containers and only waste paper. The executive summary reflects the facts that during the comment period, after the June publication, it

was very clear to the City that they would not be successful in getting someone who is willing to take on the whole thing.

COUNCILWOMAN GALVIN: That's the June 1991.

MR. SMITH: In response to the June 1991 posting. The RFP continues to have the option language because they anticipated they would only get option bids. So, the Kruger bid is for paper only.

COUNCILWOMAN GALVIN: Question at that point, in the Nixon/Hargrave summary they refer to only one response to the RFP having been submitted in effect as a bid, as a formal proposal.

MR. SMITH: That is Kruger.

COUNCILWOMAN GALVIN: And, that was Kruger. I thought the other night when we were discussing this that there had been a specific reference to 2 bids having been received or 2 proposals having been received. One from Kruger for the paper and the other...

MR. SMITH: The options on waste.

COUNCILWOMAN GALVIN: Yes.

MR. SMITH: I do not know what Options did at that time. I do not know whether they have actually submitted a bid.

MR. SAGENDORPH: In original of mid 1991, I do not believe so.

MR. SMITH: Yes.

MR. SAGENDORPH: I wasn't directly involved at that point, Marty was still on board then.

COUNCILWOMAN GALVIN: What I am talking about is, this is the June 8, 1992 summary that indicates that in response to the RFP which appears to be the final RFP and that would be the one that was published according to this November 21, 1991, there was one proposal. And, that was Kruger.

MR. SMITH: Which was Kruger's, that is right. Only for paper.

MR. SAGENDORPH: That is right.

MR. SMITH: Sheila, I do not know, just because the New Options thing is not before us -- I do not know how New Options proposed contract got into the stream. The only thing I have been addressing is Kruger.

COUNCILWOMAN GALVIN: My problem with that, Mike, is on the second page of the Nixon/Hargrave summary under 2 negotiations with Kruger Recycling Inc., there is discussion of negotiations after the proposal was received and alteration of the contract terms.

MR. SMITH: My understanding, Sheila, from the wording of this is that as negotiations that was in relation to discussions that occurred -- first of all between June and the second publication of the RFP.

COUNCILWOMAN GALVIN: Okay.

MR. SMITH: I believe that they are talking about negotiations in connection with that period of time.

COUNCILWOMAN GALVIN: Okay, my problem is, in the second sentence in that sub 2, there is a specific reference that reads, following receipt of KRIs response to the DPWs request for clarification. The DPW together with and blah, blah, blah... entered into negotiations with KRI and its legal engineering counsel. My concern is when, was that before or after the proposal that was submitted in response to the November 21st 1991 proposal.

MR. SMITH: I am reading that as being after the proposal but, I do not know that.

COUNCILWOMAN GALVIN: In other words, the proposal was submitted and then they negotiated after that.

MR. SMITH: That is correct.

COUNCILWOMAN GALVIN: And, I have got another... that gives me a problem in terms of alteration of a bid. But, that is... alteration of a proposal response. Putting that aside for the moment...

MR. SMITH: Unless we know what that is, Sheila, I don't...

COUNCILWOMAN GALVIN: That is my problem.

MR. SMITH: I don't know whether or not that...

COUNCILWOMAN GALVIN: Mike, that is exactly what my point is, I don't know. I can't tell and given that I am unclear on compliance with 120W.

MR. SMITH: Well, I don't think... I mean, from what I have seen here, the compliance with 120W, is whether or not notice of the RFP was out there, whether or not the RFP complies with the notice but then the question of the tinkering as to the niceties of the contract...

COUNCILWOMAN GALVIN: I agree there is leeway for tinkering as long as it stays within the scope of the original RFP.

MR. SMITH: It doesn't appear to...

COUNCILWOMAN GALVIN: And, I can't tell.

MR. SMITH: There does not appear, Sheila, to be any question that from... that Kruger's paper only submission was...

COUNCILWOMAN GALVIN: I... okay, Mike, I understand that it is paper only but go down to little roman numeral 2 within that subparagraph 2 and it very specifically says KRI is willing to provide planning unit with much of the benefit of its status as an end market for paper by offering the planning unit the best available market prices on sorted material and 50 percent of the best available mill price for unsorted material. That's a negotiation that refers specifically to dollar amounts and dollar value, especially when we are talking about a 50 percent of the best price. Now, I don't know what the RFP requires.

MR. SMITH: I don't believe the RFP set a dollar range. I believe it was wide open. Gregg, can you add anything?

MR. SAGENDORPH: They negotiated the dollar value after the RFP.

MR. SMITH: That's correct, that is my understanding of it.

COUNCILWOMAN GALVIN: But, what did the RFP require?

MR. SMITH: I don't believe that it said anything concerning the actual price.

COUNCILWOMAN GALVIN: Because, I thought we had been hearing different prices. At one point I remembered hearing, I think, \$25 and then last time we heard \$40 a ton and I am...

MR. SAGENDORPH: That is the negotiated contract.

COUNCILWOMAN GALVIN: It went up from 25 to 40.

MR. SAGENDORPH: No, what you just read there, the unsorted paper is \$45 a ton less 50% of the sell price, the sorted paper option is \$25 a ton less full value of the sell price. That is the negotiated contract price, Albany with Kruger.

COUNCILWOMAN GALVIN: What did the RFP require for price?

MR. SAGENDORPH: That I do not know.

MR. SMITH: I don't know the answer to that either, Sheila.

COUNCILWOMAN GALVIN: That gives me a problem in entering into a contract when we don't know.

MR. SMITH: Sheila, it doesn't give me a problem for the... because of the language in here that the City's attorneys, the City aviact and our agent are telling us that regardless of what the RFP said, that negotiations on the price issue were favorable to the planning unit members. And, I don't see it is a 120W problem at all, a change in a price issue. That... I don't consider that to be substantial materiality.

COUNCILWOMAN GALVIN: My problem is, without knowing what was required in the RFP, I don't know.

MR. SMITH: But, Sheila, again, my reaction to this was that it was a non-issue because no matter what it said in the RFP about price range, if the price range was favorable to us...

COUNCILWOMAN GALVIN: How do we know it is favorable?

MR. SMITH: That is an analysis issue, I mean...

COUNCILWOMAN GALVIN: Has anybody on behalf of the Town been involved with that analysis?

MR. SMITH: I have not addressed the price.

SUPERVISOR RINGLER: It certainly is better than what we have been getting.

MR. SMITH: I did not address the price issue, at all.

COUNCILMAN GUNNER: What are we presently getting?

MR. SAGENDORPH: We haven't been billed in the last 2 months because of these negotiations and they don't know if we are on board with citing this contract or not. They haven't... they are charging... the last time we had been charged, it was at the unsorted paper price of \$45 per ton less half the sell price, even though we took in sorted paper product.

COUNCILWOMAN GALVIN: How long have we been dealing with Kruger?

MR. SAGENDORPH: Since last year, since... on the open market.

MR. SMITH: Unrelated to this, not specifically related to this service agreement.

COUNCILWOMAN GALVIN: Have we dealt exclusively with Kruger?

MR. SAGENDORPH: Yes.

COUNCILWOMAN GALVIN: Did we have a contract with Kruger?

MR. SAGENDORPH: No.

COUNCILWOMAN GALVIN: How did we end up dealing with Kruger?

MR. SAGENDORPH: At this time, they are the only market... not the only market available. They are our best market available to take the paper. We had been taking it to Fort Orange Paper. We have to send labor and equipment down to the landfill, we have to handle the paper out of a roll-off into cardboard boxes and then all that paper over to Fort Orange in Castleton. It was cheaper at the \$25. a ton rate to haul this paper in the roll-off down to Kruger on South Pearl Street.

COUNCILWOMAN GALVIN: At the \$25 rate.

MR. SAGENDORPH: Yes.

MR. SMITH: Sheila, see because of the pendency of this issue, which, as you can see, has been around for some time, it was all handled on a spot market type situation because we, at that point being a member of the planning unit, could not, ourselves, or did not want to, ourselves, enter into a short-term contractual relationship, even if that was possible. So, this is just been a matter of necessity, dealing from that perspective until this thing was finally ironed out.

