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1
2 Village of Newark Valley
3 Golden Lane Annexation
4
5 MEETING
6 Wednesday, February 9, 2011, 7:00 p.m.
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8
9 Hutchinson Hall, 109 Whig Street
10 Newark Valley, New York
11
12 MEMBERS PRESENT:
13
14 Town Board: Stuart Yetter, Donald Thomas, Daniel
15 Cheresnowski, Joseph Tomazin, Jr., Ronald Graham
16 **KAREN J. MCMULLEN, ESQ.**
17
18 Village Board: Mayor James P. Tornatore, Dennis
19 Carlin, Fred Blee, Lori DeHaas, Morgan Interwies
20 **FRANK M. COMO, ESQ.**
21
22
23 Reported By: Marisa L. Nold
24

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1 STUART YETTER: I'll call this
2 meeting, the joint Town Board and the
3 Village Board of Trustees to order.
4 The purpose of this meeting is a
5 public hearing regarding the petition to
6 annex property to the Village of Newark
7 Valley. The purpose of this is to hear any
8 objections which may be presented against
9 such petition for annexation.
10 The full board of the Town is present
11 and the full board of the Village is
12 present, along with their respective
13 attorneys. At this point in time, I will,
14 with the consent of everyone here, open the
15 floor to --
16 FRANK COMO: You may want to do some
17 preliminary stuff first. I think we should
18 acknowledge the petition, the receipt of
19 it, that it was properly filed and that the
20 notices were properly published.
21 STUART YETTER: Okay. The notice of
22 the hearing was properly published as per
23 the instructions of the town attorneys.
24 The notice was mailed to the subject of the

3

1 annexation petition, a copy of the notice
2 of hearing was mailed to any fire district,
3 public benefit corporation or town
4 improvement district that is operated by a
5 separate board of commissioners that will
6 govern the territory that's annexed by the
7 village. That was not applicable, because
8 there was no changes and all of those
9 boards stayed the same. The petition was
10 found to be in order by the town's
11 attorney.
12 Are there any questions by the
13 villagers?
14 FRANK COMO: No, we acknowledge that
15 there was proper petition and that the
16 notices were properly served.
17 Do you have affidavits of
18 publications?
19 KAREN MCMULLEN: We have a copy of
20 the publication, the Courier has yet to
21 send an affidavit of publication to us.
22 FRANK COMO: Why don't we just submit
23 the copy of the notice as part of the
24 record?

4

1 KAREN MCMULLEN: Absolutely. So the
2 legal notice was published in the Tioga
3 County Courier on January 19, 2011, and a
4 copy of the legal notice cut out from the
5 paper is submitted as part of the record.
6 JOSEPH TOMAZIN, JR.: Now, they
7 didn't have to notify the people that
8 surround the property of this?
9 FRANK COMO: No, it's not part of the
10 petition. You had to notify the people
11 that were subject to the annexation, and
12 that's only one entity.
13 KAREN MCMULLEN: And the town clerk
14 of the Town of Newark Valley did send a
15 letter to each resident of the apartments
16 as well, as a courtesy copy, that they're
17 aware of the annexation petition and the
18 notice of hearing.
19 FRANK COMO: And we need to note that
20 there wasn't a certification put on to the
21 petition as required by the statute, but
22 there was an affidavit saying that they
23 couldn't obtain one from the town regarding
24 the tax parcel.

1 KAREN MCMULLEN: I think there was a
2 certification for this one.

3 STUART YETTER: I have a
4 certification in my packet.

5 "I, Michael Maxwell, being appointed
6 assessor of the Town of Newark Valley,
7 hereby certify to the best my knowledge,
8 that Newark Valley Apartments, Limited
9 Partnership, 19 Orchard Street, Spencer,
10 New York is the owner of the Newark Valley
11 Apartments, the tax mat number is
12 53.00-1-43.122, property location is off
13 Whig Street in Newark Valley, New York."

14 FRANK COMO: Let's submit that as
15 part of it.

16 KAREN MCMULLEN: Okay. So a copy of
17 the letter signed by Michael Maxwell dated
18 December 13, 2011 -- sorry, 2010, as well
19 as the printouts showing the tax mat number
20 for the subject parcel are submitted as
21 part of the record for the hearing this
22 evening, as well as a copy of the petition.
23 We'll just put in the full petition with
24 the certification.

1 Are there any other preliminary items
2 that you'd like addressed?

3 FRANK COMO: No, I think that covers
4 it.

5 STUART YETTER: All right. At this
6 point then, as the notice of hearing
7 states, the purpose of this is to hear
8 objections, which may be presented.

9 We'll open the floor at this time.

10 CHARLES GUTTMAN: May I be heard?

11 STUART YETTER: Yes.

12 CHARLES GUTTMAN: My name is Charles
13 Guttman. I'm an attorney in Ithaca, New
14 York. I'm here on behalf of William
15 Frandsen, who is the managing partner of
16 Newark Valley Apartments, Limited
17 Partnership, which is the owner of the
18 subject property.

19 What I'd like to do, if I could, is
20 to provide a background of the situation
21 and why we believe that annexation is in
22 the public interest. Really, I'd like to
23 provide that and open myself up to
24 questions. And Mr. Frandsen is here, who

1 may have additional information. I think I
2 can clear up the confusion about the
3 certification. The petition was filed last
4 spring, which did not have the
5 certification, because we could not obtain
6 a statement from the assessor at that time.
7 But then a new petition has been filed and
8 that does have the appropriate
9 certification.

10 In terms of the background of this
11 project, it actually began back in
12 approximately 1991, and Mr. Frandsen, at
13 that time, was approached by -- I think it
14 was Robert Moulton, who was the supervisor
15 of the Town of Newark Valley at that time,
16 and Mr. Frandsen had experience in
17 developing low income and senior citizen
18 housing projects. Mr. Moulton approached
19 him and said that there appears to be a
20 need for this type of project in Newark
21 Valley and requested that he investigate
22 whether this project could be developed.

23 And I've got a few documents, I think
24 I've got ten copies. I will be submitting

1 them. Number 1 is a letter from
2 Mr. Moulton as the supervisor in the Town
3 of Newark Valley from September 19, 1991,
4 which states that the Town of Newark Valley
5 is very supportive of the proposed senior
6 citizens homes to be constructed on Whig
7 Street, that the town board along with the
8 code enforcement personnel, had physically
9 inspected the proposed site and they wanted
10 to be the lead agency for any environmental
11 assessment. These projects take a long
12 time to get developed, because economically
13 they don't make sense as a standalone
14 project.

15 And once Mr. Frandsen was approached
16 about developing this project, he then did
17 all the necessary background work, acquired
18 the property, deeded it into a limited
19 partnership and obtained the necessary
20 funding. Funding, I think, is important to
21 understand why we believe that this is in
22 the public interest. These projects are
23 supported by funding from both the state
24 and the federal government.

1 And they're funded, really, by two
 2 different means, simultaneously. One is
 3 that the federal government issues tax
 4 credits to the investors of this project,
 5 so that they receive a tax break by
 6 investing in this project, and both the
 7 federal and the state government also issue
 8 low interest loans. And Mr. Frandsen
 9 borrowed, as the managing partner, money
 10 from both the federal government and the
 11 state government, which he is paying back.

12 In connection with doing that
 13 financing, there's also a very thorough
 14 investigation done both by the state
 15 government and the federal government as to
 16 whether this project -- any project like
 17 this is going to make sense. And the
 18 government, state and federal, want to make
 19 sure that this project is supported by the
 20 municipalities.

21 And there was a resolution passed in
 22 1998 by the Town of Newark Valley stating
 23 that the town recognizes that a need does
 24 exist within the town for decent and

1 affordable housing for individuals and
 2 families of modest means, and the
 3 resolution specifically states that the
 4 Town Board of Newark Valley wishes to
 5 express its full cooperation and support
 6 for the project.

7 Also, in 1998 -- I've got another
 8 letter from the Town of Newark Valley to
 9 Mr. Frandsen saying that on December 15,
 10 1998 there was a town board meeting, and at
 11 that point, they discussed what's called a
 12 PILOT agreement, PILOT meaning payment in
 13 lieu of taxes. And, again, that PILOT
 14 agreement was being negotiated, and it says
 15 at a special meeting of the town board, the
 16 board expressed its full cooperation and
 17 support of the project. So it was clear in
 18 1998 that the town wanted this project
 19 supported, told Mr. Frandsen, we support
 20 it, we're going to give you our support and
 21 cooperation.

22 He also met with the village, because
 23 they wanted both, while it's not in the
 24 village, it was important that the village

1 is not going to be opposed to it. I've got
 2 a letter from the village to Mr. Frandsen
 3 dated December 28, 1998 advising that the
 4 village will provide fire protection and
 5 ambulance service and that the county
 6 sheriff and New York State police will
 7 provide police protection. It states that
 8 natural gas was not available.

9 And there's another letter, which I
 10 think is really critical to the issue that
 11 we're discussing now, from the Village to
 12 Mr. Frandsen also dated December 28, 1998.
 13 And it says we have been asked to advise
 14 you that the Village of Newark Valley has
 15 municipal water service available to your
 16 project site at a cost to you on Whig
 17 Street in Newark Valley. And then it goes
 18 into the details to the water source and
 19 the quality was chlorinated groundwater,
 20 278.0 gallons per day available, it gives
 21 those details.

