

TOWN BOARD
JUNE 10, 1998

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
Doris M. Davis, Councilman
Robert C. Johnson, Councilman
Susan Burns, Councilman
Bernard Kaplowitz, Esq., Town Attorney
Kathleen A. Newkirk, Town Clerk

ABSENT: George Lenhardt, Councilman
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Supervisor Fuller announced that Councilman Lenhardt would be late this evening but will be arriving shortly. She asked everyone to join in the pledge of allegiance.

Supervisor Fuller welcomed everyone to the regular meeting of the Bethlehem Town Board. The first item on the agenda was to acknowledge a recommendation from the Planning Board regarding a proposed Local Law for rezoning from residential to Planned Commercial District premises located at 467 Delaware Avenue by CMI Senior Housing and Healthcare, Inc. and set public hearing for July 8, 1998 at 7:30 p.m.

Supervisor Fuller said she invited Mr. John Cahill, who is the attorney for CMI, to do a brief presentation for the Board. Mr. Cahill thanked the Supervisor and said they were here about one year ago when they initially put forth the application for the rezoning. He said in accordance with the zoning regulations, they had to go to the Planning Board for a recommendation from that Board pertaining to the rezoning. He said they recently received the recommendation and the rezoning is recommended. He said there are certain conditions which they are well aware of and cognizant of and are more than willing to comply with. He said the process through the Planning Board took place over a number of meetings and with great input from the various agencies within the Town and the help of the Town Engineer, Town Planner and Building Inspector.

Mr. Cahill said it has resulted in a revised concept plan which is exhibited and is substantially different from the beginning plan. He said it includes 94 living units and 47 parking spaces which is a result of the determination by the Zoning Board as to the number of parking spaces required for the project. He said they have worked very closely with the Town Engineer with respect to drainage, buffering and traffic pattern. There has been discussion with the library, according to Mr. Cahill, with respect to an emergency access connection through the library property and a final word should be received as to the result of the discussions. He said they are led to believe that that emergency access will be provided and parking spaces for library use will be allowed by CMI in light of the recent development that the library was otherwise pursuing.

Mr. Cahill said basically this is what they are requesting. He said as indicated it is a request for rezoning to a Planned Commercial District pursuant to provisions of the Zoning Law.

Supervisor Fuller asked if there were any questions from the Board Members. There were none. The Supervisor said there will be a full presentation the night of the public hearing. She asked the Board to set the public hearing but before that, there was a need to have a motion on the SEQR resolution which would be a condition Negative Declaration.

Set Public
Hearing on
CMI for
July 8, 1998
Planning Board
regarding Local
Law for rezoning
from residential
to Planned
Commercial
District

TOWN BOARD
TOWN OF BETHLEHEM
SEQR RESOLUTION
DETERMINATION OF SIGNIFICANCE/CONDITIONED NEGATIVE DECLARATION
APPLICATION TO ESTABLISH A PLANNED COMMERCIAL DISTRICT
PLANNED COMMERCIAL DISTRICT NO. 5
CMI SENIOR HOUSING AND HEALTHCARE, INC.

- WHEREAS, the Town Board of the Town of Bethlehem has received an application and Environmental Assessment Form from CMI Senior Housing and Healthcare, Inc, to establish a Planned Commercial District (PCD) on a 6.71 acre parcel of land located at 467 Delaware Avenue; and,
- WHEREAS, establishment of the PCD would amend the current zoning district designation on the parcel from Residence A District to Planned Commercial District; and,
- WHEREAS, CMI Senior Housing and Healthcare, Inc. has submitted conceptual plans for further development of the District in the event that the zoning amendment is granted and said plans entail construction of a 2-story, 94-unit, 69,881 square foot, assisted living residence for senior citizens, with accessory parking for 47 vehicles; and,
- WHEREAS, Chapter 128, Article 5 of the Code of the Town of Bethlehem contains procedures for the establishment of a Planned Commercial District, and said procedures authorize the Town Board to establish such a District upon referral to, and recommendation of, the Town Planning Board; and,
- WHEREAS, the State Environmental Quality Review Act (SEQR) regulations found at 6 NYCRR Part 617.3(a) require that no agency may undertake, fund or approve an action until it has complied with the requirements of SEQR; and,
- WHEREAS, the "Memorandum of Understanding between the Town of Bethlehem Town Board and Planning Board for Planned Development Districts" (MOU), adopted by the Town Board on February 27, 1991, sets forth procedures for incorporating the requirements of SEQR with the requirements of Chapter 128, Article 5 of the Code of the Town of Bethlehem for the establishment of Planned Commercial Districts; and,
- WHEREAS, in accordance with the SEQR regulations at 6 NYCRR Part 617.6(a), the Town Board at its meeting of May 14, 1997: (1) determined that the PCD application constituted an "action" subject to SEQR; (2) identified other involved agencies for the purpose of coordinated review; (3) made a preliminary classification of the project as an "Unlisted" action; (4) required a full Environmental Assessment Form to assist the lead agency in its determination of significance; and (5) determined that the proposed action was not located in a certified agricultural district and, therefore, not subject to the provisions of the Agriculture and Markets Law; and,
- WHEREAS, in accordance with the SEQR regulations at 6 NYCRR Part 617.6(b) the Town Board at its meeting of May 14, 1997 also initiated a coordinated review of the action, declared its desire and intent to be lead agency for SEQR review, and subsequently circulated the PCD application, full EAF and supporting materials to all involved agencies; and,
- WHEREAS, in accordance with the procedures outlined in the MOU, the Town Board at its meeting of May 14, 1997 also referred the PCD application to the Planning Board for a recommendation on both the application and on a SEQR Determination of Significance; and,
- WHEREAS, the Planning Board has carefully reviewed and considered the PCD application, the full Environmental Assessment Form and supporting materials submitted by the applicant, and various staff memoranda prepared by the Town Planning Department and Town Engineering Division addressing potential areas of environmental concern in establishing a Planned Commercial District and constructing an assisted living residence at the location; and,
- WHEREAS the Planning Board, satisfied that its identified areas of concern have been adequately address by the applicant, adopted a Resolution at its meeting of June 2, 1998, and said Resolution recommends that the Town Board issue a SEQR Conditioned Negative Declaration with respect to the application and approve the rezoning from Residence A District to Planned Commercial District with certain conditions attached that would limit

future land use on the parcel to that which is currently proposed by the applicant; and,

WHEREAS, the Town Board has independently reviewed and considered the Planned Commercial District application, the full Environmental Assessment Form and supporting materials submitted by the applicant; and,

WHEREAS, the application and supporting materials include, but are not limited to, a traffic study, parking generation study, preliminary drainage study, architectural design study, proposed environmental mitigation measures, and conceptual project plans which address site layout, utilities, storm water management, grading, landscaping, architectural design and other site development factors; and,

WHEREAS, the applicant has submitted materials which favorably respond to the above noted Planning Department and Engineering Division memoranda, and to comments and issues raised by the Planning Board in its review of the application; and,

WHEREAS, the applicant's stated purpose in pursuing a Planned Commercial District designation for the parcel, which would permit up to sixteen (16) dwelling units per acre, rather than a Planned Residence District designation, which would permit up to eight (8) dwelling units per acre, is to obtain the unit density necessary to make the project feasible to the applicant; and,

WHEREAS, the Town Board has concluded in its deliberations on the matter that construction of an assisted living residence for senior citizens as presented by the applicant would be in the best interest of the residents of the Town in that it would provide additional housing options for said residents to remain in the community as they age and can no longer function independently without assistance in their daily living activities; and,

WHEREAS, the Town Board, notwithstanding its desire to promote additional housing opportunities for senior citizens, notes that the Planned Commercial District regulations of the Zoning Code list as permitted uses in a PCD certain commercial land uses that the Town Board might otherwise consider inappropriate and incompatible with the existing residential and institutional character of the surrounding neighborhood in the vicinity of the parcel; and,

WHEREAS, in the past there have been certain Planned Development Districts established in the Town, premised in part on concept plans for development of the Districts presented at the time of rezoning, and for various reasons, such as change in ownership or market conditions, said Districts remained idle for many years and subsequent plans presented to the Town for development of Building Projects within said Districts varied substantially from the original concept plan relied upon in deliberations on rezoning; and,

WHEREAS, the Town Board, in order to reconcile its desire to promote additional housing opportunities for senior citizens with the above stated concerns about the establishment of a Planned Commercial District at the location, has concluded that its desire and concerns can be reconciled with appropriate conditions attached to the rezoning that would:

1. limit future land use at the parcel to that presented by the applicant;
2. tie future development of the parcel to the concept plan relied upon by the Town in its deliberations on both SEQR and the rezoning application;
3. provide notice to any future purchaser of the parcel that there are certain land use conditions attached to the zoning amendment; and,
4. set a time limit on commencement of construction at the site, and in the event that construction does not commence within said time period, zoning on the parcel would revert to its current designation; and,

WHEREAS, the Town Board in its deliberations on the matter has concluded that with the above stated conditions attached to the rezoning the parcel will be developed in a manner consistent with the character of surrounding residential and institutional land uses; and,

WHEREAS, the Town Board has concluded that the applicant has adequately addressed all identified areas of concern and will

provide appropriate environmental mitigation for the project;
and,

WHEREAS, no substantive comments have been received from any involved agency concerning the potential environmental effects of the proposed action;

NOW, THEREFORE, BE IT RESOLVED,

that the Town Board of the Town of Bethlehem hereby confirms it is lead agency with respect to SEQR review of the CMI Senior Housing and Healthcare Inc. application to establish a Planned Commercial District at 467 Delaware Avenue; and,

BE IT FURTHER RESOLVED

that based upon its review of the PCD application, the full EAF and other supporting materials submitted by the applicant, the recommendations of the Town Planning Board, comments on the application submitted by the Town Planning Department, Town Engineering Division and involved agencies, its own independent analysis of the application, and comparison with the Criteria for Determining Significance found at 6 NYCRR Part 617.7, the Town Board hereby finds that, with appropriate conditions attached thereto, approval of the CMI Senior Housing and Healthcare, Inc. application to establish a Planned Commercial District, for the purpose of constructing a 69,881 square foot assisted living residence for senior citizens, constitutes an action which will not have a significant impact on the environment and, therefore, does not require preparation of a draft Environmental Impact Statement; and,

BE IT FURTHER RESOLVED,

that this Determination of Significance shall be considered a Conditioned Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law; and,

BE IT FURTHER RESOLVED,

that the conditions attached to this Conditioned Negative Declaration are as follows:

1. the following conditions shall be attached to any zoning amendment which is enacted to establish the Planned Commercial District:

(a) future land use under the Planned Commercial District designation shall be limited to an assisted living residence for senior citizens as said land use is presented in the application for establishment of the Planned Commercial District (Notwithstanding this zoning condition, future land use may also include, as determined by the Town Board, accessory uses which are customarily associated with such a facility.); and,

(b) maximum dwelling unit density for the assisted living residence shall be 94 units; and,

(c) any future application made to the Town for approval of a Building Project on the parcel, as well as subsequent construction of said Building Project, shall be substantially consistent with the concept plans presented to the Town as part of the application for rezoning (Notwithstanding this zoning condition, minor modifications from the concept plan which are deemed appropriate by the Town Board may be permitted.); and,

(d) construction on the parcel shall be commenced within three (3) years of the date of enactment of the zoning amendment and in the event that said construction has not commenced the zoning of the parcel shall revert to its former designation - Residence A District (Construction shall be deemed to commence when a Building Permit has been issued for construction on the parcel and substantial clearing and grading activity has begun.); and,

(e) appropriate notice of these conditions of rezoning shall be incorporated in the deed to the parcel to serve as notice to any future purchaser of the property that there are certain land use limitations associated with the zoning amendment; and,

2. an appropriate erosion control plan for construction activity at the site shall be prepared and submitted to the Town at the time application is made for Building Project Approval; and,

