

TOWN BOARD
JUNE 13, 2001

A regular meeting of the Town Board of the Town of Bethlehem was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, NY. The meeting was called to order by the Supervisor at 7:30 p.m.

PRESENT: Sheila Fuller, Supervisor
George Lenhardt, Councilman
Doris M. Davis, Councilman
Daniel G. Plummer, Councilman
Susan Burns, Councilman
Kathleen A. Newkirk, Town Clerk
Robert J. Alessi, Esq., Town Attorney

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Supervisor Fuller called the meeting to order and invited everyone to join in the pledge of allegiance.

The first item was a request from the Supervisor to set a public hearing amending Local Law No. 8 of 1998 to provide an extension of time for construction to commence for PCD #5 (CMI) Delaware Avenue. Public hearing could be held July 11, 2001 at 7:30 p.m. and advertise June 27, 2001.

The Supervisor explained this rezoning had been done in July of 1998 and the property was formerly known as CMI, noting it is a senior facility to be located next to the Bethlehem Public Library. She said the purpose is to set a public hearing to consider amending the Local Law that was passed in 1998. Question was raised if the amendment was necessary due to the litigation. The Supervisor said it was and noted construction was to begin by July of 2001. She said that has not happened because it was held up 3 years in court. She said they are asking for a 2 year extension to expire two years after the Board makes a decision.

Question was raised regarding this item coming before the Board previously for an extension and the fact there was no public hearing held and no amendment to the Local Law. Supervisor Fuller noted it was 2 different items. She said this is the hearing on the zone change noting it reverts back to residential if there is no public hearing to extend the time. She explained the zone change was first and then the Building Project Approval. She said the previous request regarded the Building Project Approval.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to set a public hearing for July 11, 2001 at 7:30 p.m. to consider proposed local law amending Local Law No. 8 of 1998 providing for an extension of time pertaining to the commencement of construction for PCD No. 5 (CMI) Delaware Avenue, Delmar, NY. The motion was passed by the following vote:

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

The next item was to remove from table and consider recommendation from the Planning Department for consideration of adoption of proposed Local Law regarding Park Land Reservation and Fees.

The motion was made by Mr. Plummer and seconded by Mrs. Davis to remove from table a recommendation from Jeffrey Lipnicky, Town Planner, for consideration of adoption of proposed Local Law regarding Park Land Reservation and Fees. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

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Supervisor Fuller noted there was a public hearing held February 14, 2001 and this item was supposed to be on the agenda 2 weeks ago. She said Mr. Lipnicky was ill and, therefore, it was tabled and brought back at this meeting. She asked Mr. Lipnicky to give some background and answer questions. Mr. Lipnicky said the basic local law has not changed since the public hearing was held. He said essentially what it does is require that either a developer provide the Town a certain amount of his land at the time of development as Town park land or in lieu of that, provide a fee to the Town. He said it is a common exaction in New York State and is authorized under State statute. He said the requirements would apply to single family homes, as well as, multi-family developments in Town.

Mr. Lipnicky said the way it is set up in the Local Law is a sliding scale method of how much the fee is or the parkland set aside. He said the highest figure is \$1500 and that would apply to single family homes and the lowest figure is \$925 which would apply to per unit for apartment projects.

Councilman Lenhardt said during the public hearing he asked Town Attorney Alessi about the local law as it was written. He said Mr. Alessi said every subdivision project would come before the Town Board based on this local law. Mr. Lipnicky asked why it would come before the Town Board. Mr. Lenhardt asked Mr. Alessi to address this information. Town Attorney Alessi said he remembered the conversation and said he remarked that that had to be looked at agreeing that it could be a possibility. Mr. Alessi said he spoke with Mr. Lipnicky and they have discussed this question. Mr. Lipnicky responded that he did not see any reason that it would come back to the Town Board. He said it would have to come back to the Town Board if the Planning Board required a land set aside. He said at some point in time the Town Board would have to accept the land but aside from that he does not feel there is a reason for it to come back.

