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IN THE MATTER OF THE  
PETITION OF NEWARK VALLEY  
APARTMENTS, LP FOR  
ANNEXATION BY THE VILLAGE OF  
NEWARK VALLEY OF LANDS IN THE  
TOWN OF NEWARK VALLEY BEING  
TAX PARCEL NO. 53.00-1.43.122

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FINDINGS, RESOLUTIONS AND ORDER  
OF THE TOWN OF NEWARK VALLEY PURSUANT TO  
ARTICLE 17 OF THE NEW YORK STATE  
GENERAL AND MUNICIPAL LAW

A Petition ("Petition") having been filed by Newark Valley Apartments, LP ("Petitioner") for the annexation of certain property in the Town of Newark Valley ("Town") into the Village of Newark Valley ("Village"), and a joint public hearing of the governing Boards of the Town and the Village having been held on February 9, 2011, in accordance with Section 705 of the General Municipal Law of the State of New York, the Village Board of the Village of Newark Valley hereby makes the following Findings and adopts the following Resolutions and Order based upon such Findings, all in accordance with Section 711 of the General Municipal Law:

**FINDINGS**

1. The Petition of Newark Valley Apartments, LP dated March 12, 2010, for the annexation of Town of Newark Valley Tax Parcel Number 53.00-1.43.122 ("Property") was duly filed in the Offices of the Town Clerk of the Town of Newark Valley and the Village Clerk of the Village of Newark Valley. A copy of the Petition is attached hereto as Exhibit "A".
2. Pursuant to Section 704 of the General Municipal Law, the Town caused notice of the required joint public hearing on the Petition to be timely published and sent to the (i) the Petitioner (the Petitioner being the sole owner of property within the territory proposed to be annexed), (ii) all persons residing within the territory proposed to be annexed qualified to vote for officers of the Town as their names appear upon the register of voters for the last preceding general election, (iii) the Newark Valley Central School District and (iv) the Newark Valley Fire District.
3. The joint public hearing of the Village and Town of Newark Valley was held at the Newark Valley Town Hall on February 9, 2011, in accordance with the notices as published and mailed.

4. In attendance at the joint public hearing were (i) the Mayor, the four Trustees of the Village, the Attorney for the Village and the Village Clerk; and (ii) the Town Supervisor, the four Councilmen of the Town Board, the Attorney for the Town and the Town Clerk.
5. Stuart Yetter, Jr., Supervisor of the Town of Newark Valley, presided at the hearing by agreement of the members of the participating Boards.
6. Comments were received from various members of the public in attendance at the joint public hearing, including the Attorney for the Petitioner, including Charles Franeze of Hunt Engineering, and William Foster the Village of Newark Valley Public Works Superintendent. Elected officials of both the Village and Town offered comment as well. A transcript of the proceedings is attached hereto as Exhibit "B". No representative from the Newark Valley Central School District, and the Newark Valley Fire District appeared at the hearing.
7. The Supervisor of the Town confirmed at the outset of the joint public hearing that to the best of his knowledge the required notices of the public hearing for the Town and Village had been published in a timely fashion as indicated above and the Town Clerk had complied with the mailing of notices as required by Article 17 of the General Municipal Law.
8. The Village Attorney had reviewed the Petition and had advised the Village that the Petition has been in substantial compliance with Section 703 of the General Municipal Law.
9. The Village Board of the Village of Newark Valley makes the following findings in accordance with the Section 711 of the General Municipal Law as to whether the proposed annexation is or is not in the overall public interest:
  - A. The Petitioner owns property in the Town, on Golden Lane. The parcel of land is contiguous with the Village in the rear. It fronts on a Town road called Golden Lane, which was dedicated to the Town by the Petitioner or by a related company to the Town, that accesses its development.
  - B. Petitioner's property is the only property for which Golden Lane is currently used actively.
  - C. The Property is approximately 2.55 acres and contains total of 18 apartments which are all dedicated for low-income housing and is State and federally funded.
  - D. The rents are subsidized under HUD Section VIII.