BE IT FURTHER RESOLVED,

that this Determination of Significance is made in reliance on review of an application indicating a specific land use and

conceptual project proposal for the subject parcel, and in-as-much as the Town Zoning Code identifies in its list of permitted uses in a PCD, various commercial land uses, which the Board might consider otherwise inappropriate and/or incompatible with adjacent residences and the general character of the surrounding neighborhood, the above stated conditions of rezoning are intended to minimize the potential for adverse impacts in creating a commercial zoning district at the location and to ensure that development of the district will be accomplished in a manner consistent with the intended purpose of the rezoning, namely, the construction of an assisted living residence for senior citizens; and,

BE IT FURTHER RESOLVED,

that the Town Planning Department is hereby authorized and directed to file any and all appropriate notices of this determination so that the intent of this Resolution is carried out; and,

BE IT FURTHER RESOLVED,

that pursuant to 6 NYCRR 617.12(a)(2)(i) the Town Board hereby establishes a 30 day comment period, running through July 11, 1998, during which time the Town Board will accept comments on this Determination of Significance; and,

BE IT FURTHER RESOLVED,

that this determination is based upon the following facts and conclusions:

A. Parcel and Project Description

1. The parcel proposed for rezoning from Residence A District to Planned Commercial District (PCD) is located along Delaware Avenue (NYS Rt. 443) and consists of 6.71 acres of undeveloped land.
2. The zoning classification of surrounding properties and those in the immediate vicinity of the site is also Residence A District, a zoning district intended primarily for single family homes. Other zoning districts within approximately 1/4 mile of the parcel include Residence A District (a single family zone), Residence AB and B Districts (districts allowing multi-family uses), and Commercial CC District (a district allowing office and retail commercial uses).
3. Existing land use in the vicinity of the project site can be characterized as both residential and institutional in nature. Properties adjacent to the parcel consist of a combination of uses including single family residential neighborhoods to the north and west, a non-conforming commercial use to the south, and residential uses and the Bethlehem Public Library to the east. Also located in the immediate vicinity of the parcel is additional single family housing, two-family housing and the Bethlehem Town Hall.
4. Within approximately 1/4 mile of the site, existing land uses also include, multi-family housing, apartments, additional institutional uses (eg., fire house, church, nonprofits), and office conversions.
5. The applicant's stated intent in requesting a zoning amendment to Planned Commercial District, rather than Planned Residence District, is to obtain the necessary zoning density to make the proposed project feasible to the applicant. A Planned Commercial District allows up to 16 dwelling units per acre, while a Planned Residence District allows up to 8 dwelling units per acre.
6. The Town Board in this Resolution has indicated that certain conditions will be attached to rezoning of the parcel to PCD. The purpose of these conditions is to prevent other uses of the site which are inconsistent with the character of the surrounding neighborhood, but are permitted by the PCD regulations.
7. The parcel itself can be characterized as a vacant, wooded lot. Vegetation consists of approximately 4.7 acres of woodland, 1.4 acres of brush and 0.59 acres of federal regulatory wetland.
8. Site topography is gently sloping and divides the parcel into two minor drainage areas, one flowing toward an area of federal regulatory wetland on the northern portion of the lot, and the other generally flowing toward the southwest corner of the property.

9. Drainage from the site is tributary to Dowers Kill, an unprotected stream (Class C) located west of the parcel. The Dowers Kill flows in a generally southern direction and passes through a culvert under Delaware Avenue in the vicinity of the southwest property corner. Areas of localized flooding along the Dowers Kill are known to occur upstream of this culvert and west of the project site.

10. Conceptual plans for development of the parcel indicate that if the zoning amendment is approved, the applicant would construct a two-story assisted living residence for senior citizens on the site, consisting of 94 dwelling units and 69,881 square feet of total floor area. Also included in the concept plan are provisions for 47 accessory parking spaces.

11. Conceptual plans and the applicant's EAF indicate that project construction would impact approximately 3.5 acres of currently undeveloped land. This land would be converted to parking, building and lawn area. Included in this impacted area is approximately 0.09 acres of federal regulatory wetland which would be filled as a result of project construction.

12. Conceptual plans and the applicant's EAF indicate that upon project completion, approximately 3.2 acres of the site would remain undeveloped and in its natural state. This would include approximately 2.7 acres of woodland and 0.5 acres of delineated federal wetland.

13. Conceptual plans include provisions for storm water management, water supply, sanitary sewage disposal, landscaping, and site grading.

14. Review of the concept plan for landscaping and grading indicates that a significant area of existing trees toward the rear of the site can, and will be retained upon project completion, forming a natural buffer area approximately 140 feet deep to adjacent single family housing along Stratton Place to the north. In addition, a substantial number of other existing trees can be retained, and are proposed for retention, on other portions of the parcel and in hedgerows along the eastern and western property lines. The concept plan indicates that this vegetation along the property lines will be supplemented with landscape plantings to enhance visual screening of the project site from single family homes located to the west.

15. The concept plan for storm water management indicates that post-development storm water runoff from the site will be controlled through the use of two storm water detention basins. Storm water would be collected on site in catch basins and conveyed by pipe to the detention areas. Storm water would then be released from the detention basins directly to the above mentioned Delaware Avenue culvert at a rate no greater than the predevelopment condition.

16. The storm water management plan also includes provisions for diverting runoff from the rear area of the site to the detention basins. Water from this area of the site currently drains toward the Dowers Kill, to a point upstream of the above mentioned area of flooding, and contributes to this condition.

17. The project site is located in both the Town water and sewer districts. Both services are available to the parcel and are adequate to accommodate the facility.

18. Access to the site would be provided from Delaware Avenue. Delaware Avenue (NYS Rt. 443) is a State highway which functions as a minor arterial through this area of Town. A secondary emergency access is also proposed from the existing parking lot of the Bethlehem Public Library.

B. Evaluation of Potential Environmental Impacts

1. The project will not have a significant or long-term adverse effect on existing air quality. The nature of the land use is such that it will not produce industrial related air emissions, nor will it result in the generation of significant traffic that might contribute measurably to auto related emissions. Any potential impacts to air quality which may result from the project are expected to be construction related (ie., dust), of short-term duration and minor impact, and can be minimized by employing good site development practices.

2. The project will not have a significant or long-term adverse effect on ground or surface water quality. The project site is not located over a significant aquifer, nor is the site located

adjacent to, or in the immediate vicinity of a protected stream (Class C(T) or higher).

3. Although the site is not located in the vicinity of a protected stream, it does lie proximate to the Dowers Kill. As with most development activity, site construction has some potential to impact this water body in terms of runoff from construction activity (eg., erosion, stream siltation and sedimentation). Due to the nature of the site, however, potential impacts from such activity will be minor. These impacts will be mitigated by development of an erosion control plan to be implemented during the period of project construction.

4. The project will not have a significant adverse effect on wetland resources. There are no State regulated wetlands in the vicinity of the project site. Although the site itself does contain 0.5 acres of delineated federal wetlands, only 0.09 acres of such wetlands will be filled as a result of project construction. This quantity of fill falls well within the threshold qualifying the activity under U.S. Army Corps of Engineers Nationwide Permit No. 26.

5. The project will not have a significant or long-term adverse effect on existing noise levels in the vicinity of the project site. The land use does not involve the operation of heavy machinery or other activity that would produce a noticeable increase in outdoor noise levels. Any increases in such noise level would be construction related and of short-term duration.

6. The project will not result in a substantial increase in solid waste production. The project would entail the construction of only 94 dwelling units for senior citizens. In addition, it is expected that residents of the project would come largely from the Town of Bethlehem and nearby communities, areas which are currently in the same watershed as the project site.

7. The project will not result in a substantial increase in traffic volumes or create traffic congestion on area roadways. The traffic study prepared for the project indicates that during peak hours (weekday p.m.) the project would generate only 35+/- additional vehicle trips on the adjacent street system. Intersections and roadways in the vicinity of the project site have more than sufficient excess capacity to accommodate these additional trips.

8. The project will not have a noticeable traffic impact on local neighborhood residential streets. Access to the site would come from Delaware Avenue, a State highway and minor arterial street in Town. The traffic study indicates that during peak hours (weekday p.m.) the project would generate only four additional vehicle trips on Borthwick Avenue, the local neighborhood residential street which is expected to be most impacted by project development.

9. The project will not have a significant adverse effect on flooding or drainage problems in the area. The project includes provisions for an on-site storm water management system. A preliminary drainage study of the project indicates that the storm water management system will control post development runoff from the site to predevelopment levels. This will be accomplished through construction of on-site storm water detention basins which will release runoff from the site at a rate equal to, or lower than existing runoff rates. Although it is not expected that the project's storm water management system will resolve existing drainage/flooding issues along the Dowers Kill, the system will be designed so as not to contribute adversely to the existing condition.

10. Conceptual plans and preliminary drainage analysis indicate that the project may actually provide some marginal benefit to existing drainage conditions by diverting runoff from the rear of the site to the detention basins. This runoff from the rear of the site currently enters the Dowers Kill upstream of the area of drainage problems, and currently contributes to localized flooding along the stream. The concept plan for drainage is to intercept this storm water and release it to the Dowers Kill downstream of the area of flooding.

11. Due to the nature of site topography, physical conditions of the site are such that project development will not cause substantial erosion or stream sedimentation. However, because

of the site's proximity to the Dowers Kill and the inherent potential for erosion associated with any construction activity, an erosion control plan will be developed and submitted to the Town for review and approval prior to the commencement of construction.

12. The project will not have a significant adverse impact on vegetation or wildlife resources. Communication received from NYS Department of Environmental Conservation and review of the Town's environmental inventory files indicates that the project site does not contain any known occurrence of a threatened or endangered species, significant habitat area, or any unique habitat characteristic that is associated with such species. Project development would result in the removal of approximately 3.5 acres of vegetation from the site. Approximately, 3.2 acres of existing vegetation would be maintained.

13. Review of the Town's environmental inventory files indicates the project site does not contain any designated Critical Environmental Area.

14. The project will not have an adverse impact on agricultural resources. Review of the Town's environmental inventory files indicates the project site is not located in a certified Agricultural District and has not been used for agricultural purposes in the recent past.

15. The project will not have an adverse impact on archeological resources. Review of the Town's environmental inventory files indicates that the site is not located in an area identified by NYS Office of Parks Recreation and Historic Preservation (NYSOPRHP) as archeologically sensitive.

16. The project will not have an adverse impact on historic properties. Review of the "Reconnaissance Level Survey of the Town of Bethlehem", prepared by NYSOPRHP for the Town in 1996, indicates there are no properties in the vicinity of the site which are listed on the State or National Registers of Historic Places. Although there are three individual properties and a district which may meet the criteria for State and National Register listing located within two blocks of the project site, these properties are not directly visible from the project site and, therefore, they will not be impacted by project construction.

17. The project will not have a significant adverse impact on scenic resources. No significant scenic resources exist in proximity to the project site.

18. The project as conditioned will not have a significant adverse impact on existing neighborhood or community character, architectural or visual resources. The general project vicinity is characterized by a mixture of land uses including single family housing, two-family housing, a public library, Town Hall and a non-conforming commercial use. Although the scale of the proposed project is greater than that of adjoining single family homes to the north and west of the parcel, a number of modifications have been made in conceptual project design to minimize potential adverse visual effects on these properties. Included among these modifications are the following:

(a) Parking and storm water detention areas previously proposed in the rear yard have been eliminated. This modification allows preservation of a wooded buffer area, with a minimum dimension of approximately 140 feet, between the proposed structure and single family residential properties located to the north.

(b) Conceptual grading and storm water management plans, the building footprint, design of the front parking lot, and conceptual landscaping plans have been amended with respect to the western side yard of the parcel. These modifications: (1) reduce the building footprint of the structure by 3,561 square feet (10%); (2) increase the setback of the building to the western property line from 50 feet to 100 feet; (3) increase the setback of parking to said property line from 35 feet to 55 feet; (4) reduce the potential for direct glare from vehicle headlights shining toward adjacent structures; and (5) provide the opportunity to preserve existing vegetation and enhance screening between the site and single family homes to the west.

(c) The architectural design concept has been amended in terms of footprint and architectural style to reduce the perceived mass of the building and better acknowledge architectural themes which are prevalent in residential construction in the area.

