

TOWN BOARD
OCTOBER 9, 2002

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 7:30 p.m.

PRESENT: Sheila Fuller, Supervisor
George Lenhardt, Councilman
Doris M. Davis, Councilman
Daniel G. Plummer, Councilman
Catherine T. Picarazzi, Deputy Town Clerk
Robert J. Alessi, Esq., Town Attorney

ABSENT: Thomas Marcelle, Councilman

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Supervisor Fuller welcomed everyone to a regular meeting of the Bethlehem Town Board. She invited all present to join in the pledge of allegiance.

The first item was to set the Public Hearing regarding the 2003 Tentative Budget for the Town of Bethlehem to be held October 23, 2002 at 7:30 p.m.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve setting the public hearing regarding the Preliminary 2003 Budget for the Town of Bethlehem at 7:30 p.m. on October 23, 2001. The motion was passed by the following vote:

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

Noes: None.

Absent: Mr. Marcelle.

The next item was a request for approval to go to bid for Radio System Expansion for all town government and public safety departments. Could advertise October 16, 2002 and open bids on November 26, 2002. Supervisor Fuller said Mr. Robert Johnson, Mr. Richard Webster and Deputy Chief Corsi were in attendance. Mr. Robert Johnson said he is representing the Emergency Services. He said for too many years they have been working to upgrade the communications in the Town of Bethlehem, which would incorporate Police, fire, ambulance and the complete emergency services communications package. He said they have been working very hard and diligent along the way. He stated after September 11 last year, it became apparent to everyone that this should be handled and get serious about it, which they have. He is requesting permission to advertise for solicitors that would respond to the RFP. He said at that time, before any bids, they would be back to the Town for permission to move forward.

Supervisor Fuller asked if there were any questions for Mr. Johnson. Councilman Lenhardt said he had his usual question, if the fire districts are on board with this proposal. Mr. Johnson said they were and reminded everyone that it was a year ago August the fire districts, fire companies and the ambulance district and the police department brought the consultant up from Irving, Texas and spent a long night reviewing possible options about what could be done. He said they stayed half the night, answered all the questions and then they asked each of the representatives to go back to their companies and districts and be sure they all agreed. He said they came back in September last year with an agreement from everyone and this is the project that they are moving forward with.

Councilman Davis asked how many companies they expected to get a bid from. Mr. Johnson answered he had no idea, noting there are a lot of them out there. He said how busy they are or who is looking for work in these times, makes that a hard question to answer.

Councilman Plummer mentioned in the Memorandum there is a range of between \$500,000 and \$700,000 for the cost and asked if that was what came from the consultant that was hired. Mr. Johnson said that is a very loose range because there are so many ifs in this proposal but they hoped it would come in considerably less than that but they tried to put a figure in. Mr. Plummer said it was his understanding that the County of Albany had or was proposing to move forward and the price was in the millions and Colonie had done something similar, asking if this was correct. Mr. Webster said they did have some price estimates and were reluctant to release them until after the bidding process.

Mr. Johnson said in regard to Albany County, Mr. Plummer was correct. He said the estimates are running somewhere around 12 million dollars for an 800 system. He said they looked carefully at a lot of people's request here in Town for an 800 system, which probably would have been in the 5 million dollar range for the Town of Bethlehem in a 5-year time frame if they could get the 800 frequencies. He stated those were some of the things they looked at when they opted for a lesser system, less bells and whistles but one that they felt would definitely improve the Town's communication. He went on to say, the State of New York is looking at what they call a 700 system which would still be a UHF system that might incorporate everybody some day with that being 5 to 8 years from now before it would even be available. He said they felt there is just no way this Town can wait for something that will be that far out. Councilman Plummer said we are not going to hook-up with the County, this is for the Town of Bethlehem emergency. Mr. Johnson replied that was correct.