22 But I think the key of all of this
 23 was in 1998 -- beginning in 1991 and
 24 continuing through 1998, it was the

1 municipalities who approached Mr. Frandsen,
 2 we need this project, please have it built.
 3 He then went to the federal and state
 4 governments and in all projects like this,
 5 they need to know that municipalities
 6 support this project, they need to know
 7 that it's going to be compliant with
 8 zoning, they need to know that site control
 9 exists and they need to know that all the
 10 necessary utilities for operating this
 11 project are going to be there.

12 If any of those conditions don't
 13 exist, there's no way that the federal
 14 government is going to approve the project.
 15 Mr. Frandsen established by the paperwork
 16 that those things existed, negotiated the
 17 financial arrangements, developed the
 18 architectural planning, got the building
 19 built and everything.

20 And for, I think it's over ten years
 21 now, this project has been operating. It's
 22 an 18-unit project, there are, I believe
 23 ten one-bedroom units and eight two-bedroom
 24 units for a total of 26 bedrooms. It's

1 essentially been fully occupied, and it's
2 occupied primarily, if not exclusively, by
3 low income people.

4 The way this project works
5 financially is also very important to
6 understand, because the residents are low
7 income people, they receive -- I think 100
8 percent of them receive what's called
9 Section VIII housing. They receive money
10 to pay the rent. When Mr. Frandsen got
11 these low interest loans, the government is
12 willing to give him low interest loans, not
13 because they think he's a nice guy, but
14 based on a promise as part of the deed
15 covers that this property will be rented to
16 low income people.

17 Now, the rents aren't sufficient to
18 cover the county costs of this project,
19 that's known from the beginning. And as
20 manager of the project, on a year-in,
21 year-out basis, he has to do a few things;
22 number one, he's certified at the beginning
23 of the project, and I believe he has to
24 certify every year -- I'll check with him,

1 he's not sure if it's every year or every
2 three years, he certified that he will
3 manage the property in as efficient manner
4 as possible.

5 On a yearly basis he tells the state
6 government -- he tells both of them, the
7 budget submitted to the state government
8 and the federal government, this is what I
9 expect to come in as rental income, this is
10 what may come in as miscellaneous income,
11 laundry machine unit, any other
12 miscellaneous income, and these are the
13 expected expenses.

14 It's going to expect some expenses to
15 pay the PILOT agreement or any other taxes,
16 there's going to be expenses for
17 maintenance, there's going to be expenses
18 for management, repairs, utilities,
19 including the mortgage payments both to the
20 federal government and to the state
21 government, so he gives them a budget.
22 That budget is approved on an annual basis,
23 and on an annual basis, it comes out that
24 the income is not going to be sufficient to

1 cover all of the expenses, and the
2 difference is paid to Mr. Frandsen as a
3 manager, as a rent subsidy by the State of
4 New York.

5 So he believes that annexation makes
6 sense for a variety of reasons, which I'll
7 get to in a minute, but it's not for his
8 personal benefit. He gets a management fee
9 for running this project from the
10 government. If his expenses go up, the
11 rent subsidy goes up. If his expenses go
12 down, the rent subsidy goes down.

13 The amount of money he clears as
14 manager of this project doesn't change. If
15 the expenses are higher, then the
16 difference is paid by the State of New
17 York, and it's paid by myself as a New York
18 State taxpayer, as well as all of us as New
19 York State taxpayers. If the expenses goes
20 down, then the State of New York pays less
21 money. If, for some reason, this project
22 failed, then it has potential for the town
23 to take over the project, I don't know if
24 the town would want to if it was a failed

1 project, but if not, ultimately there would
2 be a default on money owed to the federal
3 government and money owed to the state
4 government.

5 So a default would cause a lot of
6 problems; one, the PILOT agreement wouldn't
7 exist in the future, the federal government
8 would have an uncollectible debt, the state
9 government would have an uncollectible
10 debt, and the people who were residing
11 there would not have a place to live. I
12 don't think that's what's in anyone's mind,
13 I don't think that's really a concern here.

14 The concern is that Mr. Frandsen has
15 an obligation to manage these properties as
16 efficiently as possible. He believes that
17 it would be more efficient to have this
18 property annexed to the village, and
19 therefore he's duty bound to present this
20 petition.

21 It's our belief that if the property
22 is annexed, there will be a public benefit
23 in several regards. There's going to be a
24 benefit for the residents, there's going to

1 be a benefit for the town and village in
2 general in that these people have a place
3 to live, and there's going to be lower
4 economic costs for this project, which
5 means that the State of New York is going
6 to have decreased rent subsidies. So those
7 are the reasons why this petition is being
8 presented.

9 In terms of -- I think there's really
10 three issues to address. One is the
11 economic issue, one is water quality issue
12 and one is safety issue, specifically, fire
13 safety. We've got a project now that is
14 being served by the village water, and it's
15 my understanding that sometime in the near
16 future the village will be revising,
17 updating its water system, and there's a
18 potential that if this property is not
19 annexed into the village, the municipal
20 water service may not be available to this
21 property.

22 Today there is a hydrant, a fire
23 hydrant, adjacent to the property. I
24 believe there's actually two hydrants, one

1 which served right in front of the property
2 and one which is a little bit further down
3 the road. I think the one down the road
4 probably benefits the neighbors more than
5 it benefits this project. If there is no
6 municipal water, those hydrants will
7 probably become dysfunctional.

8 I used to represent -- I'm a city
9 attorney in the City of Ithaca. I spent a
10 lot of time talking with people from the
11 fire department there. I think it's common
12 knowledge that fire officials like fire
13 hydrants for one very good reason, they
14 help put out fires. And I assume that fire
15 protection is covered by the -- I think
16 it's the town fire departments here, and I
17 assume you've got a water truck there. And
18 if there's no hydrants in the nearby area
19 and a fire happens, the water truck
20 provides the water to put out the fire.
21 It's not as good a method as a hydrant.
22 So, therefore, we think that having the
23 hydrant is a good thing.

24 I can almost guarantee you that any

1 person who works in fire protection is
2 going to say having a hydrant is a good
3 thing.

4 There's some economic benefits to
5 that, because if you have a hydrant at your
6 property, your fire insurance rates go
7 down, because the fire insurance companies
8 will know that having a hydrant means
9 you've got a lower chance of having damage.
10 So you've got an economic benefit from
11 having the hydrant, and you've got a safety
12 issue by having that hydrant.

13 For that reason alone, we believe
14 guaranteeing municipal water is a benefit
15 for the project, it's a benefit for the
16 people who live there, it's a benefit for
17 the neighbors. It's going to help them
18 financially with the fire insurance rates,
19 it's going to help them in safety and fire
20 protection.

21 The next issue has to do with quality
22 of water. You've got a municipal system, I
23 don't know much about the details of how
24 it's run, but I know enough to know that

1 any municipal system is periodically tested
2 and it's tested for one reason, to make
3 sure that there is quality of water, the
4 water is free of bacteria, good drinking
5 water; that's obviously important, for any
6 person who is drinking the water.

7 So having the guarantee of municipal
8 water means that the residents are
9 guaranteed good quality water. If
10 municipal water is not supplied to this
11 project, what will happen is that
12 Mr. Frandsen will have to develop what's
13 known as a community water system.

14 It's a little municipal system, and
15 there are, basically, very similar
16 requirements that the water be tested. But
17 I think we all know from experience, now,
18 when you've got a little system run by an
19 individual, you're comparing it to a
20 municipal system run by people who are more
21 professional, you've got a higher
22 likelihood of a guarantee of quality from
23 the municipal system.

24 So we believe in terms of water

1 quality, having a municipal system is a
 2 benefit to the residents.
 3 Mr. Frandsen, as I said before, this
 4 is not the first project he's done. He did
 5 a project several years ago in Van Etten,
 6 and at that time, originally there was no
 7 municipal water for that project. And he
 8 had and he operated and he ran a community
 9 water system, he's familiar with how it
 10 goes. Later, it got hooked up to the Van
 11 Etten municipal water.

12 He did his best job to run that
 13 community system, and it gets tested on a
 14 regular basis to make sure there's the
 15 right amount of chlorine in the water and
 16 to make sure there aren't any chloroforms,
 17 and on one occasion while he was running
 18 that test, there was some chloroforms. He
 19 had to flush the system and test it a
 20 multitude number of times. When you've got
 21 a municipal system, you have a higher
 22 guaranteed quality of water, and that's
 23 important.

24 The other issue before us is the

1 question of economics. I think that's the
 2 one that's been discussed and debated quite
 3 a bit before. If this project does not
 4 have municipal water, he will have to
 5 develop a water system. What he will have
 6 to do is he will have to drill two wells.

7 The requirements are that they be
 8 redundant. You don't want to have just one
 9 well, and there's a problem that people
 10 don't have any water. The requirements are
 11 there be two wells. It's not exactly the
 12 same as a well that someone drills for
 13 their own individual house, they have to be
 14 double-cased and obviously have to be
 15 bigger wells for the house, because they're
 16 serving 15 units. You've got to have two
 17 pumps that are bigger fancier pumps than we
 18 have on our own individual houses and what
 19 you then have to do is then have a huge
 20 storage tank, so you pump the water into
 21 the storage tank and it's available there
 22 and then you have another tank that sends
 23 it into the property.