COUNCILWOMAN GALVIN: Well, I have other questions but I also know Charlie has been chomping at the bit with some questions.

COUNCILMAN GUNNER: No, I just... I did get myself cleared up that those materials, I did have them at hand at home -- the ones that were handed out, I did research and find them.

MR. SMITH: Reviewing this from a process basis, it is my opinion that the process... the 120W process has been appropriately handled. My primary concern, Sheila, in following up on your question, was in connection with our adopting this and was appropriate notice of the draft RFP and the RFP looking at the draft RFP and my conversations with Nealand, Nixon/Hargrave offices and the published notice, there is compliance. I have not looked at every nuance of the particular contract, no.

COUNCILWOMAN GALVIN: Well see, I can feel that probably given the material you just have given me today that there was compliance with the 120W publication requirement. Without seeing the RFP, the thing that gives me indigestion in this or one of several is these negotiations that took place, either before or after the proposal was submitted by Kruger and not being able to tell the materiality of those negotiations, especially without knowing the requirements of the original RFP. The one that was published in 1991.

MR. SMITH: And, I don't have the answer on the price issues, I just don't. I looked at it from the perspective of what I was asked about the last time, which was the belief by you and Mr. Gunner that there was a proposal that was an ominous proposal and that was the issue that I looked into.

COUNCILWOMAN GALVIN: And, Mike, when you faxed me this and when I sat down and went over this summary from Nixon/Hargrave, it raised the other question about the materiality of those negotiations since they go specifically to a price issue.

MR. SECOR: I mean there has been ongoing meetings between the recycling coordination meetings which Gregg has been most recently attending -- I have been going to -- where Nixon/Hargrave would come and report to the members of ANSWERS, what was going on, how it was going -- Nixon/Hargrave has been involved all along in this. The City of Albany's Department... Public Works Department and the City Attorney's department has been involved in this. I don't know why we should call them to question whether or not they did it right.

COUNCILWOMAN GALVIN: That is all well and good, Bruce, except for the fact that we have a responsibility to make sure that our end and anything that we are connected with in relation to any type of contract negotiations like this is done correctly. And, my concern is, there have been too many loose ends.

MR. SECOR: I don't see, where do you say loose ends. I don't understand that.

MR. SMITH: Sheila, my concern is... well, the proposal having been properly noticed, properly submitted in response to the proposal, falling within the options available. The tinkering as to terms, I don't see as a 120W problem.

COUNCILWOMAN GALVIN: Well, tinkering as to terms is one thing, tinkering as to dollar cost is a substantial element.

MR. BRUCE: That is the idea of the... the whole idea of the proposal process is for bidders or potential contractors to come in and say this is the offer I am making. And, that is what they are discussing here.

COUNCILWOMAN GALVIN: That is exactly the point, Bruce, and I can't tell from this Nixon/Hargrave memo whether or not those negotiations -- and Mike seems to think the negotiations took place after the proposal was submitted in response to the November 19, 1991 RFP. If the numbers were changed after that, how do we know what the other people who submitted bids, where they stand.

MR. SECOR: No one else submitted bids.

MR. SMITH: There were no other bids, Sheila.

COUNCILWOMAN GALVIN: Well, according... that's another thing that bothers me, because at the last meeting we were told there were 2 bids. That there was a bid from Kruger and that there was a bid from New Options.

MR. SECOR: Again, I wasn't at the last meeting but the 2 bids, there was a bid from Kruger response to this RFP. Later on at some point, New Options on Waste who had been held up by DEC in trying to get their recycling process started in Watervliet, never ended up being there and ended up on South Pearl Street next to these people, later on came forward and said, we have an offer on your comingled recyclable containers. I don't really think they considered a response to the RFP because the RFP date had been closed long before that. They just came forward and offered a contract. That became the 2nd contract.

MR. SMITH: Which is another problem there.

COUNCILWOMAN GALVIN: That is another problem.

MR. SECOR: But, that is why we had been taking our recyclables out to Syracuse because there was no local market. Now there is a local market available. But, that kind of just matured with time.

MR. SMITH: We reported on the... in the August meeting, on the New Options, when I was on vacation Mike Greco in my office was sent the material regarding the contract. At that point, up until now, the big question vis a vis New Options had never been raised or discussed.

COUNCILMAN GUNNER: I remember your recommendations, Mr. Greco gave, gave some very strong thing. As a matter of fact, strong things have been recommended by you and but as a matter of fact, even in the introductory letter, you were very much upset about the contract, right?

MR. SAGENDORPH: Right.

SUPERVISOR RINGLER: That is the second contract with New Options on Waste.

MR. SAGENDORPH: Yes, right.

COUNCILMAN GUNNER: Correct.

SUPERVISOR RINGLER: Which, they admitted was the wrong contract.

MR. SAGENDORPH: Yes.

MR. SMITH: We have the ability in terms of... there is nothing magical about this November 17th, 18th closing dates. I would be very glad to go back and investigate the issues that Sheila is raising and I have already altered them that there were substantial concerns expressed by the Board. We will get the answers and... I believe there has been compliance, Sheila, the issues I looked into.

SUPERVISOR RINGLER: I guess we have a major concern here, first of all we don't have any guarantees that we are required to provide under this contract. We don't have to guarantee them anything.

MR. SAGENDORPH: No.

SUPERVISOR RINGLER: This just gives us the ability to use the service, as I understand it, correct?

MR. SAGENDORPH: Yes.

MR. SMITH: It ties us to use them if we are going to use this particular... to get rid of this particular material.

SUPERVISOR RINGLER: It doesn't tie... it only... what we take in at Rupert Road which is very little.

MR. SMITH: Right, it is no put or pay provision.

COUNCILWOMAN GALVIN: But, if we take in recyclable paper under contract, it has to go to Kruger is that right?

MR. SMITH: That's correct.

COUNCILWOMAN GALVIN: We have no option. It has to go to Kruger.

MR. SMITH: That is correct. Instead of taking it out to Syracuse, we are using some place else if somebody else will take it. At this point, Kruger has been used because they have been the only one to take it at a price that...

MR. SAGENDORPH: It was the most economically feasible place at this point in time. Late last year we were tipping for free and then it went up to \$25 less the sell price of \$10, \$15 a ton. They have been on hold with us and I can't give you... I am hesitant to call them down there to see what the price is.

COUNCILMAN GUNNER: Why?

MR. SAGENDORPH: Until we can get this resolved.

COUNCILMAN GUNNER: Oh, okay.

MR. SAGENDORPH: I mean, they are letting us in, which is good. I don't want them to shut the door on us at this point. There is a glut of paper in the market and it may be difficult to find another market.

COUNCILMAN GUNNER: Another question for you, which concerned me a little bit and I think it has been either misspoken or I misread it. August 12th minutes...

MR. SAGENDORPH: Okay.

COUNCILMAN GUNNER: And, I asked this indirectly in the last meeting. It is referring to you, it is right from the minutes -- he said they are also recommending that at the bottom, that Kruger recycling and New Options on Waste which is ANSWERS has contracted with to take the recyclables from all the participating municipalities. I have my interpretation, what was your meaning of that sentence?

MR. SAGENDORPH: What page is that on?

COUNCILMAN GUNNER: On the excerpt that was given to us, on the second page and it is about 1/4 of the way down, one paragraph down from the top after your signature. It begins with he said in the middle of the page. Why don't you take this?

MR. SAGENDORPH: No, I am all set, Charlie, I have it. The City of Albany, ANSWERS, negotiated with both New Options on Waste and Kruger to take the recyclables, either who they award the contract to from the participating municipalities, from the planning unit, if the municipalities sign on... sign the contract with these companies. If the municipalities fail to sign the contract, these two companies have the right to close the doors on them.

COUNCILMAN GUNNER: You are not indicating that there is any relationship between ANSWERS and Kruger? But, if you read that, you know, I was reading it cold at home, I guess. Do you see what I mean?

MR. SAGENDORPH: Yes.

COUNCILMAN GUNNER: There isn't because I asked...

MR. SAGENDORPH: City of Albany negotiated the contract.

COUNCILMAN GUNNER: Okay.