These include certain elements of the bungalow and cottage styles which are found throughout the Delmar/Elsmere area.

(d) In addition, rezoning of the parcel will be conditioned on certain land use limitations, as previously identified in this Resolution, to ensure that future development of the District is carried out in a manner consistent with the character of surrounding land uses.

19. The nature of the proposed land use is such that it will not result in a major change in the use of energy or create a hazard to human health.

20. The project will not have a significant adverse impact on open space or recreational resources. Project development would convert 3.5 acres of undeveloped land, on 6.7 acre site, to urban use in an urbanized area of Town. In addition, the site is not located adjacent to, or in the immediate vicinity of any recreation area. Furthermore, project occupants will consist of elderly residents who are in need of various degrees of assistance in daily living activities. These persons are not expected to routinely use or place demands on existing recreation facilities.

21. Rezoning of the parcel from Residence A District to Planned Commercial District and subsequent development of the project site may be interpreted as generally consistent with recommendations contained in the Town's "Land Use Planning Reference Resource" (LUPRR). Construction of the assisted living residence would further one of the specific objectives cited in the LUPRR. This objective is: "promote efforts to provide a sufficient quantity of housing units for residents who may have special needs, such as the elderly or physically handicapped."

22. Review of the site in the field and with available environmental data revealed no other environmentally sensitive characteristic of the parcel, or issues which have not been addressed, or areas requiring further study.

On a motion by Ms. Davis, seconded by Mr. Johnson and a vote of 4 for and 0 against, and 1 absent, this RESOLUTION was adopted on June 10, 1998.

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Supervisor Fuller said the next motion would be to set the public hearing for the rezoning to Planned Commercial District.

The motion was made by Ms. Burns and seconded by Mr. Johnson to set a public hearing for July 8, 1998 at 7:30 p.m. to consider proposed local law approving rezoning of 467 Delaware Avenue from Residential to Planned Commercial District for the proposal of CMI Senior Housing and Healthcare, Inc. The motion was passed by the following vote:

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

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Supervisor Fuller thanked the applicants for their attendance at the meeting and indicated July 8th will be the public hearing. Mr. Cahill thanked the Supervisor.

Supervisor Fuller noted the next item would be addressed later in the meeting when the attorney, Robert Alessi, and engineers arrive from O'Brien and Gere.

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The following item was a recommendation from Michael Cirillo, Engineering Services Administrator, for Wemple Road Right-of-way Acquisition.

Engineering
Services Wemple
Road Right of Way

The motion was made by Mrs. Davis and seconded by Mr. Johnson to approve proceeding with Wemple Road right-of-way acquisition as recommended by Michael Cirillo, Engineering Services Administrator,

Department of Public Works. The motion was passed by the following vote:

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

Adop- The next item was a recommendation from Engineering Services
 tion Administrator, Michael Cirillo, for adoption of supplemental
 supple- resolution and to authorize Supervisor Fuller to sign supplemental
 mental agreement regarding Traffic Signal installation at Elm Avenue Park.
 agree- She explained it boils down to an additional \$5,000 deposit they need
 ment from the Town of Bethlehem. She said the installation cost is
 regard- greater than the initial cost that New York State estimated. The
 ing original cost was \$75,000 and the Town needs to provide an additional
 the Town. \$5,000, according to Supervisor Fuller. She said what is most
 important is that 75 percent of the total cost will be recovered by

traffic The following resolution was presented:
 signal
 at Elm
 Avenue Park
 and
 resolu- RESOLUTION
 tion

Authorizing the implementation, and funding of a State
 "Marchiselli" Program-aid eligible transportation federal-aid
 project, to fully fund the local share of federal- and State-aid
 eligible and ineligible project costs, and appropriating funds
 therefor.

WHEREAS, a Project for the Elm Avenue Traffic Signal
 Installation, P.I.N. 1805.19 (the "Project") is eligible for funding
 under Title 23 U.S. Code, as amended, that calls for the
 apportionment of the costs such program to be borne at the ratio of
 80 percent Federal funds and 20 percent non-federal funds; and

WHEREAS, the Town of Bethlehem desires to advance the project by
 making a commitment of 100 percent of the non-federal share of the
 costs of Construction work for the project or portions thereof, with
 the federal share of such costs to be applied directly by the New
 York State Department of Transportation ("NYSDOT") pursuant to
 Agreement;

NOW, THEREFORE, the Town Board duly convened does hereby
 RESOLVE, that the Town Board hereby approves the project; and it
 is hereby further

RESOLVED, that the Town Board hereby authorizes the Town of
 Bethlehem to pay in the first instance the full non-federal share of
 the cost of construction work for the Project or portions thereof;
 and it is further

RESOLVED, that the sum of \$5,000.00 is hereby appropriated from
 HP5680.249 and made available to cover the cost of participation in
 the above phase of the Project; and it is further

RESOLVED, that in the event the non-federal share of the costs
 of the project exceeds the amount appropriated above, the Town Board
 of the Town of Bethlehem shall convene as soon as possible to
 appropriate said excess amount immediately upon the notification by
 the NYS Department of Transportation thereof, and it is further

RESOLVED, that the Town Supervisor of the Town of Bethlehem be
 and she is hereby authorized to execute all necessary Agreements,
 certifications or reimbursement request for Federal Aid and/or
 Marchiselli Aid on behalf of the Town of Bethlehem with NYSDOT in
 connection with the advancement or approval of the Project and
 providing for the administration of the Project and the
 municipality's first instance funding of the non-federal share of the
 costs of project costs and permanent funding of the local share of
 federal-aid and state-aid eligible project costs and all project
 costs within appropriations therefor that are not so eligible, and it
 is further

RESOLVED, that a certified copy of this resolution be filed with
 the New York State Commissioner of Transportation by attaching it to
 any necessary Agreement in connection with the Project and it is
 further

RESOLVED, this Resolution shall take effect immediately.

The foregoing resolution was presented for adoption by Mrs. Davis and seconded by Mrs. Burns. The resolution was passed by the following vote:

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

Supervisor Fuller asked if there was any discussion. Councilman Davis said she thought it was just terrific to have this signal. She said it has made a big difference and with the park opening, the timing was probably, as well as, it could be expected to be. She said the turn signals are most helpful and hopefully will increase the safety of the young people and older residents as well. Supervisor Fuller thanked Councilman Davis and said it certainly has been a long awaited project, finally completed.

The next item was a recommendation from Michael Cirillo, Engineering Services Administrator, for approval of a safety improvement project and authorization of the Administrator to negotiate for necessary right-of-way and easement for 439 Krumkill Road, North Bethlehem. Supervisor Fuller explained the Town Engineering Division was requested to check a sight distance complaint at 439 Krumkill Road because of an embankment in front of this lot. The Engineering Division has determined that the sight distance issue is in front of 439 Krumkill Road and must be removed. The right-of-way acquisition and a temporary easement will need to be acquired.

Engineering Service approval of a safety improve ment project 439 Krumkill Road

The motion was made by Ms. Burns and seconded by Mr. Johnson to approve the authorization of Engineering Services Administrator, Michael Cirillo, proceeding with the negotiations for necessary right-of-way and easement for 439 Krumkill Road, North Bethlehem.

Councilman Johnson asked if the property that is being discussed was the one he was thinking about, usually the residents do a lot of work on their lawn and he said it was a rather new lawn and said he does not know how this works. He asked if the residents know what is happening with this. Supervisor Fuller said Mr. Cirillo has been dealing with them for a while. Councilman Johnson said this was okay and thanked the Supervisor.

The motion was passed by the following vote:

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

Supervisor Fuller said she will check on the new lawn.

The following item was a recommendation from Town Planner, Jeffrey Lipnicky, for acceptance of an application regarding Building Project Approval for PRD No. 1, Meadowbrook and referral to the Planning Board for review and recommendation. Supervisor Fuller said this is a Building Project Approval that at the time did not include a 1 family house and what was needed was to send this to the Planning Board for a recommendation on both the SEQR and the Building Project Approval amendment.

The motion was made by Ms. Burns and seconded by Mrs. Davis to approve the referral to the Planning Board for a recommendation on the SEQR and Building Project Approval amendment for PRD No. 1, Meadowbrook. The motion was passed by the following vote:

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

Planning accept an applicatio Building project approval PRD No. 1 Meadowbroo. and referra to Planni Board

Supervisor Fuller noted it will now be going to the Planning Board.

Parks and Recreation appoint seasonal personnel

The following item was a request from David Austin, Administrator, Parks & Recreation Department, for approval of appointment of seasonal personnel.

The motion was made by Ms. Burns and seconded by Mr. Johnson to approve the appointment of seasonal personnel as requested in the Memorandum from David Austin, Administrator, Parks and Recreation Department, dated June 10, 1998, at the titles and salaries indicated. The motion was passed by the following vote:

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

NOTE: Councilman George Lenhardt arrived at the Town Board meeting at 8:03 p.m.

Supervisor Fuller next returned to the second item on the agenda, consideration of a proposed amendment to O'Brien and Gere's recommendation for a proposed test well.

Amendment to O'Brien and Gere's proposed test well

SUPERVISOR FULLER: Good evening, gentleman. Mr. Alessi, if you will present what it is we are discussing this evening.

MR. ALESSI: Sure, good evening everyone. What's before the Board this evening is the result of some developments in the litigation. I will preface my comments tonight with what may become repetitive but I think important comment that this is an obviously significant litigation for the Town, trying to balance providing information to the Town with making sure that we preserve litigation strategy and position. So, tonight, perhaps more so than ever, I am going to be circumspect but I hope you will find that the information we provide is what you need to make a decision and if you feel that there are questions you need to ask that regard the litigation, my recommendation -- particularly for tonight -- would be that we go into executive session if need be. You know, I am going to try my best to avoid that and to get the information that you need but again, tonight particularly it is sensitive.

Last time we were before the Board, there was the issue of the proposal from O'Brien and Gere to install a test/production well and the Board approved that and what has happened in the interim is that I had sent out a notice to the defendants and their counsel... I sent a note to the defendants counsel and said, here is what we plan on doing, if you have any questions or comments, please contact me. And, what happened was we did get a comment and we got a comment from both Rust and Fraser that said, in essence, we would like to perform this testing and this installation of the production well. I explored in more detail what that meant and first and foremost I had in my mind to make sure that the Town's interests in every way were protected and that we could come up with a proposal out of it that would be something that would be protective of the Town's interest and prudent. And, what arose out of that process was the... is the amended proposal that you have before you from O'Brien and Gere. And, we call it amended proposal because it is just that.

The differences are as follows... really the salient differences... 1. is that Rust and Fraser have agreed to do this work but importantly O'Brien and Gere under the proposal would oversee all aspects of it. And, while the cost of the original proposal was \$52,000 or \$54,000 dollars, the oversight of O'Brien and Gere would still cause a cost of not to exceed \$18,000. And, that would be for their oversight. If you recall in their original proposal, there engineering was \$28,000 and in terms of engineering they would do a lot of what they were going to do -- they were going to do an oversight of a drilling. Well, it is the same driller, the driller is going... just as the other proposal... use the same type of equipment, the same calibration procedures. O'Brien and Gere will be

oversight of a drilling. Well, it is the same driller, the driller is going... just as the other proposal... use the same type of equipment, the same calibration procedures. O'Brien and Gere will be there just as they were before. And, O'Brien and Gere will be overseeing and evaluating whatever Rust would do at the test of this and installation of this production well. O'Brien and Gere would prepare a report, just as they would have prepared in the original proposal and the really differences that would occur is instead of paying O'Brien and Gere to be there when the driller sets up, Rust will be there to observe the set-up. When the driller goes to tear things down, not test but demobilize, Rust will be there with the contractor to have that demobilization occurring. And, to assure that we have a quality to the process, again O'Brien and Gere will be there through all aspects of the process where that is of concern.

So, what is before the Board is essentially, if you look on one side, the cost savings. We're talking about a \$35,000 cost savings. Couple significant points in addition, 1. Rust and Fraser have agreed that they will not claim their expenses in the litigation. For example, if Rust and Fraser were to succeed on their defenses in the litigation, they would under what's being proposed, would not be able to claim that they, therefore, should be paid for their work. And, that was one of the main issues we wanted to make sure was not even at play.