24 I think at the last hearing, the

1 figure was thrown out at about \$15,000 to
 2 drill the well, and there was some
 3 discussion of, oh, it's only \$15,000 to
 4 drill the well, let's compare that to what
 5 these units are going to pay in water
 6 service charges. Well, \$15,000 is probably
 7 the estimated cost of drilling the well,
 8 but that doesn't cover the cost of putting
 9 in the pumps, it doesn't cover the cost of
 10 putting in the tanks, it doesn't cover the
 11 cost of actually building a building in
 12 which to house the storage tanks, and I
 13 think it's an \$8,000 pump that goes from
 14 the storage tanks into the properties.

15 I asked Mr. Frandsen to give me his
 16 best estimate of what it would cost to
 17 develop this type of community system. His
 18 best guess was about \$125,000, because it
 19 may be more, it may be less. He's going to
 20 have to find a contractor that can do it.
 21 You don't have a lot of contractors who are
 22 experienced in developing these water
 23 systems. To some extent, he's at the mercy
 24 of what he can get. But his best estimate

1 is going to be the cost of about \$125,000
 2 just the develop the system. Then once
 3 you've got that system, you've got the
 4 normal maintenance of a system, which is
 5 more complicated than an individual
 6 one-family house and because it's a
 7 community water system, the water has to be
 8 tested on a daily basis.

9 You have to have the water sample
 10 tested -- taken every day, periodically
 11 sent to a lab, and I think it's once a
 12 month, someone from the government actually
 13 comes and tests it themselves. There was a
 14 figure thrown out of about \$2,000 for
 15 testing the first year and about \$500 for
 16 future years, but that's only the cost of
 17 the lab tests. You have to have a
 18 certified individual who's going to
 19 actually draw the water into a sterile
 20 container so it can be sent.

21 If you say -- let's just use round
 22 numbers, of \$30 a day for someone to drive
 23 over there, take the water, put it aside
 24 into the container and sometimes take it to

1 the lab and drive back and that takes an
 2 hour, and they got paid \$30, that's about
 3 \$200 a week, which is about \$10,000 a year.
 4 That is a more realistic cost of what it's
 5 going to cost to test the water.
 6 Essentially what you're going to have is
 7 the same requirements of a water system,
 8 which is going to serve 18 units, as it's
 9 going to serve the whole village. And it's
 10 just inefficient to run a water system that
 11 way, it's much more efficient to run a
 12 water system for the village and include
 13 this property.

14 So for all of those reasons,
 15 Mr. Frandsen analyzed it, and he really
 16 analyzed it in two respects; one is safety
 17 and one is economics. In terms of safety,
 18 it's in the public interest because of the
 19 hydrants and the quality of water that this
 20 property be annexed. And in terms of
 21 economics, it's going to save -- it's not
 22 going to affect Mr. Frandsen personally one
 23 way or another.

24 There's actually a slight argument

1 that he personally does better if he had to
 2 develop a new system, because he's going to
 3 say, I've got larger management
 4 responsibilities, so I should get a larger
 5 management fee. That's really a trivial
 6 issue. He analyzed it, because he has an
 7 obligation to the New York State
 8 government, the United States government,
 9 to operate this project as efficiently as
 10 possible. He knows from his experience, he
 11 knows from analyzing the numbers that it's
 12 going to be economically much better to
 13 have a connectedness to the municipal
 14 system and the economic benefit goes to the
 15 State of New York.

16 Now, the question becomes what
 17 detriments are there to annexation. And I
 18 submit that there are really not any
 19 detriments to annexation. I know it's been
 20 discussed that the water line from the
 21 village goes under, I believe it's Whig
 22 Street, and that line at some point may
 23 need to be modified in some way or
 24 repaired, but it's fairly common for one

1 municipality to negotiate with another
 2 municipality to repair water lines, not
 3 actually under the pavement itself, it's on
 4 the side of the road. Those are things
 5 that happen with municipalities on a daily
 6 basis. You're laughing, I understand --

7 JOSEPH TOMAZIN, JR.: Because -- I'm
 8 going to let you finish.

9 CHARLES GUTTMAN: There are so many
 10 situations where one municipality has to
 11 cooperate with another municipality in
 12 terms of easements. And to repair roads,
 13 snowplowing or whatever it is, that is a
 14 potential thing that these two
 15 municipalities would have to agree on, that
 16 the village might have to go underneath the
 17 town road and repair a water line. The
 18 water line from Whig Street to the project
 19 was put in about 10 years ago and probably
 20 50, 60 years from now, that's probably
 21 going to have to be maintained, also. I
 22 submit that that's not an insurmountable
 23 problem. That, I think, is probably the
 24 biggest detriment to the annexation. I

1 don't think there are really others.

2 I think there's an issue that should
 3 be explained in terms of real estate taxes,
 4 and I believe it's 1998 and I can get the
 5 date for you, if you need it. The PILOT
 6 agreement was entered into, the town
 7 renegotiated that with Mr. Frandsen and at
 8 that time, the town was operating as agents
 9 of the town and the county and the school
 10 district.

11 And an agreement was made that
 12 Mr. Frandsen would make an annual payment
 13 to the town and that amount would be shared
 14 between the town government, the
 15 county government, and the school district.
 16 The village is not a party to that
 17 agreement, and I believe an argument, and I
 18 discussed this with Mr. Como the other day,
 19 exists that the town would be able to
 20 assess the property for real estate taxes
 21 and not be subject to the PILOT agreement.

22 FRANK COMO: You mean the village?

23 CHARLES GUTTMAN: The village would
 24 be able to assess, did I say the town? I'm

1 sorry, the village would be able to assess
2 it, because they were not a party to the
3 original PILOT agreement, and the PILOT
4 agreement would continue. So there would
5 be no detriments to the town, the county or
6 the school in terms of taxes.

7 I would recommend that what happens
8 with most of these projects is the taxes
9 are usually paid by the PILOT agreements
10 rather than by traditional assessments and
11 that probably there would be renegotiated
12 agreements. If there isn't, the law on
13 assessments on these type of projects
14 changed either two or three years ago. New
15 York State government adopted Section 581-A
16 of the real property tax law and before
17 that, there was a real mess on how you
18 would assess projects like that.

19 And there were cases that went all
20 over the place and the assessors went all
21 over the place, they came up with very
22 different answers. New York State
23 government solved that question pretty
24 clearly when they adopted this new section,

1 and they said that with projects like this,
2 when a certain percentage of the project is
3 dedicated to low income housing, that what
4 you do is you determine what the income of
5 the project is and you capitalize it. You
6 multiply it by a number, say that's the
7 value of the project, and it's different
8 than a regular rental apartment, because
9 you've got different factors.

10 The rents are not market rents,
11 they're subsidized rents. The interest,
12 the mortgage interest, is not a standard
13 interest, it's a subsidized interest. All
14 of those come into play. You get the true
15 economic value of the property and factors
16 are based on that. So one of two ways
17 works in terms of assessment. The PILOT
18 agreement could be renegotiated or either
19 the village could just say we want village
20 taxes and the PILOT agreement stays. So
21 taxing is not a detriment to either the
22 town or the village.

23 And I would be happy, if someone else
24 thinks that there's some other negative to

1 this annexation, to discuss that. I've
2 looked over the papers. I don't believe
3 there is any other detriment, but I would
4 be happy to discuss or have Mr. Frandsen
5 discuss any other concerns that anyone has
6 as to why this is not in the public
7 interest.

8 JOSEPH TOMAZIN, JR.: Could you
9 explain this tax deal again? I guess I'm
10 lost. Can the village, as this becomes a
11 village property, can the village assess
12 village taxes on this property?

13 CHARLES GUTTMAN: I believe they can.
14 The rationale I have is that there -- the
15 PILOT agreement is a contract between
16 Mr. Frandsen and the town, the town acting
17 on behalf of the town, the county and the
18 school district. I've got several copies
19 of the PILOT agreement. I'd be
20 happy -- there may be one here, but I'd be
21 happy to give you extra copies of it, so
22 it's part of the record.

23 The village is not a party to that
24 agreement. That agreement says that each

1 year the taxes that are going to be paid to
2 the town is determined, and the town has an
3 obligation of sharing it with the county
4 and the school. The village didn't sign
5 that agreement. And basic contract law
6 says, if I enter into an agreement with
7 you, you and I are both bound, but Mr.
8 Yetter or Mr. Graham, they're not a party
9 to that agreement and they're not bound by
10 it. So if -- today, the property is not in
11 the village, the village might like to
12 assess it, but they can't. Tomorrow, if
13 it's in the village --

14 JOSEPH TOMAZIN, JR.: This board has
15 to make a decision on more than just
16 Mr. Frandsen or your thoughts. We're
17 looking at the best interest of the Town of
18 Newark Valley. Okay, now what you just
19 told me, if this becomes a village
20 property, the village creates another tax
21 base -- the Town of Newark Valley is
22 maintaining a road for village tax money,
23 and we're getting nothing out of it, so
24 that's one negative.

1 CHARLES GUTTMAN: Well, today, you're
2 maintaining that road.

3 JOSEPH TOMAZIN, JR.: Crrect.

4 CHARLES GUTTMAN: And, today, you're
5 getting tax payments under the PILOT
6 agreement.

7 JOSEPH TOMAZIN, JR.: That's true.

8 CHARLES GUTTMAN: Tomorrow, if it
9 became part of the village, you would still
10 get the same --

11 JOSEPH TOMAZIN, JR.: Understood.

12 CHARLES GUTTMAN: -- PILOT agreement.
13 I think you've got an argument that at that
14 point the road is within the village and
15 the village should maintain the road.