Supervisor Fuller asked if there was not a discussion about Dave Austin and the Town Board being involved if the Planning Board requires the land. Mr. Lipnicky said in terms of the requirement of a set aside of land by the Planning Board, it would go to Dave Austin for a recommendation. He said it would come to the Town Board and Administrator if there was a determination that the set aside would be required. He said in the end it is the Town Board who determines if land is accepted. He said in the case of fees, there is no requirement for referral to the Town Board. The Supervisor noted the land is more the issue.

Councilman Lenhardt next commented regarding the equipment and maintenance of parkland set aside that is not contiguous to parkland that is already owned, noting he would prefer the local law mandate a fee rather than allow a developer to appropriate piece meal parcels of land to the Town. Mr. Lipnicky said in his view, the way the State law is written, you cannot do that. Town Attorney Alessi said this was correct. He said most of the action is likely to occur and the reason he answered the question the last time is because there has to be an initial determination as to whether or not there is suitable land within the subdivision that is under discussion at the Planning Board for parkland. He said if there is a determination that there is suitable land within the subdivision, then you get into a circumstance that was being described that it eventually has to come before the Town Board. He said he is not in a position to prejudge how often that will occur if at all in this Town. He said from his experience in other municipalities throughout the State, very seldom as a practical matter does the Planning Board determine that there is suitable land within a subdivision and more than that, the experience is overwhelmingly on the side that landowners themselves do not want to set aside land within their subdivision. He said they would rather pay the fee and the irony is the law does not allow the Town to say in all instances that they will just take a fee. He said the initial determination has to be made by the Planning Board upfront

and usually the determination is a consensual one between the Board and the applicant that there is not suitable land within the subdivision and a fee is paid. It is a win/win, according to Mr. Alessi, because it is better for the Town in these instances and it is better for the landowner. Mr. Lipnicky said the criteria, basically, spells out the most developable property within the subdivision because it speaks in terms of land that is suitable for active recreation use.

Councilman Lenhardt had one other concern on this which was brought up at the public hearing by a large landowner wanting to deed a parcel off to his heir and this would be subject to this law. He asked if there was some sort of wording that could be put in to negate this issue. Mr. Lipnicky said this gets to more of a constitutional issue – equal treatment. Mr. Alessi said he has not looked at this issue in any detail. He said he would want to take a look at it. He did say, as Mr. Lipnicky alluded to, that it would require an exemption from the law. He said for a certain class of individuals you would have to establish a rational basis for that exemption. He said you would have to then consider other exemptions. In his experience, he said, he has not recalled seeing many of these parkland laws with exemptions such as that but it could be looked at. He said in theory you can do it but in order to do it and have it be defensible and constitutional would be a challenge. Councilman Davis asked if it would be possible to do that at a later date if the Board adopted the law at this meeting. Mr. Alessi said an amendment can be made to the law.

Mr. Lipnicky said the way this was written it indicates at the time of subdivision the Planning Board has to make a determination. He said the regulations are that subdivision does not become addressable until the third split of a lot. He said, therefore, if a parcel has never been split, it would not be subject to this.

Councilman Burns said she thought Mr. Lipnicky had noted the intent was active and passive. Mr. Lipnicky said the primary focus on this is on active recreation use. He said he thinks as they went through the review of subdivisions, if there was an especially attractive area that would be suitable for some passive recreation use, he thought the way it was written it would be an opportunity to get something like that. So, it is not solely active recreation use, Mr. Lipnicky said.

Supervisor Fuller asked if they were able to have fees or land for a bike path or sidewalks, asking if there is a way to do this, as far as, passive recreation. Mr. Lipnicky said in his opinion and reading, what is done has to be done on public parkland with the fees. He said they could look into whether a bike trail or a bikeway alongside a road would qualify but his suspicion was that it probably would not. He said he did not know if Mr. Alessi had any information on this. Mr. Alessi said there is no clear ability to do that, however, he has looked at past Comptroller's decisions and he believes it is still a possibility but the odds do not look very good from what he has seen thus far.