Importantly on the other side, O'Brien and Gere's expenses, the not to exceed \$18,000 oversight, will still remain part of our claim. We are not waiving that.

So, those are really the salient points of what is before you. I am mindful that the parties who are proposing to do this are parties in a law suit. There is no doubt about that and that has not been lost on me. It has not been lost on O'Brien and Gere. What we have done in this exercise is to present to you a scenario that very closely approximates that which you approved before which does have some differences, obviously, with the players involved here. But, O'Brien and Gere has assured me and they are here tonight, should you have any questions, that the integrity of the testing, the integrity of the data, the integrity of the results will not be impacted by the amended proposal. And, it is upon that recommendation, that this proposal comes before you.

Again, given that the context in which this is occurring is under litigation and we have our reasons from a litigation prospective for presenting this proposal but I will stop there and again, tonight, if you would indulge me, there may be some questions that I am going to suggest to you that might be appropriate to answer in another forum but I think that we ought to see where we go on that. So, that concludes what we would like to present to the Board tonight. And, I will stop there.

SUPERVISOR FULLER: Thank you, Bob. Are there any questions from the Town Board?

COUNCILMAN JOHNSON: I think what you are saying, Bob, is you're recommend... as our Counsel, you are recommending that we accept this proposal?

MR. ALESSI: Well, what... the real answer to that question is yes. And, I want to emphasize that it is based upon O'Brien and Gere's consultation with me that this testing... we can achieve the goal that we set out... that this Board voted on with the original proposal and we can do so because the integrity of what you had approved before remains in tact with the amended proposal. So, on that basis, I do recommend that the Town accept... the Town Board accept the proposal.

COUNCILMAN DAVIS: Bob, is there any basis on which Fraser and/or Rust would be able to claim through the litigation process that because we are allowing them to do this, we have confidence in what they do? We trust their competence and ultimately, therefore, affect our litigation and what we are going?

MR. ALESSI: That's a good question. The answer is no and for this reason. Let me say, your question was in the litigation.

COUNCILMAN DAVIS: Yes, in the litigation.

MR. ALESSI: Their... if the Board were to approve of the amended proposal, there would be a stipulation that would be drafted and we have already got the... really the essence of it in agreement. That neither party would be able to use this event in the litigation. Wouldn't even be able to get into evidence in any aspect of the litigation so that again, this is part of what people talk about in settlement. It happens in all kinds of litigation. You try some things and neither party is prejudice by it. So, there would be a stipulation that would be created that would essentially contain the elements I talked about. They can't claim their costs against us, we still claim O'Brien and Gere's costs. No party can use the fact of this occurring at all in the litigation. So, those are reasons, among some others, as to why they would not be able to claim what you had referenced in the litigation. In the public arena would they be able to claim it? Maybe. Do I think they are going to try to do that? I don't know. It's... I know that maybe somewhat of an issue with some people in terms of my role, I look at litigation. We're protected in that regard.

SUPERVISOR FULLER: Susan.

COUNCILMAN BURNS: Sure. Um... okay, I guess my first question, you said you explored what it meant when you sent back the letter. My question would be why would they decide to do this?

MR. ALESSI: I can't speculate on why they would decide to do it. Other than to say, as a general matter in litigation, in the abstract that litigants generally do try to reduce the damages you have to argue over. Litigation is a risk to both parties. Both parties in litigation, no matter what it is, generally try to reduce the risk. One way to do it, is to reduce the amount of damages. If this test/production well yields more water, then that may mean there is less water to buy from the City of Albany. If there is less water to buy from the City of Albany, there is less damages that go in the litigation. Less damages the defendants have to face paying, it's less damages we have to prove and there is cost to proving damages, etc. And, since those risks are at play, litigants generally try to create a win/win where they reduce the amount they are arguing over since it's a zero sum game when you get to a jury trial. So, I can't answer other than in that regard as to why they may be doing it, but I can tell you I have thought through all the nefarious reasons why in addition to the positive reasons why. And I am comfortable that in litigation, particularly since none of this will come into evidence and ever make its way to a jury, that from our perspective we are protected in litigation.

COUNCILMAN BURNS: Okay. Let me go back to something you said up front, you have been calling this well -- test/production well. Now, the packet of materials I received is right here, this is the information I received. No where in this packet of materials does it say production well. Now, these are materials, well May 6, 1998 when we, several weeks ago, agreed to drill the test well and no where and I believe looking back in the minutes was it ever brought to my attention or the residents attention that this was a production well. In light of that, I happen to see a letter from March 3, 1998 to Bruce from O'Brien and Gere, I just saw this tonight which was agreed on 3/16/98 signed by Bruce and from Mr. Mickam -- my eyes fail. In this letter to Bruce, which I have first laid eyes on tonight, it talks about a production well. This was March 3rd, okay. With that information tonight, we were led to believe that we were putting in a test well and here is the documentation. Now, in light of this written letter, from March '98 agreed to by Mr. Secor and signed, we found out that this is really a production well. We find out it is a production well to fulfill the water shortages that we will be faced with this summer and it is in this letter. Following from just these 3 points, let's have some common sense. Now, for us to... Rust and Fraser want to pay for this test well. Well, I may be a skeptic but you don't get something for nothing.

So, I would like to make a motion at this time to table this recommendation and to stop any construction of this well until further discussion and information is provided and until it is clear what's going on. Right now it is not clear to me and I don't think it is clear to the residents. And, we must be accountable. And, our residents deserve no less.

MR. ALESSI: With... I think there was a question somewhere in there and I think the question was...

COUNCILMAN BURNS: There was a motion.

MR. ALESSI: I think the question was whether there was ever a statement that this was a production well. I believe that if you would go back and look at more than the 3 documents you mentioned, you would find several instances and if you listen to the tapes of what I said, you will find several instances and if you listen to what Mr. Geiss said and what Mr. Secor said there will be several instances where it was called a test/production well all along for the following reason. And, it was not only at the last meeting, it was the meeting before that. It is in a letter dated April 10, 1998 which you didn't cite to from O'Brien and Gere. I will read the first sentence. It says 'Dear Bruce, The purpose of this letter is to summarize estimated costs associated with the installation and pump testing of a test supply well'. Supply and production are clearly synonymous terms and I used the phrase repeatedly, test/production wells. And, I will say that that issue is clear to me because I recall saying often that the purpose... the reason why we call it a test/production well is because we are going to go test. We're going to see how much it yields and then if it yields enough, the reason why... and the whole real purpose of this April 10th letter from O'Brien and Gere and the chart that you had... that all Town Board Members had... showed the difference in costs between what a test well alone would cost and what a test/supply well would cost. And, the reason why we recommended and you approved a test/supply well was because the cost differential between the 2 was so minimal that we said, if this test produces a positive result, we could go right to a production/supply well and we wouldn't have to go in and reinstall and pay a lot for more costs. So, the idea has always been, way back to when we were talking about dredging a test/supply well, we fairly indicated and called it that at the time because we wanted you, the Board, to know and we wanted the residents to know, that we had more in mind than just a test well. And, we thought that going test supply would be more efficient and that with regard to the tests, we'd do the tests and we would stop and look at the test results. And, if those test results were positive and this Board thought that they were positive and warranted going to production, the casings would already be in the ground and we would then have to apply to the Department of Health for authorization and perhaps some other agencies to turn this into a production well. So, I would respectfully submit if you go back and look at more than those 3 documents, if you would listen to the tape before you voted last time, you will hear the words test/production well. And, I don't know as if there is more that I can say. Nothing has changed from this meeting. The documents you've only got one more document, the same documents that you had before you the last time you voted, are the documents that I am referencing and I didn't understand there to be any uncertainty at that time as to whether this was going to be a test/production well and again, I remember making it a point to talk about a test/production well. And, it's in the document that I spoke about in that first sentence that I just read so I can understand where there may have been some confusion but that's my recollection and that's what's in that document.

COUNCILMAN DAVIS: Bob, I also...

COUNCILMAN BURNS: With all due respect, Mr. Alessi, that is not... maybe it was clear in your mind, it was not clear to me and no where was it ever said to me or did I hear production well. As a matter of fact, 2 weeks later at a Town Board meeting, Mr. Davies came up here and read a statement and talked about a production well and someone on the Board, I don't remember who, said no, it is not a production well and I will look at those minutes. This was the meeting following that meeting that we decided on that. So, I am sorry,

that's not the case. And, yes, things have changed. A lot of things has changed. And, maybe because you have seen this letter, it was clear in your mind but not in mine. And, I think we need to be accountable to the residents of the Town of Bethlehem.

MR. ALESSI: That's the roll of a Town Board Member as to what needs to be done. And, you know best as to what was clear in your mind. My comment is not what was in your mind, my comment was about what I said, what is in an April 10th letter that I read and with regard to why it is called a test well and this may be part of the confusion is that in its present form right now, it is a test well. It only becomes a supply or production well when you do 3 more things. 1. get the results of your tests. 2. determine that it's worthy to move forward to be a production well. 3. you apply to the Department of Health. But, what we all did was to fairly disclose up front that's why... where we were headed and that's the whole essence of the April 10th document which says that it's a test/supply well. I don't comment on what was clear in other people's minds. What I comment on is what I said the documents we put forth. And, if it was clear or not then that's up to other people to speak. I am not challenging what was in other people's minds.

COUNCILMAN BURNS: Let me state, that had I had it then said because I clearly don't remember it being said... production well... my thinking would have gone along a different tract and that's what's changed for me at that time in... from there. I would have thought about it differently.

MR. ALESSI: I am trying to understand what would have been different because a test well and a production well are really the same thing except for the size of the casing.

COUNCILMAN BURNS: I've been told that that is not the case.

MR. ALESSI: Well, I will tell you, Mr. Geiss is here to be able to respond to those issues and we can get to those.

COUNCILMAN BURNS: Okay.

MR. GEISS: Can I respond to that?

COUNCILMAN BURNS: Please do.

SUPERVISOR FULLER: I have a procedural question. Susan, has a motion on the floor.

MR. GEISS: I was going to ask...

SUPERVISOR FULLER: We need to go back to her motion unless you wish to withdraw it until we go through the answers to the questions? Or would you like to leave your motion on the floor and I will proceed.

COUNCILMAN BURNS: I'd like to answer the question or it's up... I do have a motion and I also would like to know the answer to the question.

MR. ALESSI: This is a matter of procedure, as I am sure you know. Technically we are not supposed to speak when a motion is on the table.

SUPERVISOR FULLER: That's right.

MR. ALESSI: I want to answer your questions but I don't want to run afoul of procedures of the Town Board.

COUNCILMAN BURNS: Well, it's the... if the motion is passed, then you will have that opportunity.

SUPERVISOR FULLER: Susan, if you don't mind, would you repeat your motion.

COUNCILMAN BURNS: Sure. The motion is to table this recommendation and to stop any construction of this well until further discussion and information is provided and until it is clear what is going on?

Right now, it is not clear to me and I don't believe that it's clear to our residents, we must be accountable.

SUPERVISOR FULLER: Is there a second to the motion? Motion fails for lack of a second.

Now, Mr. Geiss, if you will come back up.

MR. GEISS: Yes. To address some of the questions that you raised to Bob with regard to the phrase production well. I believe the phrase that was used when I was here, not 2 weeks ago but a month ago... I think it was the May 13th meeting...

SUPERVISOR FULLER: It was May 13th.

MR. GEISS: We talked about a test well to final well standards. I don't believe we referenced production well in any of the discussions that evening. But, I think the exact phrase was test well to final well standards.

ATTORNEY KAPLOWITZ: What's that mean?