SUPERVISOR RINGLER: Do you feel comfortable with the process? The rest of the Board, do you have any feelings on this one we are doing? Do you want to move it ahead?

COUNCILMAN WEBSTER: Counselor have any problems?

COUNCILWOMAN FULLER: I don't have any, Mike is the attorney.

COUNCILMAN GUNNER: I think I might have another question or two if you will be patient with me.

SUPERVISOR RINGLER: Sure, go ahead.

COUNCILWOMAN GALVIN: Charlie, while you are looking up your next question, I have got one. Gregg, who is Shirley Phyllis, who I supposedly have been in touch with? I never heard of her.

MR. SAGENDORPH: Okay.

MR. SMITH: Nixon/Hargrave. She is the paralegal doing the closing.

MR. SAGENDORPH: I had been in touch with Mike Smith on Friday and also George Nealand and George called me back and said Gregg what you are requesting has also been requested from Mike Smith and possibly from Councilwoman Galvin. So, I just took for granted...

COUNCILWOMAN GALVIN: Okay, no I have not been in touch with anybody.

MR. SAGENDORPH: He just said if you want 3 of everything I will send you 3 and I just...

COUNCILWOMAN GALVIN: I was just curious as to who I was supposedly in touch with who I have never heard of.

MR. SMITH: She may call too.

COUNCILWOMAN GALVIN: Okay.

COUNCILMAN GUNNER: Yes. Town Board meeting September 9, 1992, okay -- I am sorry I don't have another copy for you -- I will let you have this to read, if you want to read it. Okay. Right in the middle of the page, there are a couple other questions, one being regarding the two contracts that were proposed. There was still some discussions that we have to clarify with the City. I met the City together with Gregg and Bruce yesterday -- and I guess this is you, Ken speaking --

SUPERVISOR RINGLER: Okay.

COUNCILMAN GUNNER: If we wanted to add some language to the Kruger contract which provides us an out in this particular contract because as it is right now, we would be tied into that planning unit did and that was one of the major concerns of our attorneys when we looked at it. I have submitted proposed language to the City and my understanding is.. and they are going to go to Kruger and I believe that is going to be acceptable to them. In the mean time, even without contracts, these markets are available and I think we should go ahead with the mandatory recycling. My question is, have we really resolved this?

MR. SMITH: Charlie, we have. The way it is going to be worked is this... and, you should have had in your package the letter from Kruger agreeing to amend the contract. Because of the logistical mechanics of amending our contract before the closing but no one else's, Kruger indicated, the City indicated, that was just impossible to do. As opposed to the past when we have had problems with the City because they said things were impossible, Kruger lawyer, Michele Casilly of Plunkett and Jaffy agreed with me that we

will close on the contract that everyone is closing on but in regards to ours, it will be immediately amended to contain the language I proposed. I can live with that.

COUNCILWOMAN GALVIN: What do you mean by immediately, at the closing?

MR. SMITH: The next day. There will be an addendum signed. It will be presented to Michele. There is not, Sheila, what they are doing at the closing, there is not going to be a formal closing according to Shirley Phillips. So that it will be... they are being done by mail.

COUNCILWOMAN GALVIN: If they are being done by mail, why can't it be done simultaneously?

MR. SMITH: I don't see a problem with that. It is just a question of, they don't do the initial, the same contract as the initially be signed by everyone. Then it is just a question of logistics in getting them signed. This is a position that... being a member of the planning unit, you remember that there have been a number of occasions where we have taken our own positions, we have tried to get our own changes and we keep running up against this, the fact that normally or usually everyone else is signed off. I understand right now, that we are the only ones who have not signed off or who haven't signed all the closing documents as well. That's fine.

COUNCILMAN GUNNER: Once again on September 9th meeting page 22, Mr. Ringler is speaking, what the contract's do is not tie us into specifically requiring our haulers to go to these particular vendors or while it will allow them to, what it does require us to do is to send anything we collect -- which is the Rupert Road facility. So, that has been cleared up in the contract and no...

MR. SMITH: That has always been. It did not need to be cleared up. That's always been there.

COUNCILWOMAN GALVIN: Mike, I thought you just said that if we got recyclable paper it had to go to Kruger.

MR. SMITH: If we get it, not the haulers.

COUNCILMAN GUNNER: Rupert Road.

MR. SMITH: Rupert Road.

COUNCILMAN GUNNER: There is nothing in there requiring us to make our haulers go there.

MR. SMITH: That is correct. There is language, Charlie, that talks about best efforts.

COUNCILMAN GUNNER: And, what is that?

MR. SMITH: Telling them it is available, encouraging them to do it. There is no forceful requirement. That is clear from the language. It basically says we... it's an encouragement provision. That was a matter of concern for me in looking at the contract because we discussed the possibility of enacting full control legislation and we haven't done it.

COUNCILMAN GUNNER: Okay, so we will not have any responsibility. Now, right in that same paragraph, and perhaps you can help me out, with Bruce here. Are you saying that we are presently paying \$45-\$40.

MR. SAGENDORPH: I can't tell you exactly.

COUNCILMAN GUNNER: Roughly?

MR. SAGENDORPH: The last time we paid, it was \$25 less the sell price.

COUNCILMAN GUNNER: Okay, all right. And, if we become a member of the unit, will be \$25.

MR. SAGENDORPH: It would remain that.

COUNCILWOMAN GALVIN: What would be \$45?

MR. SAGENDORPH: The unsorted paper. The City of Albany is doing this. They are taking down the magazines, the newspaper, the cardboard, the office paper, and the junk mail all in the same truck and just dumping it on their floor. It is a lot more labor intensive to separate that all out so that is \$45 a ton less half the sell price of what the most of that paper is -- which will probably be newspaper. When you take it down, the 5 items sorted, it is \$25 less whatever market value they get for the material you are taking in.

COUNCILWOMAN GALVIN: So, we are now paying exactly what this contract...

MR. SAGENDORPH: We were at the last billing, yes.

MR. SMITH: It appears that's probably a courtesy in anticipation of the contract. It is not binding on them.

COUNCILWOMAN GALVIN: No, but are there other facilities available that our haulers might be using?

MR. SAGENDORPH: There is one hauler in Town that is going to Fort Orange Paper but in talking with that individual, and I don't know legality of getting into the price structure, what he is getting there.

COUNCILWOMAN GALVIN: What is the rate at Fort Orange?

MR. SAGENDORPH: I don't know.

COUNCILWOMAN GALVIN: Has anybody ever asked?

MR. SAGENDORPH: Last we checked it was higher there, plus we couldn't get in. They have redone their system and they are taking less paper than they used to. They did a major improvement and they wind up taking less paper with the glut of paper coming on with recycling, they wound up taking less. The local hauler that is going in there was one of the first people to haul to Fort Orange. So, he is going to be one of the last ones that they ask to leave and he is the only hauler that I know of in this area that is being able to go into Fort Orange.

COUNCILWOMAN GALVIN: Are there any other places that are taking it?

MR. SAGENDORPH: There is T.A. Prettle in Schenectady but once again, you get into the logistics of South Pearl Street versus Schenectady. There is Bonded Insulation up towards Utica, I believe.

COUNCILWOMAN GALVIN: How much are those other places charging?

MR. SAGENDORPH: Roughly the same \$15 per ton, the last time we checked.

COUNCILWOMAN GALVIN: \$15 as opposed to \$25 and is that sorted or unsorted?

MR. SAGENDORPH: That is sorted to them and that is their price. It is not this less the sell price or anything like that. No contract.

MR. SECOR: And, also, it is load by load. You have to call them up, will you take my load today? And, if they say no, what do you do with it. This is a guaranteed being able to be rid of it.

COUNCILWOMAN GALVIN: How many loads do you normally have from Rupert Road during the course of a week?

MR. SAGENDORPH: Course of a week, one load. 14 tons a month it averages from June through October. We have averaged 14 tons and that's everything -- cardboard, magazines, and newspapers. We have never taken a load of office paper if it is not quite full. We have never taken a load of junk mail, that dumpster is not quite full.

SUPERVISOR RINGLER Any other questions?

COUNCILMAN GUNNER: Yes, a couple more I forgot all about. Just so I understand, is that list finalized for what they are accepting?