Councilman Davis asked if we will not then be pursuing the tower or facility in East Greenbush. Mr. Johnson said we would not. Mrs. Davis asked what site we would be using. Mr. Johnson said they are using 504 Elm Avenue and the Town Hall building. Mrs. Davis asked if that would service everything. Mr. Johnson replied most everything now is done on computer. He said you could sit in Dallas, Texas and come up with a configuration that looks like it will work. He stated all the computer profiles have told them this will work and if it works, it will save the Town the tower expense. He said they see no reason why it should not work. Mrs. Davis asked if it does not if there is some way to modify it. Mr. Johnson said they would go look for more towers. Mr. Webster confirmed there is a way to modify it.

Supervisor Fuller asked about money from 911 and whether there is any public funding available that would assist in this. Mr. Johnson answered he thinks there is a good chance there will be money from various sources but you need to be a little further along than we are now. He said you have to have an agreed package and know what you are talking about, how much it is going to cost before you can apply. He said that is definitely part of their plan when they get this nailed down to exactly what will be done.

Supervisor Fuller thanked Mr. Johnson for a job well done to bring it to this point.

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

WHEREAS, the Town desires to advertise for bids for the Radio System Expansion boom mower attachment, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 16th day of October, 2002 and that bids be received up to 3:00 p.m. on the 26th day of November, 2002 at which time the bids will be publicly opened and read.

The resolution was adopted by the following vote:

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

Noes: None.
Absent: Mr. Marcelle.

The next item was a request from Senior Citizens Services Director, Karen Pellettier, for approval of transfer of funds from Insurance Recovery to Senior Services Collision Repair.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the transfer of \$1,357.07 from Insurance Recovery to Senior Services Collision Repair or repairs of one 2000 Chevrolet Lumina Sedan, vehicle number 805 as requested by Karen Pellettier, Senior Citizens Services Director. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer.
Noes: None.
Absent: Mr. Marcelle.

The following item was a request from Engineering Services Administrator, Michael Cirillo, for approval of reduction in bonding for Phase 2W, Dowerskill PRD 4, Section 3.

The motion was made by Mr. Lenhardt and seconded by Mr. Plummer to approve the reduction in bonding from \$98,000 to a new bond amount of \$21,000 for Phase 2W, Dowerskill PRD 4, Section 3 as requested by Charlew Builders and recommended by Michael Cirillo, Engineering Services Administrator. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer.
Noes: None.
Absent: Mr. Marcelle.

The next item was a request from Michael Cirillo, Engineering Services Administrator, for approval of reduction in bonding for Phase 1E, Dowerskill PRD 4 Section 3.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the reduction in bonding from \$322,000 to a new bond amount of \$50,000 for Phase 1E, Dowerskill, PRD 4, Section 3 as requested by Charlew Builders and recommended by Michael Cirillo, Engineering Services Administrator. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer.
Noes: None.
Absent: Mr. Marcelle.

The next item was a request from Engineering Services Administrator, Michael Cirillo, for adoption of resolution and approval of Supervisor to sign agreement regarding Beaver Dam Road Sanitary Sewer Project to secure New York State Funding.

Councilman Plummer asked if the \$50,000 grant was the total cost of the project. Supervisor Fuller answered, it was not, however, Assemblyman John Faso secured this. Mr. Plummer stated this would be the same way a new district would be done. The Supervisor said it was and this was funding to help the Town get through this. She said the longest part was trying to get the easements for the project from the residents.

AID TO LOCALITIES RESOLUTION

Resolution Authorizing the signing of a State Contract for an aid to Localities Project, Under the Appropriate Laws of New York State.