MR. GEISS: That means that it can be converted to a production well. It is not a production well as it sits there. What Bob described to make a well into a production well, you have to have a pump, you have to have piping, you have to have monitoring, you have to have approval from both the Health Department and DEC. So, what you have when we finish is still... a hole in the ground which essentially at that point, is still a test well. It is a large diameter in lieu of a small diameter. And, we wanted to do that so that we could stress the aquifer and get accurate readings for the capacity or yield from the well. Now, what you read on the March 3rd letter, the March 3rd letter really... signed by Jim Mickam... was an outline looking to the Town and it had included 7 items in it. The purpose of the letter was to outline the approach of looking at data, doing some geophysical surveying. Those were the 2 first, first 2 items. The remaining 5 were borings, test well, estimate of capacity available, design facilities to interconnect new supply to existing and meetings. The purpose of that was to outline the whole or give an outline of everything. The letter, itself, was only to look at the geophysical. In other words, to find out what the underground conditions or the geological conditions were at that area. And, in fact, the reference if you look at that letter and read it, it talked about... and we go to the test well, in there it talked about doing the test well installation to permanent well standards or final well standards. It also said this would... well, let me read the whole thing so I don't take anything out of context... 'Based on the survey and borings information, we will set up a program for test well installation. We would anticipate that this test well could be installed to permanent well standards. This would enable the Town to utilize it for immediate use following testing. This procedure would only follow if wells were recommended... were the recommended method for additional ground water capacity.' So, it's not talking... the March 3rd letter doesn't talk about building a production letter, it talks about the testing as the next. The next would be to develop it but also what this letter says is the geophysical work are the 2... looking at data and doing the geophysical are the recommendations of this letter. The others are procedures and steps the Town has an option of going with. It is not a recommendation that they be... to go with at this time. It was to go with the geophysical to see what the depth of the aquifer, what the aquifer consisted of so that what we could expect if we were to go down there and look and how we would place the test well. And, that's what was the purpose of the March 3rd letter. The production capability was a projection, you might say, somewhere down the road. It is not a recommendation of the March 3rd as a step that you, the Town Board, should follow. When we did the geophysical, the next step was for us... on April 10th... to make the recommendation for the test well which we included all the estimates from our subcontractor and how the test well would be proceeding. And, that's really what we came in last month and made our recommendation on, was on the test well to permanent well standards, not making it a production well as yet. So, that's what I just wanted to clarify what you are reading in that letter.

COUNCILMAN BURNS: Well, I understand the purpose of the letter. I read it and the geophy... you know, all of those things. I understand the purpose of the letter. That's not my issue. My issue is I have never seen this letter until tonight. The issue is accountability. The issue here is that it was a test well a month ago and tonight it is a production well.

MR. GEISS: I haven't said it's a production well.

SUPERVISOR FULLER: I think for some clarification here, we had a May 6 letter which was for... and this is the official records of the meeting when we adopted it... Susan, there is... here is May.

COUNCILMAN BURNS: I have this. I have this...

SUPERVISOR FULLER: Okay, if you go back with that whole...

COUNCILMAN BURNS: This is what was given to me.

SUPERVISOR FULLER: April 10th...

COUNCILMAN BURNS: Not this. This is what I based my decisions on. This group of papers.

SUPERVISOR FULLER: April 21st location of proposed test/supply well in relation to the infiltration trench and a schematic of the proposed test/supply well. The drawings, this was all a complete packet.

COUNCILMAN BURNS: I read them 5 times, read them again today.

SUPERVISOR FULLER: Well, I am confused by the...

COUNCILMAN DAVIS: I believe there's several, at least one, possibly more residents who have spoken on this issue at the last several Board meetings have referred to this test well as a possible performance/production/supply, whatever the term was, and they were aware of what it was. So, I would assume that we would be aware of what it was.

COUNCILMAN BURNS: No where is it stated in these documents.

MR. ALESSI: Just... just try ot maybe narrow this down. The documents, as I understand it, Ms. Burns that you have, say test/supply well. Is that correct? Do the documents you have had and read say test/supply well?

COUNCILMAN BURNS: Says proposed test well.

MR. ALESSI: Well, the documents that Mrs. Fuller just... in that whole packet...

COUNCILMAN DAVIS: Test/supply well.

MR. ALESSI: Talk about test... they say the words test/supply well. I just read along with them. And, if you... I think you have those documents.

COUNCILMAN BURNS: Tonight it is test/production well. Why is this...

MR. ALESSI: It is a semantical issue. Supply and production are... I... in this field, they are synonyms. It's... it's you originally only knew it was a test well and the documents that you had only said test well. And, what we tried to do was go back and look at the documents that you say you have and point out that the words do not say test well, they say test/supply well. And, if there was confusion with... for me saying production as opposed to supply, I apologize for that confusion but I think the word production as Mrs. Davis has been indicated, has been used by residents commenting. I have used it, it is a term that is a synonym. But, I think we can fairly say that the documents that all Town Board Members have had say test/supply well, not test well. That's the only point I wanted to make.

COUNCILMAN BURNS: I am not an engineer and for me to know supply means production is... is not clear. I am not an engineer. To me it didn't mean production well and we talked at length about a test well, not a test/production well.

COUNCILMAN DAVIS: I do think it was explained to us by residents that... what the significance was. I do remember that and I remember hearing it clearly. If it weren't understood in the material that you got, I think, we probably would have understood it from that information.

SUPERVISOR FULLER: I think that there was a statement made at a meeting here on May 13th about a production well by a resident being concerned about the quality of water.

COUNCILMAN DAVIS: Yes, that's right.

SUPERVISOR FULLER: And, I remember saying the issue is not quality of water, it is was quantity of water is what the issue was. So, perhaps, that's what's created some of this confusion.

COUNCILMAN BURNS: I believe it also was stated that it was not a production well at that meeting. That's what I recall.

MRS. BURTIS: Well if the meaning... if you are talking to a production well...

SUPERVISOR FULLER: Excuse me, Linda, it's the Town Board has the opportunity to ask questions right now and then I will turn to the audience as soon as we are through. Thank you.

COUNCILMAN BURNS: All right. We'll leave that and you know where I stand on that and not clear to me. Has never been clear to me until tonight. Further, about the test well, in the letter from...

COUNCILMAN DAVIS: Test/supply well.

COUNCILMAN BURNS: Rust Environment to... let's see, Mr. Brust to Mr. Swenson.

SUPERVISOR FULLER: Rust to O'Brien and Gere.

COUNCILMAN BURNS: Right. Rust to O'Brien and Gere. There's some generalities and um.. broad statements that I'm not clear about. It says we will install 2 other monitoring wells. What are those wells?

MR. GEISS: When you install a test well to look at yield, you need to look at the cone of influence or, I think we have talked about... let me back up, I will put a little more general terms. When you pump out of the ground or out of your test well, you're going to draw the water in the well down. As you draw it down, you influence the area in around the well, and you want to measure not only the draw down at the well itself but you want to measure how it affects the draw down in the area of the well. So, you put in small observation wells, you are looking at the water depth in those wells and how the water depth changes in the vicinity of the well as you pump the well. This gives you an indication of, you know, the affect and you can project how the well is going to react under other conditions when you can measure the water depth in all... in the observation areas.

COUNCILMAN BURNS: Are these different, again, not being an engineer, than ... meters?

MR. GEISS: Excuse me?

COUNCILMAN BURNS: A piece meter?

MR. GEISS: Pisometer?

COUNCILMAN BURNS: Pisometer.

MR. GEISS: Um... I can't specifically say in that when I talk about observation, and maybe Guy Swenson who probably could tell you

exactly, but the observation what it is is a 2 inch... most likely it is a 2 inch diameter pipe that goes down into the ground with a screen at the bottom so you can measure the water depth in the area that you are doing it.

COUNCILMAN BURNS: And, these monitor wells were in the original...?

MR. ALESSI: Yes, if you would look at the April 10th O'Brien...

COUNCILMAN BURNS: It says observation wells, is that the same as a monitoring well?

MR. GEISS: Yes, it is. Observation and monitoring would be the same.

COUNCILMAN BURNS: And, it says in this letter in general this work will be performed according to your proposal. I'm sorry but those words in general... I would like to see specific proposal because I don't like the words in general. I am not sure what exactly this is.

MR. GEISS: They had...

COUNCILMAN BURNS: Words like that, I will just go on.

MR. GEISS: Okay.

COUNCILMAN BURNS: And then it says our scope and methodology for this work fit well with your proposal. Well, what scope and what methodology? It's just so unclear, so general, so broad that I am saying... which is why I brought forth my motion, we need more information. We need more time. We need to figure this out. It's... there's just not enough information in front of me.

MR. GEISS: They... Rust has proposed a... I can't say it is identical, word for word, from what we had proposed to you but they proposed the installation of the test wells in the location... in the vicinity of the river, as we had. The test wells are the same size, they were going to perform the similar testing, the 72 hour test such that the proposal was in all essential terms, I would say identical to what we were going to do. They, I believe, had 1 change, the screen size was going to be a couple inches larger in diameter than what we had proposed. Being larger, did not have an effect on what we were looking at, therefore, the proposal put together... put forth by Rust, they were going to use the same contractor, Lane Christenson, that we had proposed to use. So, the work... the field work was going to be performed by the same personnel that we had proposed to use. And, this would be at no cost to you, the Town.

COUNCILMAN BURNS: And, we have not seen a proposal from them, just a letter. Not anything like we had a month ago.

MR. GEISS: Do we? I wasn't at that meeting, maybe Bob.

MR. ALESSI: With regards to the proposal before you. You are hearing the experts you have hired tell you the differences. And, you have heard them say in all other respects it is the same. I don't know what further information you're looking for. The questions that you have had Mr. Geiss has answered and he has gone through all the differences. There are no more differences. I am just trying to figure out what specifically it is you need to compare the 2 proposals. He said there... it is the same with the exception of these items and he said those are all the items.

COUNCILMAN BURNS: I would like to have a proposal in front of me.

MR. ALESSI: Okay. I understand.

COUNCILMAN BURNS: Before voting on this.

MR. ALESSI: I guess my... you say you would like a proposal. The proposal is that it is to be done in all respects, the same as the original proposal with the exception of what Mr. Geiss just mentioned which he has said are diminuous and as such, are things that engineers in the field would not put forth and that's why they are

not put forth. There is nothing more to provide. Is what you are saying is you would like what Mr. Geiss said to be put in writing?

COUNCILMAN BURNS: Correct. The conditions have changed.

SUPERVISOR FULLER: Are there any other questions of Bob or Tony at this point? Bob, I have a question, back on what is the down side if we were not to accept this proposal? There is a reason that Fraser and Rust have come forward, if we were to reject their offer, is that an opportunity for them to say they have attempted to help the problem?

MR. ALESSI: Most of the down sides, I wouldn't want to discuss in public. One down side, I'm... I think is okay to discuss in public and that is, we talked about the last proposal of being able to claim in the litigation the cost. I think that was a question that maybe more than one of you asked. It's a lot of money. Are we going to be able to get this back in the litigation and my answer was -- expecting to win, and assuming we win, we would get it back. The discussion takes off from there. What the defendants may claim, and I am not going to evaluate or tell you what I think the likelihood of success, but I can virtually guarantee you they will claim, you cannot recover any of the \$54,000 in litigation because we offered to do it. We gave you virtually the identical proposal with some differences that your engineer has said are insignificant and therefore, we should not have to pay for those costs because it is an expense that the Town incurred and that the Town has an obligation to mitigate damages. We presented you with an opportunity to mitigate damages and you did not present a... this is their words, I am hypothesizing... you did not present a reason why... a legitimate reason why to turn it down. And, I am not saying that legitimate reasons can't be argued that you might be able to create later legitimate reasons. But, that is the down side that the \$54,000 will not be recoverable and actually it's not \$54,000, it would be \$54,000 minus... to be true to the analysis... \$54,000 minus the \$18,000 of O'Brien and Gere, so it's about \$35,000 that they would claim that you would not be able to recover. And, that's the one down side that I will speak of. There are others that I don't wish to speak of because if this Town Board decides not to do it, I don't want to prejudice our position.

SUPERVISOR FULLER: Thank you.