MR. SAGENDORPH: Yes.

COUNCILMAN GUNNER: And, do our haulers all know? Because as of October 14th, they weren't.

MR. SAGENDORPH: They are aware of what is acceptable and what is not. Haulers have been getting written up on the dump floor if they are bringing in stuff not acceptable at ANSWERS on the tipping floor. They get a sheet, the driver gets a sheet saying this load contains too much of this, this should be recycled.

COUNCILMAN GUNNER: Now, as I remember the contract, if they do that, if they bring it over and they do that at Kruger, all right, who pays for that removal? There was something in the contract about unacceptable loads.

MR. SMITH: The haulers do it, we do not.

COUNCILMAN GUNNER: We do not.

MR. SMITH: It is not our load.

COUNCILMAN GUNNER: It is only our load that we are responsible for.

MR. SAGENDORPH: That we are responsible for, yes.

MR. SMITH: We would be... Charlie, if we did the same thing, we would be responsible.

COUNCILMAN GUNNER: I just wanted to make sure we are not responsible for them. One other question, in... there was something in here and I read that -- do we get any more involvement in the planning unit by participating in this, while we are saying it is okay for other things to go on, since they bid and decided on this? Will they bid on and decide on garbage dumping or things like that? I mean, are we buying into... are we in any way legally getting into something like that? Do you know what I am getting at?

MR. SMITH: Yes, I do because it is an issue that we have raised a number of times on a number of issues. The planning unit is a creature of the environmental conservation law. We are required to be a member of a planning unit with "one or more municipalities". No one by the way, knows what DEC will eventually say what one or more municipalities is. For example, the Eastern Rensselaer County Solid Waste Authority -- when the, I think it was the village or town of Hoosick attempted to withdraw, they were told in writing and I believe, that that has been provided -- they were told in writing by DEC that although they had withdrawn from the authority, they remained a member of the planning unit. So, the planning unit is an entity that we are in for a number of purposes, solid waste management planning, under the environmental conservation law. If we were to leave that unit, we would have to find one or more municipalities so we would then try and seek the approval of our own planning unit. The concern we have always had has been in connection, not with the planning unit, although I think we have all been very vigilant about what the planning unit is going to do -- the concern has been the legislation that has been proposed in a number of sessions concerning the creation of a waste shed authority, similar to what happened in Rensselaer County and similar to other places. The concern there, we all know, is because we do not want, as a member, to voluntarily subject ourselves to their condemnation authority which all the members do, at least in the authorities that have been created so far. In looking at the individual planning unit endeavors, we have been very, very careful not to participate in -- perhaps overly careful -- we have always wanted to say, okay fine, we are a member of the planning unit, we will deal with that when it is good for us but when we feel that it somehow is going to create this defacto appearance that we are buying into the authority -- we have made it very, very clear that that is not what is happening. And,

that was the genesis of the termination language that is going to be added to the Kruger contract which talks about in the event there is an authority created and as would happen, the planning unit contract is going to transfer to the authority -- we are out because if it means us eating a landfill because of their condemnation authority, that is something that we are unwilling to do. So, the planning unit is not in itself a dangerous creature but we have been looking at every step of this to make sure that it does not get us into it. The authority is the issue that we have to be concerned with.

COUNCILWOMAN GALVIN: Since the demise of the burn plant issue, at least temporarily last June, we haven't had any status reports on what is going on with alternatives, what's afoot, if anything?

MR. SECOR: The Solid Waste Task Force has not met since the date of that election and we have been... Ken wrote a letter to the Task Force members thanking them for their help. I felt it was inappropriate for us to meet, one of our options is to look at our own landfill at a time when ANSWERS is going around looking for a permanent regional landfill. I thought it would be inappropriate for us to look at our own individual landfill, heaven forbid we should point out other sites for them that they are already studying in the towns, since they had a shotgun approach to start with. So, we... I have purposely laid back and we haven't done anything in terms of that landfill issue. As far as the service contract side of it, some things are maturing out there between what has happened with ANSWERS. We have also been waiting for what is going to happen between OGS and ANSWERS. There has been a proposed sale of the ANSWERS facility. None of these things have settled down, so one of the problems in the solid waste business is, give me a set of facts and I can make a decision. If you keep changing all the facts and all the rules it makes it very hard. So, basically the direct answer to your question is we are waiting to have some things solidify so we can have firm ground to consider.

COUNCILWOMAN GALVIN: What is our time line in terms of commitment to ANSWERS, how long does that have left to run?

MR. SECOR: The interim landfill is operating, our contract with ANSWERS runs for...

SUPERVISOR RINGLER: 14 years from when we originally signed it.

MR. SMITH: With a 5 year termination buy out.

MR. SECOR: 14 years with a 5 year termination type deal, so the time line, there is no crisis on our side. And, I don't want to do anything to upset this apple cart. The time line shows the City is to announce their final selection of a landfill site this December. So, very shortly we should see a report from C.T. Male, who is the selected consultant, out looking at the landfill sites. Once we have that in, then I think we can begin to reconvene the Solid Waste Task Force and look at these other options. Hopefully, we will also get an answer on what is going to happen with the sale... the proposed sale of the city facilities on Rapp Road and the landfill and all these other things, if OGS and the city make up their mind with the proposal from Energy Answers.

SUPERVISOR RINGLER: Any other questions?

COUNCILMAN GUNNER: I think one has been answered already. You said there is nothing holy about the 19th of November.

MR. SMITH: No, the 17th and 18th. They are aware that we have concerns and they are being addressed.

COUNCILMAN GUNNER: Okay. I would just like to read this over myself and see whether you answered that question again. Okay, you refer in the second paragraph there, you do refer to the planning unit again. So, that would exclude any authority.

MR. SMITH: Yes, correct.

COUNCILMAN GUNNER: Is that what you were talking about?

MR. SMITH: That is correct. The termination language, Charlie, specifically says if there is an authority created and/or the contracts are transferred or assumed by the authority, we are out.

COUNCILMAN GUNNER: And, I think Sheila pretty much covered all my other questions.

SUPERVISOR RINGLER: Anybody else have any questions? Comments? The Board want to move this along?

COUNCILWOMAN GALVIN: I still have a problem with not having Mike's analysis on the dollar amount issue and since the 17th or 18th is not critical, I would like to get that clarified.

SUPERVISOR RINGLER: Does everyone else have a problem with that?

COUNCILMAN WEBSTER: Are you comfortable with it?

MR. SMITH: I believe that the 120W process was complied with.

COUNCILMAN WEBSTER: Bernie, do you have a problem?

ATTORNEY KAPLOWITZ: No, it sounds fine to me.

SUPERVISOR RINGLER: Mrs. Fuller, do you have a problem?

COUNCILWOMAN FULLER: No, I don't have a problem with Mike's recommendation.

SUPERVISOR RINGLER: Well, if we want to go ahead then.

COUNCILMAN GUNNER: Just another question right on that topic. Didn't you earlier say that there was nothing albeit you would be glad to investigate it?

MR. SMITH: I will be glad to but as I said, Charlie, I also believe that the process was effectively complied with. I will be glad to look further but I... as I sit here I believe that the notice provisions were met.

COUNCILMAN GUNNER: Well, since you volunteered to look further, I would personally appreciate it if you would. I just get the feeling of uncertainty in my mind, not yours, okay.

MR. SMITH: No, those are 2 separate questions. Question I am being asked...

COUNCILWOMAN GALVIN: The 120W issue was the initial question in terms of the advertising but then this summary memo raised a new question and that was the question about the post bid and the post proposal submission and change of contract dollar amounts.

COUNCILMAN WEBSTER: Can we move for signing this based on Mike coming back to you with satisfactory information to satisfy Sheila's questions... the questions of Charlie and Sheila?

COUNCILWOMAN GALVIN: I have a problem with signing it without knowing whether or not that has been properly done, Fred.

COUNCILMAN WEBSTER: I am just saying, with Mike coming back satisfying that question to the Supervisor.

MR. SMITH: The alteration... whether or not the alteration impacts on the contract is an issue that I haven't looked at because I didn't know it was an issue.

COUNCILWOMAN GALVIN: I didn't know it was until I got this.