WHEREAS, the Town of Bethlehem herein called the "Municipality," after thorough consideration of the various aspects of the problem and study of available data, has hereby determined that certain work, as described in the State Contract, herein called the "Project" is desirable, in the public interest and is required in order to study and/or implement the local project or program; and

WHEREAS, under Chapter 53, Section 1, of the Laws of 2002 relating to the Local Assistance Budget, the Legislature has authorized financial assistance to localities for services and expenses related to local projects, programs and studies by means of a written agreement; and

WHEREAS, the Municipality has examined and duly considered Chapter 55, Section 1, of the Laws of 2002 relating to the Local Assistance Budget and deems it to be in the public interest and benefit under this law to enter into a contract therewith:

NOW, THEREFORE, BE IT RESOLVED BY the Bethlehem Town Board

1. That Sheila Fuller, Supervisor is directed and authorized as the official representative to act in connection with any contracts between the Municipality and the State, and to provide such additional information as may be required.

2. That one (1) certified copy of this Resolution be prepared and sent to the New York State Department of Environmental Conservation, Albany, New York together with the State Contract.

3. That this Resolution takes effect immediately.

The foregoing Resolution was presented for adoption by Mrs. Davis, and seconded by Mr. Lenhardt and passed by the following vote:

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

Noes: None.

Absent: Mr. Marcelle.

The following item was a discussion of truck traffic on Elm and Cherry Avenues. Supervisor Fuller said this is for the Town Board.

Councilman Plummer said his position has been clear and he has stated it at the past meetings that he is supportive of a ban on the larger car carriers and he had a conversation with both the representative of Callanan Industries and the individual that was at the last meeting to discuss the whole length issue. He stated in his judgment the best way to capture what they are trying to capture is to do it by length. He said the prospect of 60 feet was thrown out as a possibility. He felt the 60 feet would be used and it does not capture the Callanan's of the world, the construction industry and he thinks the type of trucks that are local trying to get to and from certain destinations. He said, however, it would capture, in his judgment, the haulers that are trying to avoid exit 23 to get to 24. He stated he views this as a safety issue. He thinks larger vehicles are very unsafe there and he would support a ban and propose that they adopt the draft option that imposes a restriction of 60 feet and more specific to auto carriers on Elm and Cherry Avenue.

Supervisor Fuller asked if that was only the car carriers. Councilman Plummer replied it was and that was for the 60 feet and over. Supervisor Fuller again asked if this was limited to car carriers only. Councilman Davis said it would include the conventional and the stinger steered she assumed in what was being proposed. Councilman Plummer said it would include car carriers that are 60 feet and longer so that was any carrier that was beyond that. Councilman Davis stated the items 1 and 2 in the draft option would be included. Councilman Plummer replied yes and they are in the section that would ban them on Cherry and Elm.

Councilman Lenhardt commented, as far as capturing the people doing a cut through, the exception part of the draft option that Councilman Plummer mentions should take care of limiting it to deliveries and picks up to and from properties

located within the Town of Bethlehem. He said he ideally would like section 3 to make vehicles of 60 feet in length and over, however, due to the make up of the Board this evening he knows it will not move forward. He stated he would support Mr. Plummer's proposal to limiting to auto carriers.

Supervisor Fuller said this would be to set the public hearing, which cannot be held until November 13th. She stated the Albany County Planning Board has to take a look at this and they only meet once a month and that meeting is to be November 1. She said the public hearing couldn't be held until after they have sent back their decision. Councilman Lenhardt asked what decision they had to send back. Town Attorney Alessi replied it matters what the County Planning Board says but before final action can be taken, a response must be received from them. He informed that final action would be the ultimate vote on the local law but the public hearing can be held before they take final action. Supervisor Fuller said her concern is that the Board usually takes action the night of the public hearing. Town Attorney Alessi responded right but if the County can respond back in 3 days but they have 30 days. He stated the Board must give them 30 days from when it is sent to them to respond. Supervisor Fuller asked if the notice could be sent to them after this meeting just setting the public hearing. Mr. Alessi replied it could be. Supervisor Fuller asked if then there is the 30 days for them to respond. Mr. Alessi replied yes, maximum.

Supervisor Fuller stated the public hearing could be held on November 13, noting the next meeting was October 23, which is too short a period of time to advertise, and then the next meeting would be the 13th of November.