16 Well, actually, I'm incorrect. The road is
17 not being annexed. So you would still give
18 me two --

19 JOSEPH TOMAZIN, JR.: I think there
20 would be more -- you know, if there was a
21 bigger party to this thing, if that was on
22 the table, it would be more -- you know,
23 then I wouldn't see -- I'm not going to
24 speak for the whole board here. But I

1 couldn't see any negative in that.

2 If the portion of the Whig Street and
3 that road were annexed to the village where
4 the village maintained those, then as a --
5 looking out for the best interest of the
6 people and the Town of Newark Valley, then
7 I would agree with Mr. Frandsen's request.

8 But being that this water line runs
9 underneath the Town of Newark Valley
10 highway, and we've been in discussion for
11 two years that the Village of Newark Valley
12 cannot maintain water lines underneath the
13 town road that -- you know, as a town
14 resident, I personally can't see how it can
15 even happen, number one, because of what
16 they've told us for the last two years.

17 CHARLES GUTTMAN: My understanding, I
18 think there's two different issues here.

19 One is the maintenance of the road itself.
20 If there's a pothole in a town road, I hope
21 you're going to fix the potholes.

22 JOSEPH TOMAZIN, JR.: This week.

23 CHARLES GUTTMAN: At some point. But
24 today, you're receiving X dollars in town

1 and county taxes and you're maintaining
2 this road. If it was annexed tomorrow, you
3 would receive the same X dollars of town
4 and county taxes and you would be
5 maintaining the same road.

6 So I think your income coming in is
7 the same, and your expenses going out are
8 the same. I don't think that changes,
9 really. The question becomes -- I think
10 you raised another question, is may the
11 village repair a water line, which is
12 outside of the village. And the answer is
13 yes, if that water line serves a village
14 property. So if you have a water line
15 going from the village through the town
16 back into the village, if annexation
17 occurs, post-annexation, villages are
18 allowed to maintain a water line if it is
19 serving a village property.

20 Now, they're going to have to go on
21 your town road and dig it up and repair the
22 line, but those kind of agreements in terms
23 of a municipality working underneath
24 someone else's road, all you have to do is

1 give them an easement and they give you a
2 hold harmless agreement. You have a town
3 attorney and a village attorney, I
4 guarantee you both of them know how to
5 write hold harmless agreement. I assume
6 you have -- the hold harmless agreement is
7 easy.

8 That kind of stuff -- we learned that
9 very quickly in practicing law. So the
10 money coming into the town doesn't change,
11 the maintenance of the road doesn't change.
12 In terms of fixing the pothole, I believe
13 it results in a zero gain, nothing changes
14 at all in that regard.

15 FRANK COMO: I would just like to
16 note for the record that there is no part
17 town highway tax. The village is assessed
18 on the highway taxes just as any other
19 entity within the town, so -- so it's not
20 deemed becoming part of the village does
21 not exempt you from the highway tax.

22 MAYOR TORNATORE: Within Newark
23 Valley, if I may in making this comment
24 again, that the village residents and

1 businesses' tax rate for the town is the
2 same as town residents for town only, so
3 it's not a situation of where it's, you
4 know, there's any current inequity
5 in all of it.

6 CHARLES GUTTMAN: In terms of all the
7 other municipal services which serve this
8 property; ambulance, fire, police, I don't
9 think that changes at all.

10 JOSEPH TOMAZIN, JR.: On December
11 28th, your letter of 1998 said that the
12 village wrote a letter and said they
13 offered fire and ambulance service. Just
14 for the record, the service no longer
15 offers town nor ambulance service in the
16 Town of Newark Valley, so nobody is arguing
17 that point.

18 CHARLES GUTTMAN: I'm submitting to
19 not make the point that the village is
20 offering police department or ambulance
21 services. The point I think was
22 significant there is that in 1998 when this
23 project was being developed, federal
24 government and the New York State

1 government were insisting that services,
2 police, fire, water are going to be there.

3 JOSEPH TOMAZIN, JR.: They are.

4 CHARLES GUTTMAN: And these letters
5 were obtained, partially, to reassure
6 Mr. Frandsen that he would have
7 this -- primarily to reassure the United
8 States government and the New York State
9 government that these services were there,
10 including the availability of water
11 services.

12 And the United States government and
13 the New York State government were relying
14 on the expectation that water service was
15 there and if that's going to change, I
16 think it's incumbent to protect the public
17 benefit that that not change. And if that
18 can be done in a way that there's no
19 detriment to anyone, and actually an
20 economic benefit and a safety benefit, then
21 I think that the scales are going to tilt
22 fairly dramatically.

23 You've got safety and economics on
24 one side, and the only thing I see on the

1 opposite side is -- I'm going to call it an
2 inconvenience that the town and village
3 win, because it's going to happen
4 frequently when you need to have repairs to
5 a water line, that the two municipalities
6 are going to have to cooperate.

7 And I'm going to suggest that it's
8 going to have to be not so much the town
9 board or the village board, but you're
10 going to have the two attorneys talking and
11 saying, we've got to have an agreement.
12 And you're going to have the people in the
13 trenches who do the actual work saying,
14 this is what needs to be done, attorneys
15 are going to draw up the papers and
16 everyone is going to say, oh, that makes
17 sense. That, to me, is really more much of
18 an inconvenience issue. You start
19 balancing that with the safety issues and
20 the economic issues, I see the scales being
21 very dramatically tilted.

22 DONALD THOMAS: For the past year,
23 we've got roughly 25 families scrambling to
24 know what to do about water.

1 JOSEPH TOMAZIN, JR.: 42.

2 DONALD THOMAS: 42. And they've been
3 doing well and everything else, because
4 they're unsure as to what the village is
5 planning to do to supply them with that
6 clean fresh water you were talking about.
7 And as long as that hydrant is up there,
8 there's no guarantee that there's going to
9 be water to it, the way I understand it.

10 CHARLES GUTTMAN: I don't agree with
11 you. I have compassion for those families
12 being up in the air of what's going to
13 happen.

14 DONALD THOMAS: I guess I'm wondering
15 why would Mr. Frandsen think it's so much
16 safer to be a villager than it is a
17 townshipper.

18 CHARLES GUTTMAN: I don't think he
19 thinks it's safer, but with one exception
20 of water. I think the distinction is, if
21 you have a single-family home, you can
22 drill a well and that's a simple project.
23 If you're drilling a well and operating a
24 system which is serving 18 units, then it's

1 a little different.

2 Mr. Frandsen told me that when he was
3 operating the one in Van Etten, late at
4 night he has to wonder, I'm providing water
5 to 18 different units where there's
6 families living there, and he has to worry
7 in the middle of the night to make sure
8 that that water is going to be clean and
9 fresh.

10 I live in the City of Ithaca, I don't
11 really think about very much where the
12 water comes from. I turn on the tap and I
13 expect it to be good water. And that is
14 the advantage of being a villager rather
15 than a townner is to have the guarantee,
16 that reassurance that you've got water
17 that's clean and fresh and is actually
18 going to be there. When you have a
19 municipal system run by professionals, you
20 have a greater guarantee that it's clean
21 and fresh and you have a greater guarantee
22 that it's actually going to be delivered,
23 and the system isn't going to fail in terms
24 of lack of quality, but also lack of

1 quantity.

2 It would be a disaster if you've got
3 an 18-unit unit development and there is no
4 water or there's water that has to be
5 boiled. I think that distinguishes this
6 project from the single-family homes. But
7 the fact that they were confused and
8 uncertain of what the future is doesn't
9 mean that this is not in the public
10 interest.

11 DONALD THOMAS: They being?

12 CHARLES GUTTMAN: The other 42
13 households. And the second hydrant
14 actually does serve some of those other
15 houses, so there's a side benefit to other
16 residents within the town, that they'll be
17 close to a hydrant that may, one, lower
18 their fire insurance rates and, two,
19 provide fire protection if there is a fire.
20 So I don't think that's the biggest issue,
21 but if anything, that's a benefit for other
22 residents of the town.

23 STUART YETTER: I have two questions.
24 You said that this unit in Van Etten that

1 was on a self-owned water source is now on
2 a public water supply. Are all your units
3 now on water supply or do you have -- a
4 public water supply or do you still have
5 units?

6 WILLIAM FRANSEN: One out of eight
7 are on a private system.

8 STUART YETTER: You still have one on
9 a private system?

10 WILLIAM FRANSEN: And New York State
11 safe water law made it so difficult. For
12 me to set up a system out there, I come
13 under the same jurisdiction that the city,
14 that your town, your village comes under.
15 I mean, you got two men working on your
16 water, and that's just how complicated it
17 gets, whether you're supplying, in my case,
18 20 units or whatever, as opposed to 8 or
19 900 families, My cost would just be
20 exorbitant.

21 STUART YETTER: Do you have any
22 documentation to that effect?

23 WILLIAM FRANSEN I can show you a
24 couple of projects.

1 STUART YETTER: I mean documentation
2 of estimates of what it would cost to do it
3 up there, other than just your best guess?

4 WILLIAM FRANSEN My best guess is
5 based on two other projects that we did.
6 They ran around \$125,000. I mean, just the
7 testing is astronomical. It's not like a
8 single-family house; you drill a well, you
9 run one test and if it passes, it's fine.
10 When you have a town, village, city water
11 system, you come under a very strict New
12 York State safe water book of regulations.