COUNCILWOMAN FULLER: This wasn't an issue Wednesday night?

COUNCILMAN WEBSTER: No, it was not an issue.

COUNCILWOMAN GALVIN: I didn't know it was an issue until you faxed this to me Friday.

SUPERVISOR RINGLER: I don't see where it is an issue. I don't feel uncomfortable with it, I don't know about the rest of you. I would just as soon get this behind us.

COUNCILMAN GUNNER: I would too but I want to make sure that we... any issues are resolved at least by our legal counsel.

COUNCILWOMAN GALVIN: Mike, how long would it take for you to verify and report back?

MR. SMITH: Well, Sheila, remember I told you last Tuesday, I thought I would be able to get you something within 24 hours and I found that dealing... there has been... because there are so many folks involved, getting information -- I can get right on it. I have no problem with it, whatever...

COUNCILWOMAN GALVIN: Would you have any problem with having it for the next Board meeting?

MR. SMITH: No.

COUNCILMAN GUNNER: That would be after the 19th.

COUNCILWOMAN GALVIN: Yes, but as Mike said, there is no problem with the 19th, 17th or 18th.

COUNCILMAN WEBSTER: If we could get him just to provide that answer back to the Supervisor, can't we authorize him now?

COUNCILWOMAN GALVIN: Well, I think since Charlie and I are the 2 raising the question, it would be nice if we had the question answered.

COUNCILMAN WEBSTER: He can respond to you also, if you wish.

MR. SMITH: It's an issue that was not looked into.

COUNCILMAN GUNNER: If you could respond to the whole Board, okay, we would all know and it would be resolved. My answer is yes, if that is done and he said he can, it is no problem.

SUPERVISOR RINGLER: How do the rest of you feel?

COUNCILMAN WEBSTER: Well, it is not a question in my mind. I am satisfied with Mike's answer but...

COUNCILWOMAN FULLER: I am satisfied with Mike and my concern is if we put this off until the 24th or wherever our next meeting is, will there be other questions raised that will have to put it off further in December before we can vote on it. This issue was not addressed Wednesday night, I wasn't here so I don't know.

COUNCILWOMAN GALVIN: Sheila, it wasn't raised Wednesday night because we didn't have the information on the RFP. It wasn't raised until this came.

COUNCILWOMAN FULLER: That didn't come in your agenda? I didn't know that.

COUNCILWOMAN GALVIN: No, I received this on...

COUNCILWOMAN FULLER: I picked my stuff up today when I was back.

COUNCILWOMAN GALVIN: I received this by fax on the 13th, the afternoon of the 13th at about 3 p.m. in the afternoon.

MR. SMITH: This was located in one of the files and I thought it provided some helpful historical information concerning the notice. Now, Sheila is dealing with right now, with the merits of the price issue.

COUNCILWOMAN GALVIN: Because the price was negotiated apparently after their proposal was submitted.

SUPERVISOR RINGLER: But, can't you look at the document to see whether or not that was...

MR. SMITH: Ken, this is the draft, okay and I think what Sheila would say to me is, that is fine, counselor but what about the RFP.

COUNCILWOMAN GALVIN: Yes.

SUPERVISOR RINGLER: Okay, so you would prefer to hold this off too?

MR. SMITH: At this point, yes.

SUPERVISOR RINGLER: Okay. All right, let me just...

MR. SMITH: Again, stating that the compliance issue, I believe is fine.

COUNCILWOMAN GALVIN: I agree with you.

MR. SMITH: I also, Sheila, in my opinion the issue of the price is the City acting as the agent for the planning unit members unless there was... I can't foresee how that would invalidate the 120W process, but I will look at it.

COUNCILWOMAN GALVIN: Thank you, Mike.

COUNCILMAN GUNNER: I would suggest if... you are sure this date is not a difficult thing?

MR. SMITH: I believe it is not, yes I believe it is not.

COUNCILMAN GUNNER: I just want to be sure.

MR. SMITH: I cannot, Charlie, there is nothing legal...

COUNCILMAN GUNNER: Because I would have something else to say otherwise.

MR. SMITH: There is nothing legally about it. I can't say... I don't know what the response is to the issue that Gregg raised, which is without the contract they have been accepting our stuff. Now, is there anything magical, there is no time of the essence language that, which is a legal answer, practical answer is that this guy may not be able to dump his stuff. I believe that my dealings with the attorneys for Kruger and the City have been very cordial, they understand the... I am hopeful they would not retaliate by saying we don't have a contract so your doors are blocked.

COUNCILMAN GUNNER: This contract has to be approved by resolution of the whole Town Board.

MR. SMITH: Yes, we have to pass a series of resolutions. Passing a resolution adopting the contract with the language I think is necessary, then dealing with the SEQR.

SUPERVISOR RINGLER: Negative declaration under SEQR.

MR. SAGENDORPH: I think just from a practical standpoint, again, I think it is important -- Charlie asked the question, do we have to force the haulers... the local haulers to go there? The answer to that is no. It is up to them to find a market. It is just as important for us to make a market available in the case there is a glut of recyclables which is starting to happen, we've instituted mandatory recycling 2 years ago. We have expanded that for additional items, if we sign this contract, Kruger is mandated to take the recyclables that are generated within the Town of Bethlehem. So even if they didn't want to take our haulers with this contract, they have to take them, at the same price we have negotiated for. So, it is a benefit. If the haulers have to go out on the spot market and have to haul this a long distance, they are going to pass the increases onto their customers. So, I think we are providing a benefit to the citizens, as well as, to the haulers at a very local place, at a reasonable price.

MR. SMITH: Sheila, if this was our own contract and we were talking about the pricing issues between proposal 1 and proposal 2, I would say, fine, that is it. That is something. But, in this particular case, it is the City who is negotiating agent.

COUNCILWOMAN GALVIN: But, we have a duty to verify its accuracy and verify its compliance and whether or not somebody else acted as our agent, we are not relieved of liability by saying, he didn't...

MR. SECOR: What liability is there?

COUNCILWOMAN GALVIN: I don't know, that is why I have asked Mike.

MR. SMITH: Well, the 120W compliance, my opinion remains the same and what I would be looking at would not in my...

COUNCILWOMAN GALVIN: No, it wouldn't involve the 120W.

MR. SMITH: It is another issue entirely.

COUNCILWOMAN GALVIN: Yup, which was raised by this 1113 information.

SUPERVISOR RINGLER: But, I would hope Nixon/Hargrave, who Albany paid a great deal of money to, insured that they complied with everything that went on here.

MR. SMITH: I don't think... and see my reaction is that I don't believe that's necessarily our issue. We are dealing with the bottom line price and a bottom line contract. We've got the 120W compliance, I am satisfied there, we have the 120W6 publication which should bring any objections out of the woodwork and we are dealing now with the merits of what they did as opposed to the process.

COUNCILWOMAN GALVIN: My problem is after the publication in November of '91 and the submission of the proposal, it is the alteration of the contract and potentially the change in the price. Just want you to verify those issues that we have previously discussed.

COUNCILMAN GUNNER: Could we do this -- I guess I should ask you, if this motion were passed conditional upon verification of those prices?

COUNCILWOMAN GALVIN: My problem is...

MR. SMITH: We are opening...

COUNCILWOMAN GALVIN: A can of worms.

MR. SMITH: See, we are opening a can of worms from this perspective, is that I don't know what I will be able to come back with that satisfies you because, Sheila, I think we have got the number of stage issues here. I believe from the language, that between June and November that this was after November. But, the problem is...

COUNCILWOMAN GALVIN: It could have been before, we don't know.

MR. SMITH: Well, then it is easy.

COUNCILWOMAN GALVIN: Then there is no problem.

MR. SMITH: But, even if it was after, was it after the bid was actually accepted and I don't see any reason to believe that is the case.

COUNCILWOMAN GALVIN: That is my... the problem is their language was sloppy. If they had been a little more precise in that summary memo, we would know. Just give us a date, tell us...

MR. SMITH: Well, yes or no.

COUNCILWOMAN GALVIN: Tell us the bid was accepted and we negotiated it. The bid was not accepted, we negotiated before.