COUNCILMAN BURNS: I would just like to say, the issue for me is not about money. I would love to save the Town money any way we can. That's not the issue for me. The issue, as I have stated, is that we can table this and we can talk about it and we can discuss it. I didn't say I rejected it. I didn't say I approved it. We can table it and we can talk about it and discuss it some more. That is how I was approaching this which to me seems reasonable, sensible, in light of the fact that I received this information. In light of the fact it was not clear to me nor do I think many of the residents, maybe some of them were aware of it. And, that is why I brought forth the motion which was not seconded.

MR. ALESSI: One of the...

SUPERVISOR FULLER: Perhaps if we go to the audience and let them have the opportunity to ask some questions, we may get some clarification on... Go ahead, Sherwood.

MR. DAVIES: Could I make a few comments and then ask a few questions of Mr. Alessi and I think these comments may sort of clarify some things.

SUPERVISOR FULLER: Okay.

MR. DAVIES: I handed tonight to each of the Board Member's a memo that I had written and attached the March 3, 1998 letter agreement between O'Brien and Gere and Mr. Secor.

SUPERVISOR FULLER: So, this is the letter that Susan is referring to.

MR. DAVIES: That's right. I just handed it to all the Board Member's tonight. I think you... that's maybe what you were referring to. Now, I should preface this by saying...

SUPERVISOR FULLER: So, then this is a memo from Sherwood Davies to the Town Board with a letter attached to it.

MR. DAVIES: Attached, right. That's correct, Sheila. Now, I should preface my comments by saying for the last 4 months, and 3 foil requests and appearing a month ago or 2 weeks ago before the Town Board making a request for the agreement between the Town and O'Brien and Gere, through the intervention of Bernie Kaplowitz, I finally got it 2 or 3 days ago. This is the agreement. I would say that if this information which was not made available to the Board Members nor the public, if this information had been made available a month ago, I think it would have prevented a number of questions being raised tonight. It could have been clarified. I believe that really this agreement, here, was concealed and was probably the most important document of any that you have received.

Now, O'Brien and Gere apparently recommend that there be a short term resolution of our water needs and they are suggesting that test well, production well, all you have to do is connect with some mains and discharge into the infiltration gallery and most likely this well will produce a million gallons a day. Now, there is an alternative to this. We could purchase Albany water. It would cost us some money but in the mean time would we get more information in terms of what's being done or what should be done. Four years ago, Mr. Secor and Mr. Fraser over estimated our water needs. They made the estimate that this community would average 6.4 million gallons a day in 1997. We are actually using 4.... a little over 5.4 million gallons a day. With the 2 large industry, Mr. Geiss, using 50 percent of this or 2.7 million gallons a day -- you mentioned this in your... that you were going to study this. So, this gives you an idea as to the requirements.

I would like to also say that the State Health Department approval for this new well has been mentioned. I would like to add that the Town has not yet received a State Health Department approval for the completed works for the Clapper Road Water Treatment Plant. I think this is extremely important that this should be secured.

The Myric and Chevalier report in 1978 developed or installed some 20 observation wells and test wells with one that was a relatively large sized well that produced 1/2 million gallons a day and they projected that a million gallons a day could be produced from a well on Schermerhorn Island. And, if you wanted additional water, you should separate those wells by about 500 feet. So, this represents quite a bit of land that would be needed to get 6 million gallons a day. Myric and Chevalier essentially rejected this Schermerhorn Island as a solution to the problem, as well as, Rust and Fraser because of the high iron concentration. In fact, the Town spent 1.5 million dollars for the infiltration gallery with a barrier to exclude that upland water because of the high iron concentration.

It now appears that we will be installing... we may be installing a well that will cost about \$26,000 and will produce, most likely, a million gallons a day. Whether that could be sustained is questionable. Now, a question I have for Mr. Geiss is, are you familiar with the work that was done by Myric and Chevalier in 1978?

MR. GEISS: I've read the conclusions and recommendations, myself personally, and our firm has reviewed the entire report.

MR. DAVIES: I see. Would you... Do you feel that the water quality from 1978 to date would change?

MR. GEISS: I believe you are referring to the water quality in their test well which was, I believe, if you are looking at the results of the approximately 2,000 feet from the river and, in fact, in their conclusions they said that you could expect different water quality as you get closer to the river, is what they referenced in their report... in the '78 report.

MR. DAVIES: Well, would you recall that there was 13 parts per million of iron in their test and it was 250 parts per million hardness?

MR. GEISS: Approximately those are the numbers that they referenced from the water quality from their test report, yes... or from the '78 report.

MR. DAVIES: Correct. Are you familiar with any water supply in New York State or in the US that produces 6 million gallons a day of raw water with iron concentrations of 10 parts per million?

MR. GEISS: I can't specifically say there is none for 6 million gallons. I know of one at 2 million gallons that has 13 to 15 parts of iron.

MR. DAVIES: And, do you feel that if this well could produce a million gallons a day, the concentration of iron 10 parts per million and this hardness that you would recommend that it be used and that we develop additional wells?

MR. GEISS: I would have to look at what the water quality from the extended test is. The hardness is not a problem... or excuse me, the iron is not a problem that is easily oxidized. You can oxidize iron into a precip... the soluble iron into a precipitate and then be able to remove it from the water with a fairly conventional means. The hardness would cause scaling trouble. I would have to look at the hardness with respect to looking at how close we are to the river and if it remained at 254, the hardness would be the difficult point that you have in that water quality, not the iron. And, that would be a factor of looking and I would have to have the test well quality at the river to give you more information. I don't know what the water quality is coming out of the infiltration gallery right now. But, I don't think it is 254. I think it is...

MR. DAVIES: About 140.

MR. GEISS: About 140.

MR. DAVIES: Hardness.

MR. GEISS: Hardness. Okay.

MR. DAVIES: And about...

MR. GEISS: That would be... that you could use for drinking water without any problem. Would not cause scaling problems.

MR. DAVIES: Well, that leads me to the next question. That's... Clapper Road supply is primarily used for industry. Selkirk Cogen, which has to deionize the water. It may be used for GE Plastics and if we have another industry come into the community, the chemical characteristics would probably be more important than the bacteriological characteristics, would you agree?

MR. GEISS: Industry has specific chemical requirements for their water which can be significantly higher than what standard drinking water standards are. Typically, you do not try and design for those specifically because various industries would have different standards.

MR. DAVIES: But, if you intended to pursue this... the development of wells and the Schermerhorn Island, would you consult with industry with regards to the water quality, is what you might expect?

MR. GEISS: I guess in general, you could consult with them. If you were at a 140 parts, 140 parts is an acceptable hardness in general for water. If you were try to get it a zero level for their use, typical the industry water is a very small volume that they are using for that purpose, so you wouldn't look at bringing the entire water down you would let them do it on a site specific basis is what I have encountered in the past but would you not talk to them... I think it would benefit you to talk to them, yes.

MR. DAVIES: And, my last question, could you give me an idea of what a test well or observation well or monitoring well would cost versus the... what we are speaking of... as a production or supply well?

MR. GEISS: Well, I don't have... I have not given data for a production well. I have given data for just a test well to final well standards. Is what I did.

MR. DAVIES: Which is production well.

MR. GEISS: It could be converted to a production well ultimately. It is large enough. There are major costs to make it a production well.

MR. DAVIES: Well, putting in the pump, connecting the main, pump house, approvals...

MR. GEISS: Monitoring, metering, many other things get added to do a production.

MR. DAVIES: Agreed.

MR. GEISS: Your question, I believe, is what does a 2 inch monitoring or observation well cost? I don't have specific numbers, it would be, if we have say roughly \$25,000 here in front of us that we are talking, it would be much less than half of that. I would say maybe you're in the \$8,000 to \$10,000 range. To be... and I am talking off the top of my head with no numbers to back me up specific. But, it's... it's less than half.

MR. DAVIES: A lot less.

MR. GEISS: Yes, okay.

MR. DAVIES: Thank you.

SUPERVISOR FULLER: You're welcome.

MR. ALESSI: One comment I just wanted to make and maybe I am just not catching it, the difference, Mrs. Burns, it's a test well with the capacity to go to a supply/production well. That's what was approved last time and I understand you were unclear that it could have the potential to go to a supply well. But, I want to get us back to the purpose which was to get information about well yield. You have the ability, once you get the test results, it is going to come back before this Board, for your approval or disapproval as to whether it is ever going to turn into a production well. I don't think anybody reasonably contests the need to get more information. And, this is a test well and this is a proposal for a test well that can become a production well only upon your approval. I just wanted to make sure we keep focusing on what we are talking about here. And, that is what was approved of last week and... or last time and that was the purpose that we presented was to gather information to see what would be the well yield for... arising out of it.

COUNCILMAN BURNS: Following your comments and then... following Sherwood's, he said that the State Health Department had not approved this and in the letter it says you would... you want to begin well construction in 5 days.

MR. ALESSI: Yes, we are talking about 2 things. The test... to be a supply or production well you need Department of Health and DEC approval. And, we have fairly said and I encourage you to go listen to the tape, we said way back when we proposed this originally, that to turn it into a supply well, you need to get Department of Health approval. And, so we are talking about apples and oranges. A test well does not need Department of Health approval, does not need DEC approval. But, if you decide to go to a production well, you need to get those approvals. And, there is no dispute over that among anybody.

COUNCILMAN BURNS: If they need approvals then maybe there is a difference.

MR. ALESSI: There is a difference. Nobody has disputed. There is a difference between a test well and a supply well. There is no difference but it's important to know what the difference is. And, Mr. Geiss has said 2 or 3 times tonight what the difference is and nobody disagrees that there is a difference between the two. I certainly don't.

COUNCILMAN DAVIS: In fact, I believe that you were asked the question regarding the difference in the amount... the cost between the 2 at a previous meeting, as well. I remember your figures. That's not the first time we have heard that question, nor is it the first time we have heard your answer.

MR. GEISS: Yes.

COUNCILMAN BURNS: Other... I just want to add in this letter, June 5th letter, from Rust to O'Brien, in addition to the June 15 date that they wanted to start construction, it also says and will be working with you to finalize the location of the well and other specifics of the work. So, number 1 you haven't finalized the location. Number 2, there is specifics of the work which, once again, I don't have in front of me in a written form.

MR. GEISS: You are reading from the... our recommendation. Actually what you have there is the June 5th, is our recommendation to the Board that they proceed with this method. So, I mean, from us as your engineer.

COUNCILMAN BURNS: No, this is the other letter.

MR. GEISS: June 5th? The June 5th...

COUNCILMAN BURNS: No, from Rust to you.

MR. GEISS: The cover letter for that is from our ground water, Guy Swenson, which is our recommendation that you proceed. We have reviewed Rust's proposal and we recommend you proceed. Now, the specifics, we haven't put a stake in the ground to locate the well. So, the final well location must be staked and said here it is. That's what they are saying there. We have approximated the location using a USGS map for location purposes. But, we haven't put the stake in the ground as yet. So, we haven't started any of the work that was outlined in our previous proposal as yet because of the Rust proposal came up before we could start any work. The rest would be the final... the method that they are using, the data that they are gathering with their subcontractor. They are going to submit it like they would submit shop drawings on a construction project for us to review and comment on and then they could proceed with their work. So, what they are saying is, we'll let you have full review of what we are doing and we will then incorporate your comments into... in our activities. So, with that, that's what we are talking about. The outline, the general outline of the work they were going to do, coincides or is identical to the work we were proposing. And, that's why we made the recommendation to you, the Board, that this is the way to proceed.

COUNCILMAN BURNS: But, the specifics of the work can be written down in a report form and given to us to read.

MR. GEISS: We can obtain that from Rust if that's your desire, yes.

COUNCILMAN BURNS: But, right now we don't have that in writing.

MR. GEISS: No, you don't have that.

SUPERVISOR FULLER: Can I ask a question for clarification? Is your recommendation that you delivered to this Board on May 13th, isn't this exactly what Rust is doing?

MR. GEISS: Yes, it is.

SUPERVISOR FULLER: Everything is in it, as far as, all the questions that Susan has. What exactly we expected to get out of this?

MR. GEISS: Yes, Rust is going to provide what we were going to provide from sub-contract and our contract, Rust has stepped forward and said they are going to do. So, they have provided the identical to what we are... we were going to provide is what they have said. Which is our April 10th, I guess Sheila points out a good thing...