Question was raised to Mr. Alessi if making it so specific, will get the Town in trouble in terms of harassment and any of the other things the car carriers and other trucking people have mentioned might be a possibility. It was mentioned that car carriers is very specific and the person stated it would be less specific if something like over 60 feet in length was said. A gentleman asked if DOT said you could restrict trucks by weight and length. Supervisor Fuller noted this is an issue the Town Board has been discussing for the last 3 board meetings and she stated she thinks they need to continue to discuss it and hopefully getting it moving. A resident took issue with saying it was only 3 meetings because it has been since last September. Town Attorney Alessi answered the question, noting from what he understood, the Board stated in order to move this along won't happen tonight given the make-up of the Board. Some Board Members would have preferred to have it just vehicles over 60 feet in length, being the auto carriers. He said that is what he heard at this meeting.

Town Attorney Alessi said it is the Board that makes the decision and he advises the Board on the law. He said to answer the question, if someone were to target this law for a law suit, yes, they would have a better chance on a law like this than they would if it was a law that said vehicles 60 feet and over. He stated that is unfortunately not the question to ask even though it is a relevant question and a legitimate question. He said the relevant legal question is, this whole area is preempted by Federal Law no matter what you do. He stated there is a very serious legal question out there as to whether in 2002 with the State Transportation Assistance Act, other Federal acts. There have been amendments to the Vehicle and Traffic Law, which states the very section that authorizes towns and says, though shall not violate the Federal Transportation Act. He said this Board knows and it is his job to advise the Board no matter what you do here, if someone wanted to challenge the law as preempted by Federal Law and he cited to 23CFR658 mentioned in the County's letter, they have a likelihood of success. He stated the Board needs to know this because of what could happen. Some concerned resident could challenge the law and that challenge could come under Section 1983 and if they win, they could not only get the law struck down but they could get potentially damages, although he thinks unlikely, but they could get their attorney's fees as well. He said we have this designated highway request that was put in by Callanan Industries. He stated that raises the question and he knows a lot of people are concerned about what has been coined the race issue, if the Town does not hurry up

and pass a local law this designation goes into effect and will that mean the local law is mute. He said the answer in his judgment is no not automatically. He said it is not a race issue to him. He stated it does not matter if this local law goes in effect after or not, the real question remains preemption, can the law stand. He said he does not believe that DOT is going to say, your local law is invalid. He said they are going to leave that to a private interest that may want to challenge it and he does not believe they are going to jump into the fray. He said he can tell everyone that DOT has concerns about Federal preemption about what this Board is considering doing. He also stated the Federal preemption question is not a complete black and white, one way or another. He said this Board in this Town advised of the legal consequences, the positive consequences are if the Town Board feels they are addressing a community need, that's positive. He stated the potential negative is this law could be struck down and there could be dollars paid as a result of that. He said Town Board's are at risk of that every day with every decision they make but it is important that the Board be aware and the public be made aware. Mr. Alessi said again that is not much different than what happens in municipal government along the way. He said he wants the people to be aware of that particular issue as we proceed through. Mr. Alessi thanked the resident for the opportunity to answer the question and answer the larger question. He said as he understands it, the Board wants to set a public hearing. He noted they know of these issues, they want to proceed to the public hearing and we will see what happens. The resident thanked Mr. Alessi.

Mr. Little, a resident, said obviously he did not intend to be at the meeting but he was called out of his office because he did not realize the meeting was going on. He said several things have happened that concern him. He gave Mr. Alessi all the credit in the world for being here and forthright with the legal position and everything. He said he lives at 4 Wexford Road right off of Elm Avenue. He stated the 60-foot business is not an acceptable alternative for someone who lives where he lives. He asked if anyone was running for election this fall and commented this is a good year to do this. He stated he drove tractor-trailers and he knows what they do. He said there is a rumor going around now that someone is asking to have Elm Avenue designated as a truck route. The Board informed Mr. Little that it is not a rumor and it was requested before the representative came to the Board. Mr. Little said he believes that it has to go through the State. Town Attorney Alessi indicated it had to go to the State and County and they have to approve or disapprove of it.