Councilman Lenhardt said he sounds like he is not in favor of this, but he is in favor of the concept. He said during the public hearing someone brought up something about liability and asked what the liability is when the developer has parkland set aside where it is not Town property and where it is. Mr. Alessi said the issue of municipal liability with regard to public land is a topic that has more dimensions to it than there is time to discuss. He said he thinks the bottom line is that for land that the Town owns, the Town is at risk for liability. He said it is determined on a case by case basis but in the general sense, there is certainly the potential for liability. He said there are provisions in New York State's general obligation laws that recognize the sort of precarious situations that municipality's can find themselves in and give liability waivers, immunity if you will, so that recreational land is encouraged. In the large part, there is not a significant liability concern according to Mr. Alessi.

Councilman Plummer asked how this would impact site plan and subdivision applications. Mr. Lipnicky said essentially anything that has not gotten

to the stage of having final approval from the Planning Board would be subject to this. He said actually for subdivisions, it would be anything that has not gotten to conditional final approval. He said once there is conditional final approval you do not go back to the Planning Board. Mr. Plummer asked if there is a sense of how many there are, noting his Memorandum indicates 480 units. Mr. Lipnicky said that is a good ballpark figure. He said there are not a lot of projects out there that have conditional final approval right now. He said either they have final approval or they are still in the process. Councilman Burns said she wrote down 8 units in this category. Mr. Lipnicky said that is about the figure.

Supervisor Fuller asked about the mechanics of this, inquiring if it is a land trust that is set up in the Town. Mr. Lipnicky said that was correct. Mrs. Fuller asked if this was used only for the purchase of parkland. Mr. Lipnicky said it could be used for the purchase of parkland or the development of park facilities within public parks. He said again there is a lot of information about what it can or cannot be used for in the Comptroller's opinions on. He said he did not know if it could be used to resurface a pool but it can be used to build a new pool. Supervisor Fuller asked if it could be used to build a new pool in the Elm Avenue Town Park. Mr. Lipnicky said it could be. He said the question becomes to what extent can it be used for maintenance. He said the purpose is not maintenance, its purpose is to provide park facilities.

Supervisor Fuller asked if there were any other questions. Councilman Davis noted Mr. Lipnicky did an extraordinary amount of background work regarding this proposal. She said the bottom line is that we are running out of parks and we will need additional parkland to satisfy the standards that have been set for communities like ours. She said she thinks that is why they are considering this.

Supervisor Fuller noted that Mr. Lipnicky, in his information points, said he has been here 13 years and has been putting this together for various boards over those years. She thanked Mr. Lipnicky. The following Resolution was presented for adoption:

TOWN BOARD
TOWN OF BETHLEHEM
SEQR RESOLUTION

DETERMINATION OF SIGNIFICANCE / NEGATIVE DECLARATION
LOCAL LAW NO. 7 OF THE YEAR 2001
ESTABLISHMENT OF A PARK LAND RESERVATION OR FEE IN-LIEU-OF
REQUIREMENT FOR RESIDENTIAL DEVELOPMENT

WHEREAS, the Town Board of the Town of Bethlehem is considering the adoption of Local Law No. 7 of the year 2001, which would establish a park land reservation or fee in-lieu-of requirement for new residential development in the Town; and,

WHEREAS, the purpose of the Local Law is to require that, for all new residential developments occurring in the Town, land within the development be reserved for public park purposes or that a fee be paid to the Town in-lieu-of such land as a condition of subdivision, site plan or building project approval; 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 SEQR regulations at 6 NYCRR Part 617.6(a) require that as soon as possible in an agency's formulation of an action it proposes to undertake it shall: (1) determine whether the action is subject SEQR; (2) determine whether the action involves a federal agency; (3) determine whether other agencies are involved; (4) make a preliminary classification of the action; (5) determine whether a full or short form Environmental Assessment Form (EAF) will be used; and (6) determine whether the action is located in an agricultural district; and,