MR. SMITH: I believe what happened was that from the memo, the chronology that I derive from the memo was that the RFP in November

was published, they submitted a proposal, the proposal was negotiated and then the bid was let.

COUNCILWOMAN GALVIN: It sounds like it but again, I can't tell from that memo.

MR. SMITH: Okay.

COUNCILMAN GUNNER: And, you are not sure either.

MR. SMITH: That will be... that issue I will get.

SUPERVISOR RINGLER: Is it a real issue?

MR. SMITH: Could be, yes.

SUPERVISOR RINGLER: Well, what does the Board want to do it? Do you want to table it, do you want to move it?

COUNCILMAN WEBSTER: I thought Charlie suggested the same thing I did, I think, satisfaction of that issue to the Supervisor and allow him to sign the contract.

COUNCILMAN GUNNER: To the Supervisor and...

COUNCILMAN WEBSTER: And Sheila, providing the information to all the Board members.

ATTORNEY KAPLOWITZ: You mean, pass it on the condition...

COUNCILWOMAN GALVIN: Why not table it until the next Board meeting?

SUPERVISOR RINGLER: I would like to have it close, if we could, because I am concerned with them cutting the market off.

COUNCILMAN WEBSTER: I am too.

SUPERVISOR RINGLER: I mean that is my concern.

COUNCILWOMAN FULLER: And, that is being unfair to the citizens.

COUNCILWOMAN GALVIN: That is a concern but to be perfectly honest, I have raised the question, I do not feel comfortable signing off strictly by information provided to me. It is information that is... that should be to the entire Board.

COUNCILMAN WEBSTER: That is what I said. That is what I just said, I said that.

COUNCILWOMAN GALVIN: It should be reviewed by the entire Board. How do we do that without a meeting, Fred?

COUNCILMAN WEBSTER: If that information comes back to us in a satisfactory fashion, he has no objections.

SUPERVISOR RINGLER: If Mike is satisfied that this was done legally in his opinion.

MR. SMITH: Within the 120W compliance, yes.

SUPERVISOR RINGLER: And, there is no problem with the way the negotiations took place in his view on the price.

MR. SMITH: That I have not looked into.

SUPERVISOR RINGLER: Listen to me through, if you investigate this and by tomorrow, when they are ready to close, if you are satisfied that they have complied legally, can we not authorize the signatures of this? If Mike is satisfied, not whether I am satisfied, he is our attorney, I respect his opinion on this.

COUNCILMAN WEBSTER: That is what Charlie suggested too.

SUPERVISOR RINGLER: And, if Mike is satisfied that this is not a problem, okay, authorize the signatures.

COUNCILMAN GUNNER: Well, Mike and at least 3 members of the Board.

SUPERVISOR RINGLER: Well, we can't vote that way, we have to do it at a meeting. Okay, we want to delegate that to him to insure the legalities of it.

COUNCILWOMAN GALVIN: Well, I want to see the documentation on this and have an opportunity to talk to Mike at a public meeting. I mean, we are talking about signing a contract. I have a problem with doing this without a meeting.

MR. SMITH: Tuesday. I believe that we can negotiate with them, that they will hold us out. They won't at this point, close us based on that. That is the best I can do.

SUPERVISOR RINGLER: Okay, motion to table.

The motion was made by Ms. Galvin and seconded by Mr. Gunner to table consideration of the resolutions regarding the Kruger Contract. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

Table
Consideration
of the
Resolutions
Regarding
Kruger
Contract

- - -

COUNCILMAN GUNNER: When are we going to hold that meeting?

SUPERVISOR RINGLER: It will be the regular meeting of the 24th. I will add it to the agenda.

COUNCILMAN GUNNER: And, you said you didn't feel that would be a problem.

MR. SMITH: I will do my best.

COUNCILMAN WEBSTER: The 24th is right.

SUPERVISOR RINGLER: The next item, entertain a motion to remove from table and consider recommendation from Bruce Secor, Commissioner of Public Works, to go to bid for ground water infiltration test wells.

The motion was made by Ms. Galvin and seconded by Mr. Webster, to remove from table and consider recommendation regarding ground water infiltration test wells. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.
Noes: None.

Remove from
Table and
Consider
Going To Bid -
Ground Water
Infiltration
Test Wells

- - -

SUPERVISOR RINGLER: I understand at the last meeting there were some concerns about initiating this two prong process without having the interest in the land before going to bid. I have discussed this with the Town Attorney and he believes that... although I believe and I am paraphrasing it...

ATTORNEY KAPLOWITZ: You can put words in my mouth.

SUPERVISOR RINGLER: That although he does not view that as a problem, we could certainly add something to the bid specifications which says that these bids would be awarded contingent upon us having the title necessary in the property.

COUNCILWOMAN FULLER: That language can be included in the bids when you put it out for bid?

SUPERVISOR RINGLER: Yes, when you put out for bid.

COUNCILMAN WEBSTER: No problem, Josh?

MR. EFFRON: No problem at all as long as it is a disclosure to prospective bidders in the bidding documents, there is no problem there. And, of course, they understand we have the exculpatory language in the bidding documents that... actually what we are trying to avoid here is 2 things -- a delay claim for not having the site available and an impossibility of performance if we don't have our site available. so, we have put in appropriate language in the bidding documents and that solves that problem.

SUPERVISOR RINGLER: Any other questions?

COUNCILWOMAN GALVIN: Josh, what is the problem with the site?

MR. EFFRON: Okay. Bear with me historically, the lands where the great bulk of the well head, the infiltration itself, is land that is now or formerly under the waters of the Hudson River and historically belongs to the State of New York. The access to those lands, and a portion of the well head belongs to Jennings, it is part of what many years ago used to be called Poplar Island. And, of course, the access to these lands overland, via from Route 144, would have to be over the lands of Jennings. So, we... actually we are looking at an interim permit as part of an application process from the Office of General Services and we are also looking at an agreement with Jennings.

COUNCILWOMAN GALVIN: Prior to this have any of our wells, our previous test wells, been on this land?

MR. EFFRON: Yes.

COUNCILWOMAN GALVIN: Did we have an interim permit for those?

MR. SECOR: No, let me answer that Josh. At the time, when we first talked to the Jennings and we asked their permission to go down and drill our test borings and things we did, they never informed us that they didn't own all of the property and that the tax map showed that all of the property was under their ownership.

COUNCILWOMAN GALVIN: But, we didn't do a search?

MR. SECOR: Well, we hadn't gotten to that point. We were still doing exploratory work. When we finished the exploration and did the preliminary design, then we sat down with the Jennings to talk about land issues and property lines, they then said -- well, by the way, we only own a little portion of this and even though the tax map shows the rest of it is owned by us, it really isn't. That is when we started getting into the tax mapping.

COUNCILWOMAN GALVIN: When we did the initial wells, did we have a written agreement with the Jennings?

MR. SECOR: No.

COUNCILWOMAN GALVIN: Did we have a written agreement with anybody?

MR. SECOR: No. Again, at this time, we were doing exploratory work in a large area and we did some borings on our own park land properties, we did borings a number of areas. We were just beginning searching, it was all done with verbal permission from the property owners.

COUNCILWOMAN GALVIN: But, we never got anything in writing, we never provided anything to them concerning our activities on the land.

MR. SECOR: No.

COUNCILWOMAN GALVIN: We never got easements or rights-of-way to bring our...

MR. SECOR: No.

COUNCILWOMAN GALVIN: Temporary right-of-way to bring our equipment on.

MR. SECOR: There was an existing farm access road and we simply went down and did some...

COUNCILWOMAN GALVIN: Oh, okay.

MR. SECOR: ...drilling... some bore sampling and it was all done with their permission.

COUNCILWOMAN GALVIN: Did we pay them anything for that?

MR. SECOR: No, we did not.

COUNCILWOMAN GALVIN: At what point in time were these... was this site selected?

MR. SECOR: It was as a result of the work done by Fraser and Dunn Geoscience and we made the selection and that was that report given to the Town Board on the 7 or 8 proposals and then there was the engineer's map, plan and report on the specific project. So, that was when... what November of last year.

MR. FRASER: I believe so, yes.