Mr. Little stated this is acceptable and accused the Board of this being done when the votes do not count. He felt if there is pain to be inflicted on a community in terms of truck traffic, why is this not shared. He said there has to be a better way to get this problem solved. Question was raised as to whom Mr. Little would like to share this with. Mr. Little said he would like to share it with the folks out in Elsmere and several other avenues. Supervisor Fuller commented Route 396. Mr. Little said he wonders how many years it will be before you want to make this a 4-lane highway. He said they can see where it is going. He stated he is still annoyed by the fact that the Breslins have not shown up here. He said there is another way to do this and everyone should sit down and work this thing out. He again mentioned the fact of voting and politics and government. He said this is not an idle threat. He said there are more than a couple lawyers who live in the neighborhood. He felt the Board could be heroes by being aggressive and does not think this would be done in Slingerlands.

Councilman Lenhardt responded they are moving along with the idea that they are going to a public hearing, however, only 2 Board Members have made their comments known on their positions on whether or not they want to proceed with. He said he would like to hear from at least one more Board Member who is on his side before the assumptions are made.

Supervisor Fuller informed she failed to mention at the beginning of the meeting that Councilman Marcelle called late in the day and he had a conflict and

could not be at the meeting. She said the Board remains the 4 that are in attendance and there is a need for 3 votes to do anything.

Councilman Davis stated she did not have a chance to speak because several other people spoke first or she would have. She said this addresses some of the comments. She felt one of her concerns about the whole issue is that she does not want to spread the pain around Town. She said she does not want this to be an issue that is pitting neighborhood against neighborhood, part of Town against part of Town. She felt she does not want other parts of the Town to have to deal with the same traffic and she did not think Mr. Little would want them to either. She said she does not think anyone dealing with it would want someone else to have to do that. She stated between the last meeting and this meeting, the only reason that she will support the draft is because she has been assured or at least as best can be that the traffic that we are addressing here would not use any other route because it would not make sense for them to do so. She felt it would not be profitable and it would not be time saving and that is essentially what this issue is all about. She said the public hearing could still be held and if it can be proven there will be a problem in other parts of Town, she would certainly have to consider that issue very seriously. She stated that was her position for this evening.

Town Attorney Alessi addressed the issue of how you measure the trucks and where you start and finish. He said there are a number of them, noting under the Federal regulations to call it safety and it was in the letter to the County, you are only supposed to only look at safety in terms of accident history related to the trucks you want to ban. He said there are a whole host of issues to be addressed in enacting a local law. He said he was told to make it simple and he is keeping it simple but what he is saying is that you can have 1 or 2 results. He said this can go through and people will respect it and nobody can challenge it and nobody can sue on it and you can achieve your result. He said then it can be challenged and it can be struck down and you can be back to square zero. He said those are the issues that are here. He said there was a request, it is not a rumor, to designate this highway and the question is, if that request persists and that designation is made, most people believe that that designation is going to take precedence. He said that designation as requested is not just for certain trucks, it is for everything. He said everything that can be imagined for a license to use that street. He said the real issue is that designation request. He said a local law can be enacted but if the 2 come together, if it is not respected and if the DOT believes that the designated highway request is going to be the one to win out in the end. He said there is a lot left to be done and a lot more to document for the local law including the issue raised with regard to where do you start measuring and where do you end to make sure you capture what you think you are capturing.

Mention was made that someone in the room encouraged the request for the highway designation be put in. Town Attorney Alessi said he has no knowledge of that at all.

Supervisor Fuller noted her position is to support the public hearing but she is not in favor of banning car carriers or banning trucks. She said she spoke previously about economic development two weeks ago and it is in today's Spotlight and she is standing by what she said from the beginning. She said this is a regional approach, this is not Cherry/Elm, it is not 396, it is not Elsmere Avenue, it is the Town of Bethlehem and the State needs to resolve the issue. She said this piece meal approach which she believes is being done, is not going to solve the truck problem.