WHEREAS, 6 NYCRR 617.6(b) indicates that when a single agency is involved with respect to an action, that agency shall be the lead agency and determine the

significance of the action; and,
WHEREAS, the Town Board has received an EAF prepared by the Town Planning Department which addresses the proposed action, and said document indicates that (1) the proposed action is subject to SEQR and properly classified an unlisted action; (2) there is no federal agency or other agency involvement with the action; (3) the action is not located within a certified agricultural district; and (4) the action is unlikely to have a significant impact on the environment; and,

WHEREAS, the Town Board has held a public hearing on the proposed action and has considered the comments provided at said hearing; and,

WHEREAS, the Town Board has considered the potential environmental impacts of the proposed action, applying the criteria for determining significance found at 6 NYCRR 617.7(c);

NOW, THEREFORE, BE IT RESOLVED,

that the Town Board of the Town of Bethlehem hereby determines that adoption of Local Law No. 7 of 2001 constitutes an Unlisted action that is subject to SEQR and that there are no other involved agencies with respect to this action; and,

BE IT FURTHER RESOLVED,

that the Town Board hereby determines that it is lead agency with respect to this action and that a short EAF, with supplement, is sufficient for determining whether the proposed action will have a significant impact on the environment; and,

BE IT FURTHER RESOLVED,

that the Town Board hereby determines that the proposed action is not located in, nor does it impact upon, a certified agricultural district; and,

BE IT FURTHER RESOLVED

that based upon its review of Local Law No. 7 of 2001, the EAF and supplement prepared by the Town Planning Department, public comments concerning the proposal, its own independent analysis of the proposed action, and comparison with the Criteria for Determining Significance found at 6 NYCRR Part 617.7, the Town Board hereby finds that adoption of the proposed Local Law 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 Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law; 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.

On a motion by Mr. Lenhardt, seconded by Mr. Plummer and a vote of 5 for, 0 against, 0 abstention and 0 absent, this RESOLUTION was adopted on June 13, 2001.

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The motion was made by Ms. Burns and seconded by Mrs. Davis to adopt Local Law No. 7 of 2001 Amending the Code of the Town of Bethlehem, Chapter 103, Subdivision Regulations and Chapter 128, Zoning to establish a park land reservation or fee in-lieu-of requirement for residential development. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

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Supervisor Fuller thanked Mr.Lipnicky and Mr. Austin for their patience.

The next item was a request from Building Inspector, Kevin Shea, for approval of issuance of a dumping permit for 126 Smultz Road, Glenmont with

stipulations. Supervisor Fuller said the request has to follow the stipulations listed in the Memorandum.

Councilman Lenhardt questioned item number 2 on the Memorandum from the Building Inspector indicating fill should consist of soil, no garbage rubbish, etc. as indicated. He said the application notes the type of material is blacktop/stone. He said it sounded contrary to the condition. Supervisor Fuller noted the Building Inspector has indicated the type of fill and will inspect this site. She noted the applicant can request whatever they want, however, the stipulations are the conditions of issuance.

The motion was made by Mr. Lenhardt and seconded by Ms. Burns to approve the issuance of a dumping permit for 126 Smultz Road, Glenmont from Mr. Joseph Rappazzo, Glenmont, NY as requested by Building Inspector, Kevin Shea. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

The following item was a request from Chief of Police, Richard LaChappelle, for approval of transfer from insurance recovery account to collision repairs account to repair damaged police vehicle.

The motion was made by Mr. Plummer and seconded by Ms. Burns to approve the transfer of \$1,086.94 from insurance recovery account to collision repairs account to repair a damaged police vehicle as requested by Richard LaChappelle, Chief of Police. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

The next item was a request from Richard LaChappelle, Chief of Police, for approval of transfer from insurance recovery account to collision repairs account to repair damaged police vehicle.