COUNCILMAN BURNS: I am...

MR. GEISS: ...they have agreed to do what our April 10th proposal was, to put in the test well. And, I guess to be fair, we didn't dot every "i" and cross every "t" on exactly. We showed the size, we showed the depth, we showed the location. We didn't say how many days we were going to spend, we said how many hours we were going to test. We gave and we talked about the work that we were going to do. And, they have agreed to do all that.

COUNCILMAN BURNS: Since the conditions have changed, I don't believe it is unreasonable to ask that it is written down even in light of the fact that Rust and Fraser will have a role in this now and what exactly they are going to do. What they are going to test. What they are going to analyze. All those roles written down so we see it in writing. I don't believe that is unreasonable.

SUPERVISOR FULLER: Linda, you have questions?

MRS. BURTIS: Yes. Let's see, first, Sheila I appreciate that you are letting this dialogue happen. I understand May 13th... I was away with one of my children... but I think Mr. Alessi and Mr. Geiss presented the proposal for the test well and residents weren't allowed to talk to them and also residents weren't allowed in this format, the way we are tonight, to give some input to the Board.

SUPERVISOR FULLER: Residents have been involved from day one, Linda, and nobody knows it better than you do and I have to tell you that the last meeting was a public hearing on outdoor dining and I felt that Mr. Alessi and Mr. Geiss had certainly put in a long time here.

MRS. BURTIS: Well, residents were involved since day one because we...

SUPERVISOR FULLER: Linda, don't...

COUNCILMAN DAVIS: Linda, why don't you ask your questions.

SUPERVISOR FULLER: ...debate that, stick to the facts.

MRS. BURTIS: Well, okay. Actually I am giving you a compliment. I am trying to say I appreciate that we are having this dialogue.

SUPERVISOR FULLER: That's all right. I am giving you one too.

COUNCILMAN DAVIS: That's all right, you don't have to do that.

COUNCILMAN LENHARDT: We don't need them.

COUNCILMAN DAVIS: You can save your time and ask the questions.

MRS. BURTIS: Um... and also, I just want to ask, are these comments in the minutes... is Kathy keeping all this dialogue, is it going to show up in the minutes?

TOWN CLERK NEWKIRK: All of it...

COUNCILMAN LENHARDT: You can see it on Channel 31 next Wednesday night.

COUNCILMAN DAVIS: It is being taped, Linda.

SUPERVISOR FULLER: Is it next Wednesday night? We need to know the date.

MRS. BURTIS: All right but it is useful to have... so I am asking that you do that, Kathy, okay.

TOWN CLERK NEWKIRK: All of the discussion pertaining to this, Linda, have been verbatim.

MRS. BURTIS: That... that the residents comments and actually, the residents comments have been very useful in the lawsuit because it was the residents that pinned Fraser down to the 6 million gallons a day and so on, so, I mean to me...

COUNCILMAN DAVIS: Linda, did you have questions, Linda?

MRS. BURTIS: ...that's just... that's just good government to be that respectful to the residents. I think what is going on here is that we're worried about sliding into a resolution and that's why slowing down right now and thinking about what a production well really means in the big picture is an important thing to do. One scenario, could be... and I'd like to hear... I'd like to see the Board even grapple with all the different scenarios that could happen with this failing water system. One scenario could be that you go ahead tonight... to me this is the worst case scenario and vote to build this production well and it yields 1 million gallons a day. This production well, the way I understand it, it's being put in a place that an engineering report in 1978 recommended -- upland of the wells that are in now, the infiltration gallery and was recommended that we not put wells there because of the poor quality of water. And, also when you hired Fraser to build this well, Fraser accepted that recommendation and in addition did another thing, he put in a clay wall barrier so that you wouldn't get that water. So, now you want to put in a test/production well where it has been recommended that we don't do it number one and number two, where the engineers just a few years ago to build this new system put in a barrier so we wouldn't get that water. I mean, that's where you are going to put this test/production well. Am I right?

MR. ALESSI: Just let her make the comments and let's take care of that. Some of these are getting into the litigation issues.

MRS. BURTIS: So... so, that I can't have...

SUPERVISOR FULLER: Bob... Excuse me one second, Linda. If they are getting into litigation issues then we need to end it and you will need to interrupt us as we get through this.

MR. ALESSI: Yes, you know... excuse me, Linda. Just to make a response to the Supervisor's question. You know, my concern is that we are getting into that and I can tell you something. The Town's got other litigations going on, we don't do this with other litigations in the Town.

SUPERVISOR FULLER: That's right.

MR. ALESSI: And, there is a reason why we don't do it. I think you have given the people opportunity to comment on the proposal that is before the Town and I would really, again, this was perhaps a comment for when you voted last time to put in the well but I got to tell you, I am very uncomfortable with talking about what we did, what the Town did back then because this really is rubbing up against the litigation. I thought Mr. Davies appropriately... and I am not saying, Linda knows the litigation to know where the areas are but that's my job and that's what you are paying me for. I thought Mr. Davies struck a pretty good balance in terms of the questioning and I wasn't uncomfortable. But, these types of statements, you know, all we're doing is to engage in a process where we are going to provide fodder for the defendants. And, if there's questions about the proposal, I... you know.

MRS. BURTIS: Okay, I'll stop asking that question...

MR. ALESSI: But, this is just going too far.

MRS. BURTIS: I hear you, I hear you, Bob.

MR. ALESSI: Thank you.

MRS. BURTIS: Um... can I ask this question? What do Rust and... Rust and Fraser are willing to spend \$35,000 out of their own pocket, so what are they going to get back from that? What do they want?

COUNCILMAN DAVIS: You will have to ask them.

MR. ALESSI: Yes, my first response is you need to ask them but that question was asked earlier tonight and I responded to it. I think Ms. Burns might have asked...

SUPERVISOR FULLER: I do have that letter, everything is there. This is ridiculous.

MRS. BURTIS: No, it actually Councilman Davis.

MR. ALESSI: Or, whomever, a Board Member asked, what do you think they are doing? Well, Ms. Burns...

COUNCILMAN DAVIS: I did not ask that question, Linda.

MR. ALESSI: Ms. Burns I think asked a similar question.

COUNCILMAN DAVIS: Don't put words in my mouth.

MR. ALESSI: And, I responded as to what might happen. So, I have already responded to that I would refer you to my response. I don't want to repeat it but I think the response that I gave in just a quick synopsis was -- people generally try to... all litigants generally try to reduce the damages that they would face in a case.

MRS. BURTIS: So, again, looking, trying to look at the larger picture, instead of just this kind of one decision at a time at a Board meeting... what we may be doing is taking \$35,000 against \$13 million dollars. We may be able, if we could, if we... this is... we are putting test wells where it was defined that we not them and now we are going to let the people who are adversarial with us right now go ahead and do that. I mean, if I were on the Board, it seems to me I would want to grapple with what do we do... how do we better serve the taxpayer, give them \$35,000 now or get our 13 million dollars investment back.

COUNCILMAN LENHARDT: I don't know where we are giving them any money at all right now.

MRS. BURTIS: Well, the question is are we jeopardizing the lawsuit?

ATTORNEY KAPLOWITZ: No.

MRS. BURTIS: By... by...

ATTORNEY KAPLOWITZ: The answer is no, we are not, in any way.

MRS. BURTIS: So, what I don't understand is... is this... this well...

SUPERVISOR FULLER: I think Mr. Alessi said that he did not want to answer that question, Linda.

MRS. BURTIS: Okay, all right. So, can I just...

SUPERVISOR FULLER: And, you knew that.

MRS. BURTIS: Put a scenario... Am I allowed to stay as a resident... am I allowed to state... okay... a scenario that I am concerned about... if you go ahead and allow our adversaries in a lawsuit to pay for costs on this production well, is that they are going to put in, this production well and perhaps get 1 million gallons... put in 5 others and get up to 6 million gallons which is what you Supervisor Fuller keep saying is the bottom line, the 6 million gallons... for me the taxpayer, the bottom line is the 13 million dollars and I am wondering if they will say now everything is fine and it is possible that that well because of iron hydrate problems is going to clog up just like the infiltration gallery is going to clog up, you are going to go ahead and put it in an area where we have been advised in the

past not to put it where our engineers have built a clay barrier so that we don't get that water.... so, I would say that it doesn't take a rocket scientist to think that there is a possibility that we are jeopardizing the lawsuit by what... by going ahead and allowing Fraser and Rust to pay for a well at this point.

And then, finally, I would just ask you, Supervisor Fuller, what... what is wrong with the motion that Susan Burns put on the floor and that is just to table this so that there can be... this is a complicated issue and there are pros and cons so that you can think about all sides of this question.

SUPERVISOR FULLER: Linda Burtis, I like the way you worded that question. Now, let's go back to Susan's motion. There was absolutely nothing wrong with her motion. I asked for a second. There was not a second to her motion, therefore, the motion failed for lack of a second.

MRS. BURTIS: Right and I am just asking you, per... or anybody on the Board, what... why not since there are... this is such a complex subject, it's involving 13 million dollars and if you talk about the debt you are talking about 28 million dollars, why not rather than rush to judgement, why not wait 2 weeks or wait a month and think about whether or not this is... are we going down a slippery slope here that's going to be harder and harder to turn back from?

SUPERVISOR FULLER: Well, I think this Town Board and I believe Susan Burns was on the Board when we hired Bob Alessi and if you were not, Susan I apologize. But, he is our attorney and we do take the advice from him. He is the one with the expertise. He is the one representing the Town and each of us are to be representing every resident and taxpayer in this community. And, that is what we are doing.

MRS. BURTIS: But, you... but specifically, is there a reason why we can't wait for 2 weeks before we come back and review this and you get a chance to have some feedback from the community?

SUPERVISOR FULLER: I am not sure if you have heard the Board vote this evening but they have not voted yet. They have not had a chance to discuss this themselves which is what we will do when we have the opportunity when I put the motion on the floor. So, you have already decided that this Board has chosen not to wait 2 weeks.

MRS. BURTIS: Well, on every single vote on the water issue you have voted it the night that it has been presented. And, the votes have been unanimous on every single vote. So, historically, I would be stunned if you didn't do it and it would make my day, actually.

COUNCILMAN LENHARDT: I am certainly prepared at this moment to vote in favor of it. I trust Mr. Alessi. I trust his capabilities and I follow his lead.

COUNCILMAN DAVIS: Tonight is not the first time I have given this thought, Linda. I have given this thought for months and months and years frankly, so don't say that we're not thinking about this until tonight.

MRS. BURTIS: The Board... what I do say is that there has never been a person on the Board who has voted aside from every... every vote has been unanimous and every vote has been the night that it has been brought up. And, I... I mean, I think... and what's happening is so remarkable is that we have a new Board Member who is raising question, after question, after question. Most of the time there is one or two questions and then there is a unanimous vote. And, I mean... that's very clear to the community that that's the way the water issue has been voted.

COUNCILMAN DAVIS: The issue is not new. The issue is not new.

MRS. BURTIS: The... every vote of every person on the Board has been... has been a unanimous vote to move along and to move along and to move along and it's amazing that such a complex, controversial, failing water system... there hasn't been one person to come forward

and say let's slow down. Let's take some feedback from the community and let's think this through.

COUNCILMAN DAVIS: Well, we need to move forward with it, Linda, so that we can get an answer and solve it rather than wait and wait and wait.

COUNCILMAN LENHARDT: Can I just mention a couple things?

SUPERVISOR FULLER: Sure, George.

COUNCILMAN LENHARDT: Backing up to a couple comments Linda made, back in the May 13th meeting, I wrote down 2 quotes, one from Mr. Alessi and one from Mr. Geiss. Mr. Alessi said 'that this testing was required to determine how much water this aquifer can produce', which will provide fuel for our litigation. That was... those last few words were mine. Mr. Geiss said 'this well will be in an area that draws from all areas including inland'. So, I just want that on the record.

SUPERVISOR FULLER: Mr. Kelleher.