- E. The development of this low-income housing project, which is the Petitioner, commenced in approximately 1991. At that time, the Supervisor of the Town submitted a letter in support of the project (Exhibit Number 1). Even the current Supervisor of the Town acknowledged that the project is an "asset to the community".
- F. The Town Board was the lead agency. In 1998 the Town passed a resolution stating that there was "... a need... within the Town for decent and affordable housing for individual and families of modest means..." and that the Board expressed "its full cooperation in support for the project". The need for this project was recognized by both the State and Federal governments. Thus, the Petitioner was granted funding for the project.
- G. Also in 1998, the Village had agreed that it had public water available.
- H. The availability of public water is a large factor in deciding to locate the project in the Town.
- I. Based upon the foregoing, the manager then obtained State and Federal approval to build and run the low-income housing development.
- J. That low-income housing development consists of 18 units which is 10 one bedroom units, and 8 two bedroom units for a total of 26 bedrooms.
- K. It has and is essentially been fully occupied primarily, if not exclusively by low-income people.
- L. As a governmentally funded low-income housing project, the costs are required to be reviewed and rates of reimbursement are controlled by the government.
- M. The record reveals that the Petitioner or related company not only dedicated Golden Road to the Town but also paid approximately \$90,000.00 to have the road improved and an 8 inch water main run down the road to its Property from Whig Street.
- N. This water main not only provides water service to the 18 low-income units on the property but also has 2 fire hydrants, one which was put in by a neighbor for improved fire protection. The nearest hydrant on the system is approximately 600- 800 feet away from the corner of Golden Road and Whig Street.

- O. The Village of Newark Valley currently supplies public water to the Property and other properties outside of the Village. However, due to issues of water safety and improvements needed, the Village has plans to improve its system. The Village has given time to the Town residents currently on water, including the Petitioner, to form their own district or improvement area. They have declined to do the same.
- P. At some point in the future, the Village will need to cut off the water supply outside of the Village. Thus the Petitioner is facing the prospect of having to obtain water for its low-income residents.
- Q. The manager of the Petitioner believes that it may cost approximately \$125,000.00 to install a private system.
- R. Such system may require the Petitioner to install a sprinkler system, pressure pumps, emergency generators, together with providing much more administrative detail and testing than what is needed with a public system.
- S. Such expenses may require additional funding from the governments and higher expenses to the project. Those expenses will be born indirectly by the residents of both the Village and the Town as tax payers.
- T. As a governmentally funded low-income residence, the manager just gets a set fee. All other costs are monitored by the governmental agencies.
- U. Annexation of this property would be revenue neutral to all entities involved.
- V. The principle of the Petitioner stated that he was invited to come to Newark Valley, to establish this low-income housing development on the promise that he would have public water and a PILOT agreement, in approximately 2001.
- W. Petitioner is obligated to maintain the development as low-income housing for a period of approximately 30 years or more.
- X. The continued existence of the fire hydrants of Golden Lane would be insured by annexation, and would be benefit not only to the residents of the Petitioner, but also the Town residents in and near

Golden Lane, to which the fire hydrants could be assessable in emergency situations.

13. There would be no change in services by allowing annexation for police.
14. There would be no change in services or expenses to the School District.
15. While the Town may still have the obligation to maintain the portion of Golden Road, it is noted that there is no part Town highway tax excluding Village residents from paying the Town Highway tax. Thus there would be no loss of revenue to the Town to maintain the road in front of the property.
16. Annexation would ensure the current level, if not improve water supply for fire protection; whereas, if the property is not annexed there will be no fire hydrants for fire protection, for not only the Petitioner's property but also the neighboring properties.
17. The Village is not part of the current PILOT agreement. Petitioner acknowledges that it will either be taxed separately or enter into a separate agreement with the Village. Thus, annexation would not affect the income from taxation by the other entities involved.
18. The Village finds that the Petitioner is providing a public service to the community in providing low-income housing on the subject Property.
19. Given that this project is for low-income housing for the approximately 26 low-income residents, annexation cannot be considered solely as a benefit to one person.
20. If the Property was annexed public water could be delivered to it by the portion of Whig Street, which is in the Town and Golden Lane which is also a Town road.
21. If the property is annexed, the Town residents contiguous to the pipeline going to the Petitioner would be able to contract with the Village to continue, resume, or establish water service with the Village.
22. The Petitioner, or its associated companies provided the main on Golden Road. Since the Petitioner located this low-income housing development under the understanding that it would obtain and continue to receive public water, and that it spent substantial amounts of monies improving and dedicating the road to the Town, and installing the water main on Golden Road, that it would be unjust to have it create a new private water system together with all the other commensurate improvements necessitated thereby.