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to approve the transfer of \$2,143.57 from insurance recovery account to collision repairs account to repair damaged police vehicle as requested by Chief of Police, Richard LaChappelle. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

The following item was to accept the resignation due to retirement of Deputy Court Clerk effective June 22, 2001. Supervisor Fuller noted Mrs. Barbara Whitney has been a 21 year employee who she did not think ever took vacation or sick leave and was at work 6:30 a.m. every morning. Mrs. Barbara Hodom, Court Clerk, noted that sometimes she was shoveled in and shoveled out during the winter. Mrs. Fuller noted her retirement is effective June 22, 2001. She read a letter of resignation sent to the Town Board and noted she is close to impossible to replace. She said she was a dedicated employee and loved her job.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to accept with regret the resignation due to retirement of Deputy Court Clerk, Mrs. Barbara Whitney, effective June 22, 2001. The motion was passed by the following vote:

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

The next item was a request from Barbara Hodom, Court Clerk, for approval of appointment of Clerk I, Justice Department, effective June 14, 2001. Supervisor Fuller said this is the appointment of Mrs. Traci Roberts, Glenmont, NY with an annual salary of \$21,034. The appointment is made from a list of candidates as provided by Albany County Civil Service Department. She said Mrs. Roberts has been employed by the Town as a part time clerk for the past 10 years and has experience in many of the operations of the court. This is a full time budgeted item and is filled due to the retirement of Mrs. Whitney.

The motion was made by Mr. Lenhardt and seconded by Ms. Burns to approve the appointment of Mrs. Traci Roberts, Glenmont, NY to the position of Clerk I, Justice Department, at an annual salary of \$21,034, effective June 14, 2001. The motion was passed by the following vote:

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

The next item was a recommendation from Commissioner of Public Works, Bruce Secor, for approval of issuance of a building permit and release of a small portion of a drainage easement at premises 43 Hasgate Drive, Delmar. Supervisor Fuller said there is an easement behind the home for storm water drainage pipeline to drain backyards.

The motion was made by Ms. Burns and seconded by Mr. Plummer to approve the recommendation of Commissioner of Public Works, Bruce Secor, for issuance of a building permit and release of a small portion of a drainage easement at premises 43 Hasgate Drive, Delmar. The motion was passed by the following vote:

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

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

The motion was made by Mr. Plummer and seconded by Ms. Burns to approve the appointment of summer personnel as requested by Administrator, David Austin, Parks and Recreation Department, as listed in his Memorandum dated June 13, 2001 at the titles and salaries indicated. The motion was passed by the following vote:

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

The next item was a request from Highway Superintendent, Gregg Sagendorph, for adoption of a resolution pertaining to use of Highway Department Equipment Reserve account funds to purchase three (3) pieces of snow removal machinery and approve going to bid for said purchases. Could advertise June 27, 2001 and open bids on July 12, 2001 at 3:00, 3:15 and 3:30 p.m. respectively.

Supervisor Fuller noted this item is for snow removal equipment. Note was made that the machinery to be replaced may be eligible for a museum. The Supervisor said it is a 1958 self-propelled snow blower, 1966 Bombadier sidewalk snow plow and a 1960 Bombadier track mounted snow plow. She said a 30 day permissive referendum is needed to expend monies from the Highway Equipment Reserve account. She noted the old equipment will be held as back-up.

The following resolution was presented for adopted by the Board:

RESOLUTION AND PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Bethlehem in the County of Albany, State of New York has on the 13th day of June, 2001 duly adopted, subject to permissive referendum, a resolution as follows:

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

WHEREAS, it is estimated that the cost of said equipment will be approximately \$220,000; and

WHEREAS in recognition of these needs, funds for such purpose are in the Highway Department Equipment Reserve; and

NOW, THEREFORE, BE IT RESOLVED that it is in the public interest to purchase this new machinery; and

BE IT FURTHER RESOLVED, that the Town Board authorizes the expenditure of the reserve moneys to fund this purchase up to a maximum amount of \$220,000; and,

BE IT FURTHER RESOLVED, that the Town Comptroller is authorized to expend from the Highway Department Equipment Reserve the funds necessary up to \$220,000 in said reserve fund; and

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

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

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

Noes: None.