13 STUART YETTER: We're aware of that.
14 We have mobile home parks that are on
15 private water supplies that fall under
16 that. None of them seem to have any issues
17 with complying with the regulations.

18 JOSEPH TOMAZIN, JR.: I couldn't --
19 one thing that you said was this hold
20 harmless agreement, I'm kind of curious on
21 that.

22 Suppose if the Village of Newark
23 Valley did tax this property, and, you know
24 -- they assumed, they don't have to assume

1 ownership, but they can assume
2 responsibility of repair and maintenance on
3 the road. That's probably one of our
4 biggest concerns, town taxes are going to
5 -- I know your PILOT agreement did tell me
6 that, but, you know, somebody else could
7 get paid to that and then we could -- you
8 know, the attorneys could wrap it up where
9 the village would maintain that road, and
10 then -- it's more of an understanding on
11 my part, anyway.

12 CHARLES GUTTMAN: I think -- I mean,
13 that would obviously be between the two
14 boards, but I think you're looking at two
15 different issues. One is the maintenance
16 of the road itself, and I think that's a
17 separate issue of the maintenance of the
18 under -- the water line underneath it.

19 JOSEPH TOMAZIN, JR.: That's true,
20 absolutely.

21 CHARLES GUTTMAN: I don't
22 think -- speaking for myself, it's a
23 village decision that may be required by
24 law, if that water line only serves people

1 who live in the village. And if it has to
2 be repaired, if you think just from pure
3 logic, that would be a responsibility of
4 the village to repair that water line,
5 because it doesn't provide any benefits to
6 the town, and if it broke, the town could
7 -- they don't care if it breaks.

8 JOSEPH TOMAZIN, JR.: Right, we
9 don't, not at this time.

10 CHARLES GUTTMAN: So the village has
11 an obligation to repair it.

12 STUART YETTER: What we care about is
13 that if you have village water lines
14 running under town highways, possibility of
15 a break, it washes the road out, liability
16 issues there. You've got a stretch of a
17 whole row of Golden Lane that is going to
18 be serving -- exists to serve only one
19 property, which now would become a village
20 property. I would be willing to bet that
21 what we spend on salt to keep that road
22 clear would eat up a great portion of that
23 PILOT agreement share that we get. It's
24 not a money maker for us, no way, shape or

1 form. The property doesn't -- you know,
2 the financial side of it, to say that it's
3 financially beneficial to the town
4 residents, it's not. It's a service that's
5 being provided for the low income people, I
6 feel, you know, that that's value. But
7 it's not our primary objective to be in the
8 low income housing to provide that or to
9 see how that affects the residents there
10 other than if it's there, it has to be done
11 well.

12 And nobody is saying that
13 Mr. Frandsen hasn't done it very well. The
14 project has been an asset to the community,
15 that's not an issue. The issue is if we
16 let that be annexed for his convenience and
17 financial benefits as far as the total cost
18 of water over the lifetime of the property,
19 if the town taxpayers -- and I understand
20 the village residents are town taxpayers,
21 you've got to understand that. But we're
22 looking -- they're only 20 percent of the
23 town taxpayers, there's another 80 percent
24 out there that we have to be aware of.

1 And they're going to be footing the
2 bill for maintenance on this road, snow
3 removal costs, all kinds of things that's
4 never going to go away. And we're not
5 going to see any benefit to us. There's no
6 benefit that I can see for a town resident
7 to see this property be annexed.

8 CHARLES GUTTMAN: Well, I think
9 there's minimal benefit. What I'm going to
10 agree with you is maintaining any road is
11 not usually a great money-making business.
12 You maintain the roads because the
13 residents want the roads maintained. And I
14 don't know the details of the layout of the
15 village and the town, but the expectation
16 is there's a bunch of roads that you have
17 that go into the village and primarily
18 serve the village residents entering and
19 exiting the village. And you maintain
20 those, because they're within the town.

21 As the road goes into the village,
22 it's serving the benefit of the village and
23 every road that goes into the village does
24 that. I'm familiar with this in Ithaca,

1 because we've got Cornell University there,
2 which doesn't pay any taxes at all. And,
3 actually, while I was city attorney, we had
4 a big debate about this, because the City
5 of Ithaca paid for maintenance of the roads
6 that go into Cornell University.

7 What's the benefit to the city? And
8 the benefit is that they're our roads and
9 the same thing with your roads.

10 STUART YETTER: Well, the point
11 you're missing there is that, yes, there's
12 roads that exist just to serve village
13 residents, but they're paying for that.
14 They're paying taxes towards that. They
15 pay town taxes.

16 So, you know -- but town residents
17 don't pay village taxes. This becomes
18 annexed, the village gains a financial
19 benefit through additional water sales and
20 potential taxation. There's an automatic
21 benefit for those, but the majority of the
22 people -- that's only 20 percent of the
23 people that this board represents.

24 CHARLES GUTTMAN: I think my

1 submission here is the annexation benefits
2 the village, it benefits the residents of
3 this project, I don't think it benefits
4 Mr. Frandsen personally, one way or
5 another. I think it benefits the residents
6 of the State of New York, because if
7 there's lower rent subsidies, all the
8 residents in the State of New York, all the
9 taxpayers are going to benefit from it.

10 I'm going to agree with you that
11 there's not a very significant benefit to
12 the town for annexation. I think the only
13 benefit I really see to the town is the
14 continued maintenance of the second
15 hydrant, which I'll agree with you is
16 fairly de minimus. On the other hand, I
17 don't think there's any detriment to the
18 town, because today you were salting Whig
19 Street and Golden Lane, tomorrow you'll be
20 salting Whig Street and Golden Lane, and
21 you'll be receiving the same amount of
22 taxes. So there's a benefit to New York
23 State, the village and the residents and no
24 detriment to the town, that all-in-all,

1 there's a benefit.

2 I guess what I'm missing -- I would
3 love to have someone explain to me, what
4 the detriment to the town is. If you have
5 a benefit to the village and the residents
6 and no detriment to the town, then
7 all-in-all, there's a benefit of --

8 DONALD THOMAS: What is the benefit
9 to the village? I have yet to hear you say
10 that.

11 CHARLES GUTTMAN: The benefit to the
12 village is, one, they're going to get
13 another property they can tax.

14 DONALD THOMAS: That means the town
15 is going to lose theirs --

16 CHARLES GUTTMAN: No, the town
17 doesn't lose, because the PILOT will be the
18 same.

19 JOSEPH TOMAZIN, JR.: What happens
20 when the PILOT expires?

21 CHARLES GUTTMAN: When the PILOT
22 expires, you go into Section 581-A, and at
23 that point, New York State law says that
24 this property is taxable. You determine

1 what the income and expenses are, the net
2 profit, that number gets capitalized and
3 that becomes the appraised value. The town
4 taxes are paid, county taxes are paid --

5 JOSEPH TOMAZIN, JR.: So it's not the
6 real property, it's something based
7 completely different?

8 CHARLES GUTTMAN: Well, Section 581-A
9 says this is how you appraised or assess a
10 property which is low income housing or
11 subsidized housing. And prior to -- I have
12 that section here. I think it was two or
13 three years ago when this law was adopted.
14 Prior to that, the assessors had to figure
15 out what to do with a fairly unique
16 property.

17 New York State legislators solved the
18 problem when they said this is the
19 methodology. But when that PILOT expires,
20 you have a taxable property on the tax
21 rolls. Today, you have a taxable property,
22 and you just agreed by contract of what
23 should be paid. When that contract ends,
24 in my experience because contracts can be

1 negotiated, but if you couldn't renegotiate
2 it, then New York State law says that it's
3 a taxable property, you assess it and taxes
4 are assessed.

5 JOSEPH TOMAZIN, JR.: You spent
6 a little bit of time talking to us about if
7 the project were to fail and whose
8 responsibility it would be.

9 Are you telling us that if we don't
10 annex this to the Village of Newark Valley,
11 this project will fail?

12 CHARLES GUTTMAN: No.

13 JOSEPH TOMAZIN, JR.: Then why did
14 you even talk about it?

15 CHARLES GUTTMAN: I wanted to cover
16 what I considered to be all the possible
17 scenarios.

18 JOSEPH TOMAZIN, JR.: But that's not
19 even a possibility.

20 CHARLES GUTTMAN: Well, it's always a
21 possibility.

22 JOSEPH TOMAZIN, JR.: But not because
23 of this.

24 CHARLES GUTTMAN: I don't believe it

1 would be because -- but we're going to have
2 \$125,000. Part of the financing of this
3 project, and this is by the agreement that
4 Mr. Frandsen entered into the New York
5 state and federal government that every
6 year, he must dedicate some of the
7 revenues into a reserve fund, so if you
8 need a new roof, his money will put a new
9 roof on.

10 Today, there's about \$70,000 in that
11 reserve fund. If, all of a sudden,
12 tomorrow, he has to develop a community
13 water system which is going to cost
14 \$125,000 and he's got 70, he's got to come
15 up with \$55,000. The likely -- what would
16 happen is he would go back to the federal
17 or state government and borrow another
18 \$55,000, but I can't guarantee you that he
19 would be able to do that. It's extremely
20 likely that that would happen and that the
21 government was not going to allow that to
22 happen over a \$55,000 issue.