23. The Village finds that the Petition is in the public interest and it will allow the low-income residents living on the property to continue to have safe water, and that there will be adequate fire protection for such residents and the neighboring properties, and also that for the other reasons stated above that annexation is in the public interest.

VILLAGE BOARD MEETING  
APRIL 12, 2011

**RESOLUTION #17-11  
ANNEXATION**

**NOW THEREFORE**, based on all of the foregoing findings, it is hereby

**RESOLVED**, that the Petitioner's Petition substantially complies with in form and content with Article 17 of the General Municipal Laws; and it is further

**RESOLVED**, that the proposed annexation described in said Petition is deemed to be in the overall public interest; and it is further

**RESOLVED**, that the proposed annexation as described in the Petition is hereby approved by the Village Board of the Village of Newark Valley.

MOTION      Trustee Blee                      SECOND    Trustee Carlin

ROLL CALL:

Blee \_\_\_Y\_\_\_ Carlin \_\_\_Y\_\_\_ Inderwies \_\_\_Y\_\_\_ Tornatore \_\_\_Y\_\_\_

**ORDER**

**HEREBY ORDERED**, that copies of the foregoing Findings, Resolutions and Determinations as set forth therein, all of which are hereby incorporated by reference into this Order, together with the Petition, notice of public hearing, written objections and testimony and minutes of the proceedings taken and kept on the hearing, be filed in the Offices of the Clerks of the Village and Town as the affected local governments, and at the County Clerk's Office.

Dated: April 12<sup>th</sup>, 2011

  
Mayor Tornatore

Dated: 4/12/11

  
Trustee Blee

Dated: 4/12/2011

  
Trustee Inderwies

Dated: 4/12/11

  
Trustee Carlin

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IN THE MATTER OF THE SECOND PETITION OF  
NEWARK VALLEY APARTMENTS, LP  
FOR ANNEXATION BY THE VILLAGE OF  
NEWARK VALLEY OF LANDS IN THE  
TOWN OF NEWARK VALLEY BEING  
TAX PARCEL NO. 53.00-1.43.122

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**FINDINGS, RESOLUTIONS AND ORDER  
OF THE TOWN OF NEWARK VALLEY PURSUANT TO  
ARTICLE 17 OF THE NEW YORK STATE  
GENERAL AND MUNICIPAL LAW**

A Second Petition ("Petition") having been filed by Newark Valley Apartments, LP ("Petitioner") for the annexation of certain property in the Town of Newark Valley ("Town") into the Village of Newark Valley ("Village"), and a second joint public hearing of the governing Boards of the Town and the Village having been held on February 9, 2011 in accordance with Section 705 of the General Municipal Law of the State of New York, the Town Board of the Town of Newark Valley hereby makes the following Findings and thereupon adopts the following Resolutions and Order based upon such Findings, all in accordance with Section 711 of the General Municipal Law:

**FINDINGS**

1. The Petition of Newark Valley Apartments, LP dated December 13, 2010 for the annexation of Town of Newark Valley Tax Parcel Number 53.00-1.43.122 ("Property") was filed in the Offices of the Town Clerk of the Town of Newark Valley on December 21, 2010. A copy of the Petition complete with a signed certification from the Town Assessor is attached hereto as Exhibit "A".

2. Pursuant to Section 704 of the General Municipal Law, the Town caused notice of the required joint public hearing on the Petition to be published in the Tioga County Courier, the



official newspaper of the Town, on January 19, 2011.