Absent: None.

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The Supervisor next asked for a motion to go to bid after the 30 day referendum. She said it could be advertised June 27, 2001 and open bids on July 12, 2001 at 3:00, 3:15 and 3:30 p.m.

The following resolution was offered by Mr. Plummer and seconded by Ms. Burns:

WHEREAS, the Town desires to advertise for bids for the purchase of one (1) loader mounted snowblower; one (1) rubber-tired sidewalk snowplow, snowblower and spreader combination; and one (1) track-mounted sidewalk snowplow, pursuant to law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk advertise for such bids in THE SPOTLIGHT issue on the 27th day of June, 2001 and that bids be received up to 3:00, 3:15 and 3:30 p.m. on the 12th day of July, 2001 at which time the bids will be publicly opened and read.

The resolution was adopted by the following vote:

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

Noes: None.

Absent: None.

The next item was to approve the Town Board minutes of May 23, 2001.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to approve the Town Board minutes of May 23, 2001 with corrections. The motion was passed by the following vote:

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

Noes: None.

Absent: None.

Supervisor Fuller asked if anyone wished to address the Board. No one addressed the Board.

The Supervisor announced there will be a meeting in Town Hall Monday night, June 18, 2001 at 7:00 p.m. in the Auditorium for the PSEG (Niagara Mohawk) proposed agreement. She noted it is open to the public and everyone is invited to attend. She said it will be repeated again on Thursday night, June 21, 2001.

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Mrs. McDermott, residing on Weigand Lane, asked about the public meeting to be held July 11th regarding the extension of time that Mr. Klersy asked for. She said at the time of the public meeting, not knowing how that will go, when the Board makes a determination about the extension of the zoning, will the Board also want to know who the buyer may be or is that an irrelevant piece of information at this time, legally. She further asked if CMI or EPOCH were going to build and the lawsuit ended in December and there was a 35 day time limit to appeal the appeal, whether the building would start in the spring some time as they thought. She said they felt if they were ready to build, they would have built already. She said they are wondering who the builder will be and asked if the Board will want to know that too. Town Attorney Alessi noted the request is really a procedural request with some substance to it. He said the Local Law has some strict constrictions about what can happen and when it can happen. He said from a legal perspective, the law does not look at who it is going to be. It looks at the parameters set forth in the approval, according to Mr. Alessi, to make sure the prescriptions are followed. He further noted, the Town Board has its own judgments to make on this matter.

Mrs. McDermott thanked the Town Attorney. She said it would be her understanding that if, for some reason, EPOCH was not the buyer and there was another buyer that they would have to build a similar structure or something that has already been approved. Mr. Alessi, noting he was not the Town Attorney at that time, said he did not go back and look at the documents in total. He said he looked at the documents for the purpose of this request that is before the Town Board. He said he did not, in this case, want to give an answer on that question.

Supervisor Fuller thanked Mrs. McDermott.

Supervisor Fuller asked if anyone else wished to address the Board. No one came forward.

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The Supervisor asked for a motion to adjourn to Executive Session to discuss negotiations.

The motion was made by Mrs. Davis and seconded by Mr. Lenhardt to adjourn to Executive Session to discuss negotiations. The motion was passed by the following vote:

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

The motion was made by Mr. Lenhardt and seconded by Mrs. Davis to adjourn the regular Town Board meeting at 8:12 p.m. The motion was carried by the following vote:

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

Town Clerk

EXECUTIVE SESSION

There was no formal action taken at the Executive Session.