MR. SECOR: I think it was November of last year when we made the report to the Town Board.

COUNCILWOMAN GALVIN: And, when did we find out that there was the problem with the title?

MR. SECOR: About 3 weeks ago.

MR. FRASER: About 3 or 4 weeks ago.

MR. SECOR: About a month ago.

COUNCILWOMAN GALVIN: How did we go from November til 3 weeks ago, without verifying title to the property?

MR. SECOR: Well, we were in the process of doing final design and talking to the Jennings and the issue never was raised. And, they had told us that they owned all the flat. But, what... when they pointed and waved their hand and said we own all the flat, it didn't mean exactly what I took it to mean. So, when we finally sat down and looked at deeds, that is when the issue came up and said oh, by the way, we only own the island here and the island over here. So, it was a discovery that we weren't anticipating because we had got to the point we were sitting down talking to them about issues of what had to be in a purchase contract so we could bring a draft contract before the Board when this was finally brought up.

COUNCILWOMAN GALVIN: Shifting gears slightly, but on the same topic, are these lands in the 100 year flood plane?

MR. SECOR: Yes, they are.

COUNCILWOMAN GALVIN: Where is the Corps of Engineers stand on this?

MR. SECOR: We have submitted to the Corps of Engineers, we have had their inspectors out on the site and they determined that although there are some Federally regulated wetlands, we are not significantly impacting those and we are awaiting -- I think we have gotten verbal approval and we are awaiting written approval from the Corps.

MR. FRASER: Correct.

MR. SECOR: Those submissions and reports are in. The Corps of Engineers is involved, the Coast Guard is not because we are not out in the water.

COUNCILWOMAN GALVIN: In the channel.

MR. SECOR: Right.

COUNCILWOMAN GALVIN: In the process of dealing with the Corps, didn't the title issue come up?

MR. SECOR: It never did. There is nothing... there was no mapping that ever even hinted that they didn't own the land and...

ATTORNEY KAPLOWITZ: If I could interject something. I don't think... one of the problems is that the ownership by the State of New York was not something by deed where you would find something. It was by virtue of the dredging they did... you remember when?

MR. SECOR: No.

ATTORNEY KAPLOWITZ: I don't remember the year.

MR. EFFRON: Many, many years ago.

ATTORNEY KAPLOWITZ: When they dredged up a portion of the river, when the State does that they claim the land they created by the dredging operation. So, there is no deeds that anybody could have ever discovered.

MR. EFFRON: Well, what also happened, Bernie, is that many, many years ago, the Feds put in a bulk head line on both the east and west shore of the river and then as... every year so when they would dredge the channel, they would spoil the material behind this bulk head line. It didn't change the ownership but to anybody looking at it, it looked like you couldn't tell the difference between what was historical upland and what was historical river land. But, there are no... I mean if you went into the chain of title, there is nothing that says this is owned by the State of New York.

COUNCILWOMAN GALVIN: I understand that but what my problem with this is, weren't we aware of the dredging operations that had taken place in that area?

MR. SECOR: We were aware that some dredge and fill had been done but again, since the issue of the State ownership of the land had never come up, there was nothing on the DEC mapping for a regulated wetlands, there was nothing on the Corps mappings, the Jennings never mentioned anything, the tax map showed that they owned anything. I sat down and talked to them because some of the tax mapping was wrong, it just never came up. We never got to that point until we started doing the appraisals and started having the plotting of the deeds and that is when this all evolved.

COUNCILWOMAN GALVIN: When were the appraisals done?

MR. SECOR: We started appraisals about 3 weeks go.

MR. EFFRON: Three weeks ago.

MR. SECOR: And, then had to stop because we realized that we were appraising lands owned by the State versus that and we had to get them plotted so that we knew who owned what.

COUNCILWOMAN GALVIN: How long do you anticipate the interim permit process to take, Josh?

MR. EFFRON: Basically, we should have an interim permit within 30 to 45 days after the application is submitted. I have a copy. I have the application. Most of the documentation that the State requires for the easement application, I think we pretty much have. There is a few things that we have to add in, then once they get that -- once they have the application in hand, they would be in a position to issue an interim permit 30 to 45 days thereafter.

COUNCILWOMAN GALVIN: And, how long would be interim permit be good for?

MR. EFFRON: Until, that would be... there is no time limit on it.

COUNCILWOMAN GALVIN: What would be the scope of the interim permit?

MR. EFFRON: To permit the construction of the digging of the test wells.

COUNCILWOMAN GALVIN: It would just go the test wells. Would we in the future have any intention of putting anything other than the test wells on the area covered by the interim permit?

MR. SECOR: Well, the test wells... if the test wells are successful and we expect they will be, will become part of the permanent installation, so then the rest of it -- what is being discussed here is -- here is the entire map and there are 2 wells shown down here with a future of 2 more wells. Now, what we are planning on this first phase, is to develop full scale 2 wells, do them as pump test wells and then once we have determined the yield and the water quality and characteristics and everything else, then go in with another contract to build the pipelines and build everything else that's involved. But, this would... what we are really going to request is a permanent easement which would be subject to the successful completion of this. This is similar to our purchase contract with the Jennings. It would say, this is a contract subject to our successful completion of this and moving ahead with the contract. But, we are really talking about a permanent easement of 200 feet by 15 or 1600 feet long. If the test well show that we have to have a wider well head protection area, then we may have to go back later on and amend that to have additional protection. But, right now, the design is for 100 feet where the direct construction is involved and 100 feet of protection zone for grading purposes and so we can control uses within 100 feet of our well head area.

COUNCILWOMAN GALVIN: So, we are looking at a temporary permit with the possibility of the need to go to a permanent easement if the test wells are successful.

MR. EFFRON: Yes, the application would be for the permanent easement with the interim permit to permit the test well program to go forward. Then, assuming, of course, that the test wells are successful and the results are satisfactory and we could -- everything would be contingent, obviously, on our getting the necessary water supply permit from DEC. Then, we can go ahead and acquire.

COUNCILWOMAN GALVIN: What are the risks of not being granted the interim permit?

MR. EFFRON: Based on the meeting that we had with OGS on Friday, I would say very minimal, the risks are very minimal.

COUNCILWOMAN GALVIN: Yes.

MR. SECOR: Again, we are not proposing to do anything until we have that permanent easement or the interim easement in hand.

COUNCILWOMAN GALVIN: I am talking about the temporary permit, the odds are in favor of getting it. How about the permanent easement?

MR. EFFRON: I am sorry, Fred... again, the discussions with the people at OGS left me with a very favorable opinion. I would say that... we had originally wanted to obtain a fee to the 100 x 1200. The people at OGS suggested that we go the permanent easement which will obtain... so far as the Town is concerned, we have the same results. The process is an awful lot simpler because there are a number of situations that would not have to be met and involved with and resolved if we don't go for the fee land grant.

COUNCILWOMAN GALVIN: How long would it take to get the permanent easement?

MR. EFFRON: Best estimates, according to OGS within 8 months to a year after we file the application.

COUNCILWOMAN GALVIN: But, the temporary permit would be 30 to 45 days.

MR. EFFRON: That is correct.

COUNCILWOMAN GALVIN: And, how long would it take to get the paper work in for the application?

MR. EFFRON: I have started it. I am hoping to have it done within a week.

COUNCILWOMAN GALVIN: So, it would be conceivable that we could have the temporary permit in hand within how long?

SUPERVISOR RINGLER: 5, 6 weeks.

MR. EFFRON: Yes, I would say, assuming that we have all of the technical stuff that they want. They want to see something in writing from the Corps of Engineers, obviously, there would have to be the consent to make the application from Jennings, so this would be part and parcel of discussions with Jennings.

COUNCILWOMAN GALVIN: So, it would be conceivable with... before the end of the year.

MR. EFFRON: Yes, oh sure.

SUPERVISOR RINGLER: Questions? Entertain a motion to go to bid with that contingency added to the specifications?