The motion was made by Mr. Plummer and seconded by Mr. Lenhardt to set the public hearing for November 13, 2002 at 7:30 p.m. to consider proposed local law banning auto carriers of a length 60 feet and over and auto carriers stinger steered of a length 60 feet and over. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer.
Noes: None.

Absent: Mr. Marcelle.

The next item was to consider the proposed local law amending Local Law No. 15 of 2001, extending a temporary moratorium on Adult Uses for 3 months.

The motion was made by Mrs. Davis and seconded by Mr. Plummer to approve the extension of a temporary moratorium on Adult Uses for 3 months.

Councilman Lenhardt asked what is proposed to happen in the 3-month extension period that has not happened to date. Supervisor Fuller noted that Mr. Flanigan is still working on it and was not prepared to be at the meeting. She said he has asked for the 3-month extension with additional work to be done. Mr. Lenhardt asked if he was to expect some resolution at the end of the 3 months. Supervisor Fuller said she hoped that the resolution would be quicker than that. Councilman Lenhardt said therefore he would vote in favor of it.

The motion was passed by the following vote:

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

Noes: None.

Absent: Mr. Marcelle.

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Councilman Davis asked if there was a technicality of the possibility of another 3-month extension. Supervisor Fuller said there is and it is written in the local law that there can be the extension. Councilman Davis said that was in the initial law when it was passed. Town Attorney Alessi said section 4B. Mrs. Davis said they knew there was a possibility of extension. Supervisor Fuller said this could be extended for another 3 months if Mr. Flanigan determines that he needs additional time. Mrs. Davis said she hoped it would not happen but in the event that it has to happen, that is in the initial law.

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

The motion was made by Mr. Plummer and seconded by Mrs. Davis to approve the appointment of seasonal personnel as requested by Nan Lanahan, Director, Parks and Recreation Department as listed in the Memorandum dated October 9, 2002 at the titles and salaries listed. The motion was passed by the following vote:

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

Noes: None.

Absent: Mr. Marcelle.

The next item was a request from Bruce Secor, Commissioner of Public Works, for approval of award of bid for Directional Drilling Services as listed in his Memorandum dated October 4, 2002.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the award of bid for Directional Drilling Services as listed in the Memorandum from Bruce Secor, Commissioner of Public Works, dated October 4, 2002 at the bid prices quoted to the various vendors. The motion was passed by the following vote:

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

Noes: None.

Absent: Mr. Marcelle.

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Supervisor Fuller said this is for the sewer. Councilman Davis said she called the Commissioner because when she heard directional drilling she was thinking of the water system and concern for the Town paying for the drilling when it was part of our settlement agreement. She said Mr. Secor assured her that this was not for the water system. She said for the record, she wanted to let everyone know this is not for the water system.

The following item was a request from Town Clerk, Kathleen A. Newkirk, for approval of change in voting location for District 2. Supervisor Fuller noted District 2 has been located at the Beverwyck for a number of years and this year Beverwyck chose to hold the election at The Terrace of Beverwyck, which is located at 41 Beverwyck Lane. She said previously it was the main building at 40 Autumn Drive.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the change in voting location of District 2 from the main building at Beverwyck, 40 Autumn Drive to The Terrace at Beverwyck at 41 Beverwyck Lane, Slingerlands. The motion was passed by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer.
Noes: None.
Absent: Mr. Marcelle.

Supervisor Fuller asked if anyone wished to address the Board. There were none.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to adjourn the regular Town Board meeting at 8:16 p.m. The motion was carried by the following vote:

Ayes: Mrs. Fuller, Mr. Lenhardt, Mrs. Davis, Mr. Plummer
Noes: None.
Absent: Mr. Marcelle.

Deputy Town Clerk