3. On January 21, 2011, the Town caused a copy of the notice of joint public hearing to be mailed to (i) the Petitioner (the Petitioner allegedly being the sole owner of property within the territory proposed to be annexed); and (ii) all persons residing within the territory proposed to be annexed qualified to vote for officers of the Town as their names appear upon the register of voters for the last preceding general election.

4. The Town also caused a copy of the notice of joint public hearing to be mailed to the Newark Valley Central School District and the Newark Valley Fire District on January 21, 2011.

5. The joint public hearing of the Village and Town of Newark Valley was held at the Newark Valley Town Hall at 9 Whig Street on February 9, 2011, at 7:00 p.m. in accordance with the notices as published and mailed.

6. In attendance at the joint public hearing were (i) the Mayor, the four Trustees of the Village, the Attorney for the Village; and (ii) the Town Supervisor, the four Councilpersons of the Town Board, the Attorney for the Town, and the Town Clerk.

7. Stuart Yetter, Jr., Supervisor of the Town of Newark Valley, presided at the hearing by agreement of the members of the participating Boards.

8. Comments were received at the joint public hearing from the Attorney for the Petitioner. Elected officials of both the Village and Town offered comment as well. A transcript of the proceedings is attached hereto as Exhibit "B". The Supervisor of the Town presented objections to the annexation petition, which were read into the record. A statement from Mary L. Chappell, Vice-President of Municipal Solutions, was read into the record. Charles Franzese from Hunt Engineering made statements on the record. No representative from the Newark Valley Central

School District or the Fire District spoke at the hearing.

9. The Town and Village Attorney confirmed at the outset of the joint public hearing that to the best of their knowledge the required notices of the public hearing for the Town and Village had been published in a timely fashion as indicated above and the Town Clerk has complied with the mailing of notices as required by Article 17 of the General Municipal Law. A copy of the publication in the Tioga County Courier and copies of the Notice of Hearing were set forth.

10. The Attorneys to the Town and Village have reviewed the Petition and have advised the Town and the Village that the Petition appeared to be substantially compliant with the requirements of Section 703 of the General Municipal Law.

11. There are no agreements between the Town and the Village with regard to assumption of indebtedness or other liabilities or the disposition of property pursuant to Sections 707 and 708 of the General Municipal Law.

12. The Town Board of the Town of Newark Valley hereby makes the following specific findings in accordance with Section 711 of the General Municipal Law as to whether the proposed annexation is or is not in the overall public interest.

- A. The primary purpose of the instant Petition is to enable the Petitioner to utilize the water services provided by the Village. Currently, the Village is in the process of updating its water system and it is possible that in the future, though the Village maintains no date is imminent, that the Petitioner could be prohibited from obtaining Village water. It is clear to the Town, however, that the Petitioner was aware of the precarious water situation when it decided to locate its project in the Town. Many other Town residents have been faced with this issue regarding Village water. Many of these affected residents have drilled and installed well systems. Petitioner's general partner, William Frandsen, admitted at the joint public hearing that such a water well is feasible on the Property.

- B. The Petition states that it is cost prohibitive to obtain water services by the means of a water well. At the joint public hearing on February 9, 2011, Attorney for Petitioner stated that two wells would have to be drilled and two water pumps would be necessary. Mr. Frandsen estimated the cost of installation would be \$125,000.00, and stated that it could be more or less. This estimated cost is approximately \$105,000.00 greater than the Petitioner stated as an estimate at the first public hearing held on March 26, 2010. No contractor's estimate was submitted. No tangible evidence of actual cost was presented.
- C. Mr. Frandsen's statements indicated that compliance with New York State law was a disincentive for utilizing a well water system that services multiple housing units. Mr. Frandsen stated that he operates eight housing facilities, and that one facility is on a private water system. Although he stated that New York State law makes the private water system "difficult," he did not provide any documentation or tangible evidence.
- D. At the first joint public hearing held on March 26, 2010, it was disclosed that the additional cost to the Village taxpayers to upgrade the water system which would service the Petitioner's Property could approach \$90,000.00. At said public hearing on March 26, 2010, no definitive funding source for this upgrade was disclosed, so it may be that this cost, if incurred, will be passed onto the Village residents solely for the benefit of Petitioner, which is not in the Village residents' best interest.
- E. The Petition states that a community water system and sprinkler system would be required if the Property utilizes private water from a well. At the second joint public hearing held on February 9, 2011, Attorney for Petitioner stated that he could not confirm or provide any evidence that a sprinkler system or any other specific improvements to the Property would be required. Evidence that no sprinkler system would be required was presented and was not contested.
- F. The Petition, as presented, does not include, for annexation, the Town road known as "Golden Lane," which services only the Petitioner's property. Should the annexation be granted, the Town would be responsible for maintaining a road solely for the benefit of Village residents, which is not in the public interest of the Town taxpayers.
- G. If the annexation of Petitioner's Property was approved, there would be no beneficial change in any way with regard to non-water related municipal services. Specifically, there would be no change in police coverage. Nor would there be any appreciable difference in fire coverage by the Newark