MR. KELLEHER: Yes. Bill Kelleher, everybody knows me and knows my position on this well supply. I am in favor of what Mr. Alessi proposes. I have appeared in court, my duties with the State and I know a judge will look at this and say, you didn't give Rust and Fraser a chance to correct their mistakes. That's... it's a very important point. I am not a lawyer but a... it is a very important point. I wish that you would not use this word production well or supply well. Please eliminate it. Call it a test well that will have a screen so eventually you can turn it into a production well if we get all the approvals and if the cost is right and the water quality is right and everything else. We shouldn't look at this as a means of solving our immediate water problem. You know, we are going to be buying water from the City of Albany this summer. It should have nothing to do with the case. I'm... I don't think it should. I see nothing wrong with Rust and Fraser doing the work as long as it is supervised by O'Brien and Gere. I do, however, and I sound like a broken record, you are not going to solve the problem if you do not consider the clogging of the well with iron hydrate. It's a well known process. I have 5 references I looked up at the request of Linda and I have listed these... United State Corps of Engineers, the National Well Association, US Filter Corporation, Johnson Well Screen Company, and a company known as the Vierducts Method where they deliberately add oxygen to the ground water in order to remove the iron and manganese before it gets to the production well. But, that's where you have a tremendous well capacity. You don't worry about the clogging of the well, the little clogging that occurs.

I just have one question to ask from Mr. Geiss and this is one of the things that we have been in complete disagreement on. Do you feel that there's no problem whatsoever with iron hydrate?

MR. GEISS: I have never said I don't feel there is no problem with iron hydrate. I said that we need to look at the water quality when we do this test well and water quality, as well as, quantity is a factor. I have also said from the other question, that iron is a treatable item to remove it for drinking water standards.

MR. KELLEHER: I am sorry, you did not answer my question. I was talking about the clogging of the aquifer with iron hydrate. Do you know what iron hydrate is?

MR. GEISS: Clogging of the aquifer or clogging of the screen can happen from the iron. And, it could happen from the growth on the screen or growth within the aquifer. This is a ground water condition that is not only expected when you are into well supplies. Wells have a certain life and there are redevelopment procedures to give you the capacity or yield back on a well once you have this condition occurring which happens as you pass water through the aquifer and through this... in the vicinity of the screen and on the screen itself. So, there are methods of redeveloping the well. This is why you need to know the exact values of the water... of the iron in the water and what you are talking about to really say that you

are going to fully clog and not have a useful well. There are values that you can do, redevelopment and have a full production well back into service. Typical ground water conditions, redevelopment is an operation and maintenance procedure for ground water facilities.

MR. KELLEHER: I am sorry, I disagree with you, 100 percent. Ask the United States Army Corps of Engineers what iron hydrate is, you cannot clean up... cleaning a well screen is standard with hydrochloric acid. This is not what I am talking about. I am talking about the precipitation of iron hydrate in the aquifer, itself, which has occurred with this horizontal well -- no question about it -- and if that isn't considered as part of your evaluation, you are doing a great disservice to this Town. I might ask this question also, would you be willing... would O'Brien and Gere be willing to back-up what they are doing by posting a bond saying that this well will yield 1 million gallons a day for 20 years?

SUPERVISOR FULLER: Mr. Alessi, do you wish to step in here?

MR. ALESSI: Yes. I just want to say a couple of things. 1. The type of comment Mr. Kelleher made about will you consider the clogging of the well by iron hydrate? Those are constructive comments that we can deal with and the answer is, it will be considered. That is as concise as I can put it. Secondly... without regard to a debate over what happens with hydrochloric acid, the answer is, it will be considered. And, you can look at the reports and make your own determination as to its consideration. Secondly, with regard to some of the other issues, I really don't want to have O'Brien and Gere going too far because of litigation reasons on it. But... and with regard to my parlance of using a production well, I can understand that it has caused a discussion, and I think just important to circle back as Mr. Kelleher recognizes, this is a test well. It is not a production well yet what we tried to do and this just goes to show you what can happen when you try to disclose fully to people...

SUPERVISOR FULLER: Yes.

MR. ALESSI: We wanted people to know that it had the capacity to become a production well so we wanted to disclose everything up front so that if we just called it a test well in the beginning and later we said, okay, the recommendation of O'Brien and Gere is to go to production well and then it comes out -- oh, that test well that you put in was all ready to become a production well. We didn't want that comment, so in any event, it is a test well now and as I have said before, it is not going to become a production well until this Board approves it and then, even if that were to happen, the Department of Health and the DEC. So, thank you for your comment on the clogging by iron hydrate and those are the types of comments we can deal with.

SUPERVISOR FULLER: Thank you. Mrs. Shapiro.

MRS. SHAPIRO: Yes. I can't resist a naive comment. It seems to me, if I heard correctly, in that proposal, you called it a test supply well and in the letter from Rust and Fraser it is called a test supply well. I would feel safer if it were just called a test well. It seems to me that reserves to the Town more the right to turn it into a production well if it sees fit. There may be some pressure because of that term in there that this was a test supply well and now you must make it a supply well.

ATTORNEY KAPLOWITZ: You could write them a letter making sure everybody agrees that test well means test supply means test I suppose. No one should claim any confusion down the road.

MR. ALESSI: I think after tonight's meeting, if anybody were to watch it on tv, to read the minutes...

SUPERVISOR FULLER: They will understand.

MR. ALESSI: ...or listen to tape, I think we are all sensitized to the difference and I appreciate Mrs. Shapiro's comments.

MRS. SHAPIRO : I don't even think there is a difference. I mean, the Town can be forced to go ahead.

MR. ALESSI: There is no way, Mrs. Shapiro, I can assure you, there is no way the Town can be forced... as a matter of fact...

SUPERVISOR FULLER: To do anything.

MR. ALESSI: ...the Town can't do it on its own. You need the approval of the DEC and Department of Health and, let's back up. O'Brien and Gere wants to do this and the Board voted to do this, so we could get some information. All this talk about whether it's going to become a production well now is really premature until we get the test information. O'Brien and Gere's recommendation may be don't proceed, it is not going to produce. It is a mute issue or they may say, we believe that this can be turned into the production well, here's why and then it is back before the Board and we will be evaluating it. I think the whole issue really at the end of the day is premature and there is nothing that is before the Town Board on the proposal that O'Brien and Gere had April 10th proposed back then or now that commits the Town to a production well in any shape or form. So, I can assure you that that doesn't exist.

SUPERVISOR FULLER: Okay, back to the item on tonight's agenda. We have an amendment to O'Brien and Gere's recommendation for a proposed test well. This would be the work done by Rust, supervised by O'Brien and Gere as our engineer. May I have a motion to approve.

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to approve the proceeding with the installation of the test well by Rust and Fraser with supervision by O'Brien and Gere, engineers hired by the Town Board.

Any discussion?

COUNCILMAN BURNS: Yes.

COUNCILMAN JOHNSON: Yes, madam Supervisor, I would like to make a comment relating to what Mr. Lenhardt and Mrs. Davis said. I was going to save my comment until the end. This Board... when we decided to go to litigation, decided to find the best attorney we could. I believe we did and I feel very comfortable with Mr. Alessi's recommendations and we're in your hands, sir.

MR. ALESSI: Thank you for your confidence.

COUNCILMAN BURNS: I would just like to say this... my issue, this issue is not about trust as George and Bob just said in Mr. Alessi and I wasn't here on the Board when he was hired. And, it is not about money. The issue I brought up was about accountability. And, I tried to put forth a motion in order to discuss and talk about this issue a little bit more and get more information and it was turned down. So, I am going to tell you I am going to vote no, not because I don't want to save the Town \$52,000 but because it is a matter of accountability which the residents deserve from this Board.

SUPERVISOR FULLER: All those in favor?

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

Noes: Ms. Burns.

Absent: None.

SUPERVISOR FULLER: Thank you, Mr. Alessi and Mr. Geiss.

The next item was a request from Kathleen A. Newkirk, Town Clerk, for adoption of resolution setting polling locations for the 1998 Elections.

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

Town Clerk
adoption of
resolution setting
polling
locations

RESOLVED, that in accordance with Election Law, Article 4, Subdivision 4-104, the Town Board of the Town of Bethlehem, hereby designates the following names locations as polling places for any election to be held in the Town of Bethlehem effective May 1, 1998 through April 30, 1999:

| <u>District</u> | <u>Polling Location</u> |
|-----------------|--|
| 1 | North Bethlehem Fire House 589 Russell Road, No. Bethlehem |
| 2 | Beverwyck 1 Autumn Dr., No. Bethlehem |
| 3 | Slingerlands Fire Department New Scotland Rd., Slingerlands |
| 4 | First United Methodist Church 428 Kenwood Ave., Delmar |
| 5 | Elsmere Grade School 247 Delaware Ave., Elsmere |
| 6 | Bethlehem Town Hall 445 Delaware Ave., Delmar |
| 7 | Slingerlands Fire Hall New Scotland Rd., Slingerlands |
| 8 | Bethlehem Town Hall 445 Delaware Ave., Delmar |
| 9 | Bethlehem Library 451 Delaware Ave., Delmar |
| 10 | First United Methodist Church 428 Kenwood Avenue, Delmar |
| 11 | Educational Services 90 Adams Pl., Delmar |
| 12 | Elsmere Fire House Poplar Dr., Delmar |
| 13 | Elsmere Grade School 247 Delaware Ave., Delmar |
| 14 | Parks & Recreation Building 261 Elm Ave., Delmar |
| 15 | Bethlehem Town Hall 445 Delaware Ave., Delmar |
| 16 | Bethlehem Lutheran Church 85 Elm Ave., Delmar |
| 17 | Delmar Fire House Delaware Ave., Delmar |
| 18 | Hamagrael School McGuffy Lane, Delmar |
| 19 | Bethlehem Central Middle School 332 Kenwood Ave., Delmar |
| 20 | St. Stephens Church Elsmere Ave., Delmar |
| 21 | Glenmont Grade School Route 9W, Glenmont |
| 22 | Selkirk Fire House #2 Glenmont Rd., Glenmont |

| <u>District</u> | <u>Polling Location</u> |
|-----------------|--|
| 23 | Delmar Fire District Annex Feura Bush Rd., Delmar |
| 24 | Selkirk Fire House #2 Glenmont Rd., Glenmont |
| 25 | Glenmont Grade School Route 9W, Glenmont |
| 26 | Bethlehem Vol. Ambulance Service 1121 Route 9W, Selkirk |
| 27 | Parks & Recreation Building 261 Elm Ave., Delmar |
| 28 | Bethlehem Historical Museum 1003 Route 144, Selkirk |
| 29 | Selkirk Fire House #3 Bridge St., So. Bethlehem |
| 30 | Selkirk Fire House #1 Maple Ave., Selkirk |

The resolution was adopted by the following vote:

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

Approval for
voting machine
custodians
attendance
at training
session

The next item was a request from Town Clerk, Kathleen A. Newkirk, for approval of attendance of Voting Machine Custodians at a Training Session to be held at Colonie, New York with expenses paid.

The motion was made by Mrs. Burns and seconded by Mr. Lenhardt to approve the attendance of Voting Machine Custodians at a Training Session to be held at Colonie, New York with expenses paid. The motion was passed by the following vote:

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

Receipt of
1997 Annual
franchise fee
Mid-Hudson Cablevision

The next item was to acknowledge receipt of the 1997 Annual Franchise Fee from Mid-Hudson Cablevision, Inc. in the amount of \$201.46.

Receipt
amendment
to final Plat
Approval for The
Meadows at
Bethlehem

The following item was to acknowledge receipt of an amendment to Final Plat Approval for The Meadows at Bethlehem, Section 2 from the Planning Board for information purposes.

Receipt of Final
Plat Approval
Outcast Acres 1
lot subdivision

The next item was to acknowledge receipt of Final Plat Approval for the Outcast Acres 1 lot subdivision from the Planning Board for information purposes.

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

Supervisor Fuller asked for a motion to adjourn.

The motion was made by Mr. Lenhardt and seconded by Mr. Johnson to adjourn the regular Town Board meeting at 9:10 p.m. The motion was passed by the following vote:

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

Kathleen A. Newkirk
Town Clerk