23 But is it a possibility, yes. I
24 would be remiss if I didn't say that is a

1 possibility and cover it. I think it's an
2 extremely slight possibility, but if I
3 didn't mention it, I can imagine you
4 saying, well, wait you didn't cover that
5 issue. I'm trying to cover everything I
6 can.

7 JOSEPH TOMAZIN, JR.: I'm covering
8 everything related to the discussion.

9 MAYOR TORNATORE: I'm a person -- I'm
10 not going to speak right now either pro or
11 con because that's not my function or our
12 function sitting on this board, but we like
13 to see things that revenue in neutral,
14 that's been brought up by the town board
15 and that's dwelled in my mind, too,
16 concerning all of this conversation. And I
17 think revenue neutrality is important in
18 this situation, and I'll be more specific.

19 Many many things are possible and, in
20 fact, not that the government is a
21 bottomless pit, but, in fact, there is a
22 bottom, and I think we'll all see the
23 bottom of it pretty soon within the next
24 two years. The key is that then those

1 alternatives that are out there, those
2 alternatives are expensive and, ultimately,
3 it becomes more expensive to all of us,
4 because in the grand scheme of life,
5 whatever we get in dollars, whatever
6 Mr. Frandsen will get in dollars comes back
7 to our expense.

8 When I say our, it's globally our
9 expense ultimately, so based upon that
10 realm called efficiency, based upon
11 efficiency, what is efficient? And I'm not
12 going to comment on that tonight, because
13 this is really a Q and A, and that is the
14 realm of efficiency.

15 So what is efficient? Is it
16 efficient to continue to utilize what is
17 working or to -- for the benefit of all
18 town residents, and this is a question, not
19 a statement on my part for Mr. Frandsen or
20 the LLC or whatever it is, to go out and
21 spend more dollars, possibly government
22 dollars, possibly that they would be
23 reimbursed for, maybe, maybe not, to do
24 these things that are already there, the

1 reservoir.

2 The ultimate situation of repair of
3 piping down the road has not even been
4 discussed within the \$70,000 reserve and
5 the possibility of the \$125,000 to be
6 spent. That doesn't include the piping,
7 the piping for this to get the potable
8 water to the facility itself. Hunt
9 Engineering is here this evening and they
10 can talk about some of those things, about
11 the potentiality of that expense.

12 Now, the piping is in good shape. I
13 mean, it is fairly, that kind of thing. I
14 mean, we just replaced piping, some of it
15 -- none of it 100 years old, but some of it
16 80 years old and a situation to improve the
17 system. And we all know whether you pay or
18 not, we all know the expense of that. So
19 if we all remember efficiency, efficiency,
20 as it takes into consideration all town
21 residents, the efficiency and the lack of
22 spending additional dollars. Thank you.

23 FRANK COMO: I just have a couple of
24 questions. Covering most of your petition,

1 on 11-B and 11-C, perhaps you should tell
2 us a little more about the Golden Lane and
3 the statement that Mr. Frandsen paid money
4 for installation.

5 CHARLES GUTTMAN: Yes, he did.
6 \$100,000 is your estimate of what that
7 originally cost to put the mains in?

8 WILLIAM FRANSEN: Yes.

9 CHARLES GUTTMAN: When -- as part of
10 the construction of this project,
11 Mr. Frandsen paid -- when I say
12 Mr. Frandsen, the point is well taken,
13 ultimately the money was -- a check was
14 written by Mr. Frandsen. Ultimately that
15 money came from public funds, because all
16 of the funds from this ultimately came from
17 public funds. But the answer to that
18 question is yes, when the project was
19 constructed, the original water lines were
20 put in.

21 And I believe that cost was
22 approximately \$100,000, and I think it's a
23 lack of efficiency that have spent that
24 money, connected it to a municipal water

1 system and then to disconnect it. And then
2 to create a second water system, I agree,
3 that's a lack of efficiency. And
4 ultimately that is public funds, which are
5 inefficiently being used, because
6 ultimately that's where those funds come
7 from.

8 FRANK COMO: I think we touched on
9 this already, but Mr. Frandsen owned the
10 property and then dedicated it to the
11 company?

12 CHARLES GUTTMAN: Yes, that's
13 correct.

14 JOSEPH TOMAZIN, JR.: What does that
15 mean?

16 FRANK COMO: You own the town -- or,
17 you own the road.

18 JOSEPH TOMAZIN, JR.: I thought you
19 were talking about the Golden Lane
20 property.

21 CHARLES GUTTMAN: No, the road is
22 dedicated. It's a common thing that when
23 anyone is developing a project is that a
24 road is built and then it's given to the

1 municipality, because that's the way it is.

2 JOSEPH TOMAZIN, JR.: Is the \$100,000
3 to install the road or the road and the
4 water line? It seems like a lot of money
5 for 600 feet of water line.

6 FRANK COMO: I believe the figure
7 that was used in your petition was 90.

8 WILLIAM FRANSEN: Yes, the water
9 line was 90. I believe the rule was we had
10 to repave it, if I remember, originally,
11 because it was oil and stone. And we
12 repaved it, because it wasn't done properly
13 in the beginning.

14 DONALD THOMAS: Just speaking from
15 memory, I'm quite sure I have 90,000 in the
16 roads, in addition.

17 KAREN MCMULLEN: In the petition you
18 mentioned that as part of the community
19 water system, it may require the petitioner
20 to install a sprinkler system, is
21 that -- can you speak to that, is that
22 accurate?

23 CHARLES GUTTMAN: We're not sure. At
24 this point, the project is built -- when a

1 project is built, it's built up to the
 2 building codes at that time. At that time,
 3 when we submitted the project for approval
 4 by the building inspectors, we stated this
 5 project is served by municipal water.
 6 There's a hydrant there, and that affects
 7 the fire safety issues in terms of what's
 8 required in terms of sprinkling.

9 If we -- if this project is
 10 disconnected from municipal water, we're
 11 going to have to investigate, we don't know
 12 the answer to this, as to what will have to
 13 be done to compensate for the fact that
 14 there is no longer a hydrant there. There
 15 are several possible things that could be
 16 required.

17 One possible thing is that a building
 18 inspector could say, you now need to
 19 sprinkle that building, which would be
 20 completely cost prohibitive. Another
 21 possibility, which is even more likely, is
 22 that they're going to require a very, very
 23 large water reserve with a very large pump,
 24 so that if there's a fire, there's water

1 available to take care of that.

2 Again, that's going to be an
 3 expensive proposition, and it could be even
 4 more expensive if -- ridiculously more
 5 expensive if sprinkling has to be
 6 retrofitted into the project.

7 STUART YETTER: We had our code
 8 enforcement officer approach and
 9 investigate that question, and he
 10 approached Charles Bliss, who is a New York
 11 State code representative and he stated
 12 that if it didn't need the sprinklers when
 13 it was built, it won't need them now
 14 regardless of the water supply.

15 CHARLES GUTTMAN: We believe that to
 16 be true, and we hope that to be true. But
 17 it's a concern that we have, because my
 18 experience are to ask the code enforcement
 19 officer a question and hope that the answer
 20 is correct and it never gets better, it
 21 never gets less of what's required, and the
 22 potential always is that it's going to be
 23 required more in terms of fire safety.

24 DONALD THOMAS: Can you use the water

1 system from a creek for the fire system?

2 CHARLES GUTTMAN: Can you use the
 3 water from the creek?

4 DONALD THOMAS: There's a good sized
 5 creek.

6 CHARLES GUTTMAN: Well, the problem
 7 is you then have to get a truck up to that
 8 creek.

9 DONALD THOMAS: Not a truck, just a
 10 pump.

11 WILLIAM FRANSEN: To answer your
 12 question, no, you cannot. There must be a
 13 reservoir on the site, and that answer that
 14 you got from whoever the code gentleman
 15 was, that is not correct. There has to be
 16 a reservoir of water on the site. The
 17 sprinkler system, that depends on how much
 18 money you spend to remodel your project,
 19 and if you spend over a certain amount of
 20 money, then it comes under the new code,
 21 which would require a sprinkler system.

22 I don't think that would happen, but
 23 there's no question that you will need
 24 reservoir of water on the site.

1 STUART YETTER: I wasn't speaking to
 2 the reservoir, I was just speaking to the
 3 sprinkler system.

4 FRANK COMO: Excuse me. Just as a
 5 note, the creek is a protected creek under
 6 the DEC. I've represented other people
 7 who've gotten fined by them for anything
 8 related to water, so you probably could not
 9 get a use. The old Tioga Central Railroad,
 10 which I represented, needed to do some
 11 riffraff, they -- for two hours they
 12 blocked off one of the channels of the
 13 creek so that they could do it, both they
 14 and the IDA got fined. I think they got
 15 fined over \$1,000.

16 CHARLES GUTTMAN: They may do it,
 17 they probably should not do it in that
 18 situation, the problem becomes you don't
 19 know ahead of time when the fire is going
 20 to happen.

21 DANIEL CHERESNOWSKI: Isn't there a
 22 hydrant right at the end where the town and
 23 the village, you know, meet?

24 CHARLES GUTTMAN: Yes.

1 DANIEL CHERESNOWSKI: How far is that
2 away from the hydrant that you put in?

3 BILL FOSTER: I was going to say 500
4 or 600 feet. But the problem with that is,
5 if you have people running trucks and
6 transferring water, you have less people
7 saving people and putting the fire out.