Valley Fire District. No tangible or scientific evidence was presented at the joint public hearing in favor of the Petition showing that abandoning the fire hydrants, if the Village decides to do so, currently operating on the Town road known as "Golden Lane" would create a safety issue for the Petitioner's residents, despite speculation to that effect at the joint public hearing. There would also be no change in school services as any student would still attend Newark Valley Central Schools without disruption.

- H. Ultimately, the Town determines that annexation is not in the public interest of taxpayers. No new documentation or tangible evidence was provided by Petitioner.

### **RESOLUTIONS**

**NOW, THEREFORE**, based on all of the foregoing Findings, it is hereby

**RESOLVED**, that the Petitioner's Petition substantially complies in form and content with Article 17 of the General Municipal Law; and it is further


**RESOLVED**, that the proposed annexation described in said Petition is hereby deemed to not be in the overall public interest; and it is further

**RESOLVED**, that the proposed annexation as described in the Petition is hereby denied by the Town Board of the Town of Newark Valley.

### **ORDER**

**HEREBY ORDERED**, that copies of the foregoing Findings, Resolutions and Determinations set forth therein, all of which are hereby incorporated by reference into this Order, together with the Petition, notice of public hearing, written objections and testimony and minutes of the proceedings taken and kept on the hearing, be filed in the Offices of the Clerks of the Village and Town as the affected local governments.

Dated: 5/3/11

  
Supervisor

Dated: 5-4-11

Dated: 5-4-11

Dated: 5.4.11

Dated: 5-6-11

Ken W. Graham  
Councilman

Joseph T. Ingram  
Councilman

Don Chumwalt  
Councilman

Donald B. Thomas  
Councilman

Village of Newark Valley

Golden Lane Annexation

MEETING

Wednesday, February 9, 2011, 7:00 p.m.

Hutchinson Hall, 109 Whig Street

Newark Valley, New York

MEMBERS PRESENT:

Town Board: Stuart Yetter, Donald Thomas, Daniel  
Cheresnowski, Joseph Tomazin, Jr., Ronald Graham

**KAREN J. MCMULLEN, ESQ.**

Village Board: Mayor James P. Tornatore, Dennis  
Carlin, Fred Blee, Lori DeHaas, Morgan Interwies

**FRANK M. COMO, ESQ.**

Reported By: Marisa L. Nold

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

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?



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.

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

FRANK COMO: No, I think that covers  
it.

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

We'll open the floor at this time.

CHARLES GUTTMAN: May I be heard?

STUART YETTER: Yes.

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

What I'd like to do, if I could, is to provide a background of the situation and why we believe that annexation is in the public interest. Really, I'd like to provide that and open myself up to 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 inequitability  
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 FRANDSEN: One out of eight  
7           are on a private system.

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

10          WILLIAM FRANDSEN: 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 FRANDSEN 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 FRANDSEN 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 FRANDSEN: 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 FRANDSEN: 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 FRANDBSEN: 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: Anecdotaly, 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 FRANDSEN: 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 FRANDSEN: 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 FRANDSEN: 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 FRANDSEN: 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 FRANDSEN   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