Go To Bid WHEREAS, the Town desired to advertise for bids for Ground Water
 Ground Infiltration Test Well, pursuant to law, and
 Water Infiltration WHEREAS, the contract will include the language: This bid, its
 Test Wells acceptance and the award of a contract is contingent upon receipt by
 With the Town of Bethlehem of all necessary governmental approvals and
 Contingency permits and upon acquisition by the Town of Bethlehem of any
 necessary rights-of-way or easement,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 18th day of November, 1992 and that bids be received up to 2:00 p.m. on the 10th day of December, 1992 at which time the bids will be publicly opened and read.

COUNCILWOMAN GALVIN: I still have the same problem with going forward without having at least the temporary permit in hand when there are hurdles that we may have to jump through. Josh has indicated that it looks very favorable but we are only talking about a 5 to 6 week delay in going to bid and at that point in time, we would have the proper documentation in hand, at least with the temporary easement since everything is going to be contingent on the success of those test wells. I think that it would be important to at least go into that property equipped and prepared because it appears that the bulk of the work in terms of going for the permanent easement will be done at this stage -- am I correct, Josh? It is going to be at this stage in getting the bulk of the paper work together?

MR. EFFRON: Yes, it's...

MR. SECOR: The problem with that is, is reflected in the memo to the Board, is the timing. If we wait 5 or 6 weeks until we have this and then start the bidding process which is another 5 or 6 weeks, we end up with a 12 week loss of time. Where, I think they can run concurrently at no risk to us because we are not going to award a bid for... give a contractor a notice to proceed until we have this paper work in hand. It just saves us about 5 or 6 weeks, which we really need to save.

COUNCILWOMAN GALVIN: Well, I understand that Bruce, except this site has been under consideration and basically selected since -- according to what you said last November. Had our people proceeded to take a look at the title and verify these things when we were aware that there had been dredging in that area, we wouldn't have any delay because Josh could have gotten going and had the interim permit in hand and possibly the easement at this point.

MR. SECOR: It really... it hasn't affected the time line because the plans and specifications were only very recently completed and we have gotten them to the Board as quickly as we can. We haven't lost any time in that line.

COUNCILWOMAN GALVIN: But, we knew what site we were looking at.

MR. SECOR: That is true and this came up and it was something that was unanticipated and, you know, it's just something that happened and we are trying to work through it. I don't see it as a big problem. The thing I don't want to lose, is the 5 or 6 weeks which is important to us.

COUNCILMAN WEBSTER: Our 24 months is running, isn't it?

MR. SECOR: Yes, our time clock. The sand is coming through the cone.

COUNCILMAN GUNNER: Can't we put an enclosure in the bid statement?

SUPERVISOR RINGLER: That is what we said we were going to do.

COUNCILWOMAN FULLER: Yes, that was what they asked for to start with.

COUNCILMAN WEBSTER: He said that would be in, yes.

COUNCILMAN GUNNER: Bernie, you feel that would...

ATTORNEY KAPLOWITZ: Yes, that was my suggestion, I think that is fine.

COUNCILMAN GUNNER: That would cover us?

ATTORNEY KAPLOWITZ: Yes.

COUNCILMAN GUNNER: I mean, at least for the bid portion.

MR. SECOR: Now, in the memo sent to the Board there was a draft notice of contract bid and the only thing I would say is to change the date and everything -- we need to pick a later date because this originally had December 3rd and I think we should push that back to December 10th as a bid date. So, it will give the bidders 3 weeks to look at these and then we have 45 days after that to decide whether to award or not. That should give us sufficient time to get at least the temporary easement.

SUPERVISOR RINGLER: All in favor?

COUNCILMAN GUNNER: No, excuse me. Does that... this motion going to include that statement? Yes?

SUPERVISOR RINGLER: Yes, I said that.

COUNCILMAN WEBSTER: Yes.

COUNCILMAN GUNNER: Okay, fine, thank you.

SUPERVISOR RINGLER: All in favor? Opposed.

The resolution was adopted by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Mrs. Fuller.
Noes: Ms. Galvin.

COUNCILMAN GUNNER: I want to go back to the original one, the Kruger thing. I am sorry but...

MR. SMITH: Can I raise one, Charlie, before you start?

COUNCILMAN GUNNER: Yes, go right ahead.

MR. SMITH: Sheila, if you look at the bottom paragraph on the second page, it clearly indicates this is the bid recommendation.

COUNCILWOMAN GALVIN: I understand that.

MR. SMITH: Clearly indicates the negotiations occurred before the bid.

COUNCILWOMAN GALVIN: I am unclear about that, even from the way this memo was presented because this is dated June 8th of 1992.

MR. SMITH: Of 1992.

COUNCILWOMAN GALVIN: Of 92, yes.

COUNCILMAN GUNNER: Who wrote that?

MR. SMITH: This is the City's attorneys, Nixon/Hargrave.

COUNCILMAN GUNNER: Okay, so they will know.

MR. SMITH: Well, we can tell from this document.

COUNCILWOMAN GALVIN: Well, I am not clear on that because it is June 8th 1992.

MR. SMITH: We don't know because there is no name on it. But, reading the whole thing, Sheila, I just went and reread it again, it talks about them having been the only bidder, it talks about a request for clarification, which occurred after -- at least from the language, I agree it is not as clean as you would want it -- but you read this thing in its entirety, is that you have June 91 draft RFP is noticed, there is then the meeting, they scope out the proposal, they then publish the November 91 notice, which we have. Kruger is the only bidder, there is then the negotiations and then the June 8, 92 recommendation to bid.

COUNCILWOMAN GALVIN: But, see here is what my problem is, if you read that 3rd paragraph, it says we believe that the proposal submitted by KRI was the only proposal responsive to the terms of the RFP, we therefore, believe that pursuant to GML Section 120W KRI is the most responsive proposer, as well as the lowest net cost proposed. I can't tell when those negotiations... whether that is before or after the negotiations. I still can't tell from that memo because of the way that paragraph 2 is written.

MR. SMITH: Okay.

COUNCILMAN GUNNER: I was... I started this question off by hoping that we could... I am not against having another special meeting if the question is answered tomorrow. All right, and then we still could even meet our deadline date. Okay. But, in there... when was this contract forwarded? I think I know, at least I know that this is whited out, the date, but the date is 6/4/92.

MR. SMITH: That is the draft...

COUNCILMAN GUNNER: Has nothing to do with it?

MR. SMITH: I don't believe so, no.

COUNCILMAN GUNNER: Oh, it is a draft, okay.

MR. SMITH: Is that the Kruger document?

COUNCILMAN GUNNER: Yes.

MR. SMITH: Charlie, I don't know the answer to that one.

MR. SAGENDORPH: It was in the summer of 92.

MR. SMITH: I think we are going to find out that it occurred, that is the thing that resulted from negotiations on the initial bid, the ultimate contract. But, I will check it out.

COUNCILMAN GUNNER: And that was before... that would be before...

MR. SMITH: Before this June 8, 92, yes.

COUNCILMAN GUNNER: June 8th, which would make it good.

MR. SMITH: Yes.

COUNCILMAN GUNNER: Because the date under the whited out is 6/4/92.

COUNCILWOMAN GALVIN: But, that was the draft, I think.

MR. SMITH: I believe what I am looking for, for Sheila's question, is in terms of compliance with the RFP.

COUNCILWOMAN GALVIN: Yes.

COUNCILMAN GUNNER: I guess that... my recommendation, thank you very much. I think... I guess, I don't see why we want to wait until next week if we can do it before hand.

SUPERVISOR RINGLER: If we can, we can call another special meeting but we have to see if Mike can get the information.

COUNCILMAN GUNNER: Okay. Well, I just wanted to leave you with that suggestion rather...

SUPERVISOR RINGLER: If I can get us all together here.

COUNCILMAN GUNNER: Well, if you get 3 of us here together.

SUPERVISOR RINGLER: Right.

COUNCILMAN GUNNER: Okay?

SUPERVISOR RINGLER: Okay.

SUPERVISOR RINGLER: Motion to adjourn.

The motion was made by Mrs. Fuller and seconded by Mr. Webster to adjourn the special Town Board meeting at 5:14 p.m. The motion was passed by the following vote:

Ayes: Mr. Ringler, Mr. Webster, Mr. Gunner, Ms. Galvin,
Mrs. Fuller.

Nces: None.

Kathleen A. Newkirk
Town Clerk