8 DANIEL CHERESNOWSKI: I disagree with
9 that, but that's your -- everybody has an
10 opinion on some of these things.

11 STUART YETTER: The purpose of
12 tonight's meeting is to have all of their
13 facts presented so that we can make a
14 decision on it. You've done a remarkable
15 job of the facts presentation at this
16 hearing, it's been much more in-depth and
17 to the point than in the previous hearings.

18 So that I know with at least this
19 board, we certainly have a lot of
20 information to go over to guide us in
21 making our decision.

22 FRANK COMO: I think there's a couple
23 of things that haven't been addressed
24 tonight that were addressed at the previous

1 meetings, just as a background.

2 A lot of this issue has started over
3 the fact that the village is in the process
4 of redoing the water system and as a result
5 of that, it discovered that it could not --
6 it itself could not cost the funds, the
7 improvements on the town portion of the
8 road and the district -- that the town
9 residents were given some options, and
10 that's what is the big motivation for
11 Mr. Frandsen to try to keep it in the water
12 system. But that -- that's why this issue
13 has resonated, and as I've said, I believe
14 that that was one of the motivations for
15 Mr. Frandsen just to get some background on
16 that.

17 CHARLES GUTTMAN: If I can expand on
18 it just a little, my understanding is --
19 please correct me if I'm wrong, is that the
20 village will probably be bonding some of
21 the cost of doing this to community bonds
22 if its benefits are village residents,
23 which you cannot bond, because the village
24 bonds are the beneficiaries of a

1 non-village resident.

2 MAYOR TORNATORE: That's correct, and
3 that's what started all of this. Everybody
4 was happy for a billion years, even though
5 we were not complying with codes, and then
6 when it came to the bonding, the villagers
7 were between a rock and a hard place. The
8 residents -- and it's very, very
9 unfortunate. I used to sleep better nights
10 than I did before all of that occurred,
11 but, again, we had an issue.

12 People misinterpreted that as
13 something other than really what it was,
14 and it caused issues. We could not bond
15 outside of our jurisdiction, thusly the
16 issue.

17 FRANK COMO: And there was a
18 statement saying that you -- earlier that
19 we could not -- something to the effect
20 that we could not, from a recent act, put a
21 pipe outside the village. That's not
22 necessarily true, we could do a pipe from
23 one village point to another village point.

24 JOSEPH TOMAZIN, JR.: So two other

1 issues, one other issue is something I want
2 to hear. There are other people that are
3 served on the water line in the Town of
4 Newark Valley that continues up Whig Street
5 and turns on Golden Lane.

6 What's going to happen to the people
7 that are tied onto the village water system
8 are outside of the village limits that
9 would be still connected to this water
10 main? What are the requirements for these
11 people of the Village of Newark Valley?

12 MAYOR TORNATORE: I'll talk about the
13 feeling -- and I believe I can speak for
14 the whole village board on this issue, is
15 that -- as all of you know, we had kept the
16 residents outside of the village on the
17 system, really, for as long as they want to
18 be, probably longer than everybody has felt
19 that it would ever occur.

20 JOSEPH TOMAZIN, JR.: They'd like to
21 see it for another 25 years.

22 MAYOR TORNATORE: That was our
23 opinion and it still exists. Now, there's
24 some reality and the reality is this,

1 because it has to do with -- and Chuck and
2 Bill, you may have to help me with this a
3 little bit.

4 The reality is this, there is a point
5 where public safety becomes an issue as far
6 as the integrity of the system itself. And
7 as you know, there is an issue with water
8 pressure far beyond, going up further
9 beyond --

10 STUART YETTER: Let's keep this to
11 the point. We're not concerned about the
12 people beyond where Golden Lane is. All
13 he's concerned about are the residents that
14 are going to be setting on upper Whig
15 Street here that are across, they're going
16 to see a water main go right by their
17 house, they're outside the village, the
18 tap-in properties here.

19 MAYOR TORNATORE: How many wells have
20 been dug or how many residents are on --

21 WILLIAM FOSTER: Are we talking just
22 Golden Lane?

23 STUART YETTER: From Golden Lane to
24 the village this way.

1 WILLIAM FOSTER: I believe you have
2 three residents left that have not put
3 wells in and because it is under five, I
4 think New York State Department of Health
5 says that they can contract and buy the
6 water from the village individually. But
7 that's just an option for them, that's not
8 anything we can do.

9 MAYOR TORNATORE: You know those
10 options that are out there. Those options
11 have not changed, those options that were
12 out there all the time are still out there,
13 and the village hasn't closed any of those
14 off. Again, those were about five options,
15 those options are still there.

16 Ultimately wells are one of them.
17 It's up to factors having to do with the
18 quality of the piping that's attached to
19 Whig Street that's on the Whig Street
20 situation, and it also has to do with the
21 flexibility of how things go.

22 FRANK COMO: As I had stated in the
23 previous time, I believe, at the previous
24 hearing, the fact that we have a pipe that

1 was built from one part of the village to
2 another through the town, it's okay for us
3 to contract with the people that it's
4 running by, just to have them hook up to
5 it.

6 MAYOR TORNATORE: As long as it's to
7 a village situation.

8 FRANK COMO: So anybody who is there
9 could contract with us essentially the way
10 it was before all of this happened.

11 STUART YETTER: So a possible side
12 benefit to town residents would be that
13 those residents that are going to be living
14 across from this water main that will now
15 be going to serve a village property that
16 you would have to be maintain irregardless,
17 they could contract to do that. So you
18 could consider that as a possible benefit
19 to the town.

20 FRANK COMO: The counties from years
21 ago ran a line out to the Conklin
22 Industrial Park. The firm that I was with
23 were the town attorneys and as a benefit,
24 we got a lot of town residents hooked up to

1 it, essentially, basically, on that theory.

2 JOSEPH TOMAZIN, JR.: As I said,
3 supposedly, whatever they were -- one or
4 two of them decided to drill a well, okay,
5 now they're not buying water from the
6 village. There's this idea out there that
7 the village -- as long as the water main
8 runs in front of your house, you have to
9 pay a maintenance fee. Are they going to
10 have to pay a maintenance fee?

11 CHARLES GUTTMAN: I don't think the
12 village would be allowed.

13 MAYOR TORNATORE: It doesn't matter
14 now, but that has to do with a capital
15 expenditure for expansion of real assets
16 when, in fact, you do charge when it passes
17 the property. It's not a use tax, it's a
18 value-added situation into the property.
19 It wasn't attached, it was a value added to
20 the property. It was the only capability
21 and availability to get that out there.

22 STUART YETTER: But that would be --
23 that would lead to another question as that
24 if these people do those own wells. If

1 that well goes in front of them, there's no
2 way that village can assess a fee to them.

3 FRANK COMO: No, they would just be
4 charged for whatever water use for that
5 village.

6 CHARLES GUTTMAN: You mentioned that
7 a potential benefit to them -- one of these
8 residents drills a well. There's a water
9 line running in front of them, they don't
10 pay anything for the water. Five years
11 later, there's a problem with that well.
12 They're going to say, oh, can I hook up to
13 this water.

14 JOSEPH TOMAZIN, JR.: I believe that
15 those three people today would rather stay
16 on the village water. I have to believe
17 that, because they would have to build a
18 well. They knew about this issue, so I
19 have to believe that they prefer --

20 CHARLES GUTTMAN: But the ones who
21 have drilled a well, they would say, I
22 drilled my well, I don't want to hook up to
23 the village. And if five years later
24 there's a problem with that well, the

1 availability and being able to future hook
2 up to those village systems --

3 STUART YETTER: Now, this is really
4 going to affect three properties with the
5 potential of one other one, if somebody
6 were to build on the lot, on the corner
7 there.

8 JOSEPH TOMAZIN, JR.: So if that was
9 the case, if somebody did build on that,
10 they could tie into the water main?

11 MAYOR TORNATORE: Again, there's more
12 than one option out there available to
13 them. Again, it's those five options that
14 had it. All of those options are available
15 --

16 JOSEPH TOMAZIN, JR.: What are the
17 options?

18 MAYOR TORNATORE: One, they can
19 attempt to annex into the village,
20 secondly, they can attempt to dig a well,
21 thirdly, they can hook to the system.

22 FRANK COMO: Since we have an
23 adequate flow, I don't see there being any
24 problem.

1 DONALD THOMAS: What happens when the
2 line goes down and you have major
3 improvements way out there on the end and
4 you're serving those two or three people?
5 Are their costs going to go so high, they
6 can't afford the water?

7 MAYOR TORNATORE: It's on the way,
8 it's -- well, it's all of our water. It
9 has to do with the availability of that
10 piping to begin -- to begin with and that
11 has a lot to do with the town board's
12 decision, everyone's decision.

13 As to the piping availability itself,
14 if it's on the way to Golden Lane, then it
15 becomes as a village is or a town is. It's
16 a communal pod and so everyone shares in
17 the cost.

18 FRANK COMO: I would note for the
19 record, in order for us to do this,
20 eventually we would have to get a -- we
21 should get an easement from the attorneys.
22 For Golden Lane, we probably would have to
23 get one for that portion of Whig Street.
24 Since you don't own the road bend, we would

1 also need to get easements from the
2 property owners if their property goes out
3 to the center line like you have here in
4 the village.

5 JOSEPH TOMAZIN, JR.: You just said
6 everyone would have to share in the cost.
7 Who is everyone?

8 MAYOR TORNATORE: Everyone that is
9 within that -- there's never an easy answer
10 to a situation or a quick answer. But
11 within the village itself, basically
12 everybody pays for the expense. And,
13 ultimately, even though it's residents that
14 are in the town who are still in the water
15 system, pay a share of the water cost,
16 also. So it's just an expansion of that,
17 so when I say we in total, I mean those
18 people that are on the system.

19 JOSEPH TOMAZIN, JR.: The Town of
20 Newark Valley would have no responsibility
21 for any repairs to the water system from
22 the town limits forward?

23 FRANK COMO: I'll answer that, no.
24 That's a simple answer.

1 MAYOR TORNATORE: Anecdotally, we,
 2 the village, we, the town, have done a lot
 3 of sharing the services in the past and we
 4 have continued to do it. In fact, both of
 5 us have accomplished a heck of a project,
 6 that all of you remembered -- what was it,
 7 Stu, a year and a half, two years ago,
 8 where the town was able to put in a culvert
 9 and we were able to bury a pipe at the same
 10 time? That's what working together and
 11 sharing the services is. That's what we
 12 want to see as a continuation of town,
 13 village politics, for the benefit of whom?
 14 For the benefit of all town residents,
 15 because it keeps all of our taxes less.

16 So with that being said, is
 17 everything accomplishable? Again, sharing
 18 the services, the crew is working together
 19 to create the best possible piping system
 20 that we have, together, gentlemen, yes.
 21 Thanks.

22 STUART YETTER: I've got a couple of
 23 statements here, one for the record.
 24 Written copies will be provided for the

1 record. But from Municipal Solutions
 2 provided from Mayor Tornatore and basically
 3 it states:

4 "Dear Mayor Tornatore, it is my
 5 opinion as financial consultant to the
 6 Village of Newark Valley, that the
 7 annexation of the Newark Valley Apartments,
 8 LP, 53.00-1-43.122, would not pose an undue
 9 burden on Village taxpayers. In fact, the
 10 annexation would benefit Village taxpayers
 11 by spreading the cost associated with
 12 operating and maintaining the Village over
 13 more taxpayers.

14 If you have any further questions or
 15 if I may be of further assistance, please
 16 don't hesitate to call." Mary L. Chappell,
 17 Vice-President of Municipal Solutions.

18 I had prepared a written statement
 19 with some objections; however, I'd like to
 20 alter that a little bit, because there has
 21 been some different facts brought to light
 22 that I was previously not aware of.
 23 However, I do have some objection that I
 24 just want to make as part of the record.

1 As Supervisor of the Town of Newark
 2 Valley, I believe the proposed annexation
 3 is not in the best interest of the town
 4 taxpayers. The annexation of the Golden
 5 Lane apartment parcel to the village is
 6 primarily for the petitioner's immediate
 7 convenience. There is no evidence that the
 8 long-term expense of a private system is
 9 greater than the long-term cost of buying
 10 public water.

11 I have information that the
 12 petitioner operates other similar
 13 facilities that use private water systems,
 14 and he should be familiar with the rules,
 15 regulations and testing requirements for
 16 private water supplies and have qualified
 17 personnel to perform those duties. The
 18 petitioner's statements in the petition
 19 regarding fire safety are incorrect. There
 20 are no provisions in the state building
 21 code requiring the installation of
 22 sprinklers in the building if the water
 23 supply changes from public to private.
 24 There is no evidence that fire protection

1 for the surrounding neighborhood will be
 2 substantially diminished if the annexation
 3 is not approved.

4 The annexation would leave town
 5 taxpayers maintaining a road that would
 6 exist to serve primarily village residents.
 7 In addition, the annexation as proposed
 8 would leave village-owned water mains under
 9 town property roads that could expose town
 10 taxpayers to financial liabilities when
 11 those lines need maintenance.

12 I object to the proposed annexation.
 13 I believe that it is not in the best
 14 interest of the Town of Newark Valley,
 15 because there are significant expenses and
 16 risks associated with the proposed
 17 annexation that would be subsidized by all
 18 town taxpayers.

19 DONALD THOMAS: What part did you
 20 want to change?

21 STUART YETTER: My objections may not
 22 be as strong as they were, but I think that
 23 overall --

24 DONALD THOMAS: They're all still

1 there.

2 STUART YETTER: The generalities are
3 there. I certainly have more facts to
4 consider than I had prior to this
5 information. A lot of good information was
6 presented here.

7 FRANK COMO: We have Chuck Franzese
8 here from Hunt to explain what the
9 associated costs may be regarding the --

10 CHARLES FRANZESE: Hi, everybody.

11 First of all, the existing water
12 mains that lead to the complex of Whig
13 Street and across buildings supply over
14 500 gallons a minute to the adjacent
15 hydrant and to the complex, which meets the
16 minimum requirements of the health
17 department for a hydrant and more than
18 adequately, it serves the complex. The
19 only negative is in the ISO investigation,
20 probably for a facility like that they
21 would want more flows of the hydrant. They
22 would recommend more flows, but there is no
23 requirement for an increase to have to
24 change it.

1 There are no costs associated with
2 this annexation to the water system, unless
3 there was a desire for Mr. Frandsen's
4 corporation to make improvements that would
5 instigate a fire sprinkler system. And to
6 do that, we probably have to go back in the
7 village to where the six-inch main ends and
8 replace it all the way out, which would be
9 about 1,500 million feet of pipe. I'm
10 drawing a blank on the gentleman's name
11 from the code. He is a very knowledgeable
12 man.

13 I think what he's saying is with no
14 changes to the facility, there's no
15 requirement to have sprinklers just because
16 you go from private to public water supply.
17 I think what Mr. Frandsen is saying, if I
18 want to speak on his behalf, is if he made
19 major improvements to this facility, that
20 would kick in the requirement to have
21 sprinklers. So I think we're talking about
22 two different things here.

23 So right now I would not see that as
24 an issue. So the idea of having to do that

1 is down the road and only instigated by
2 major improvements to the facilities and
3 not by anything that's going on with this
4 action. Does that make sense?

5 FRANK COMO: That would be something
6 for the board, the village board.

7 CHARLES FRANZESE: That would then be
8 part of the village operation.

9 FRANK COMO: That would determine for
10 the village whether or not to do it.

11 CHARLES FRANZESE: In other words,
12 the replacement of the main, those type of
13 flows would not be a responsibility of the
14 Town of Newark Valley. Is there anything
15 else you wanted me to cover?

16 JOSEPH TOMAZIN, JR.: The property
17 that you're proposing to annex to this
18 village, can you add to that property?

19 WILLIAM FRANSEN: Could I -- I own a
20 piece equally but larger just across the
21 street.

22 JOSEPH TOMAZIN, JR.: But you're not
23 proposing to annex it?

24 WILLIAM FRANSEN: No.

1 JOSEPH TOMAZIN, JR.: My thought
2 process is why aren't you proposing to
3 annex that property, as well? If this
4 happens, do you really want to go down this
5 road again in five years?

6 WILLIAM FRANSEN: No, but I would be
7 under the assumption that even if the piece
8 across the road was not annexed onto it, I
9 certainly could hook up to the same water
10 line, even if it's not annexed on, like the
11 people. Are we on the same page?

12 JOSEPH TOMAZIN, JR.: Yes, I got it.

13 CHARLES GUTTMAN: There's no plans at
14 this point to develop a similar project on
15 that property. If that was going to
16 happen, the work to develop the project --
17 the federal and state funding, it's a
18 multiyear process.

19 WILLIAM FRANSEN: Am I under the
20 wrong impression that even if it was not
21 annexed on together, the piece that it's
22 not built on, if that was not annexed on
23 with this one and I did build over there --

24 JOSEPH TOMAZIN, JR.: You wouldn't

1 have to come to us.
 2 WILLIAM FRANDBSEN I could get water
 3 from the same line, right?
 4 STUART YETTER: Anything will be
 5 talked into negotiations.
 6 FRANK COMO: If this is a big
 7 project.
 8 MAYOR TORNATORE: We like meeting
 9 once a year, that's okay.
 10 STUART YETTER: Any further
 11 discussion?
 12 FRANK COMO: Bill Foster was here.
 13 He's a former fire commissioner in the Town
 14 of Public Works department in the village.
 15 WILLIAM FOSTER: The only other thing
 16 I've got to add is I've talked to the fire
 17 chief, and he prefers to keep the hydrants
 18 active and operational and the fire that
 19 they had at the truck stop, he is
 20 mentioning to me that they should have run
 21 the main up to that section of property and
 22 had a hydrant installed up there.
 23 But in the village's defense, we did
 24 not get an easement from there, because we

1 did not sign it. Other than that, I have
 2 -- the lawyer covered everything far better
 3 than I could.
 4 STUART YETTER: Anything else from
 5 your board? If not, I propose we close the
 6 public hearing and both boards will go
 7 forth and deliberate accordingly.
 8 * * *
 9
 10 C E R T I F I C A T I O N
 11
 12 I hereby certify that the proceedings and
 13 evidence are contained fully and accurately in the
 14 notes taken by me on the above cause and that this
 15 is a correct copy of the same to the best of my
 16 ability.
 17
 18 *Marisa Nold*
 19 _____
 20 MARISA NOLD
 21
 22
 23
 24