

TB Minutes August 7, 2007

STATE OF NEW YORK

COUNTY OF WARREN

Present: Supervisor Alexander G. Gabriels III, Councilmen Scott Andersen,

Rob MacEwan, Owen Maranville, Jason Saris,

Town Counsel Michael Muller, Town Clerk Kathleen Simmes

Absent: None

Pledge of Allegiance: Scott Andersen

Public Hearing: None

Regular Meeting: Supervisor Gabriels called the regular meeting to order at 7:03 pm.

Announcements:

Conservation Park - has been used in 5 times in June and 7 times in July, showing it does get community usage. Counsel suggested the TB think about possible non-profit status as a corporation an option for Conservation Park. TB and Counsel will take it under advisement.

Warren County/Bolton Sewer Plant Bids for Improvements due back to the county on 08/23/07. This includes roughly \$600,000 estimated improvements on the trickling filter, the secondary clarifier and a new stand-by generator.

Meal Site Menu is available in the Town Hall.

There are now 2 Town of Bolton website addresses: [www.town.bolton.ny.us](http://www.town.bolton.ny.us) and [.townofboltonlanding.com](http://.townofboltonlanding.com).

Comments of Public in Attendance:

BCS request for Town to assume Hendricks Road Connector letter dated 07/23/07

Supervisor Gabriels summarized the letter from the Bolton School Board for the record that requested the Town take over the Hendricks Road Connector and purchase Lot 7 in the Westwood Forest West subdivision for athletic field parking. Supervisor Gabriels said that the TB has had conversations with the School Board and the Fire Commissioners. They are still waiting on the Fire Company's plans/proposal. Ray Ciccarelli confirmed that is an accurate synopsis. Supervisor Gabriels said that those meetings were open to the public and this letter is the first formal presentation between the TB and the Bolton School Board on this topic. The TB has not reacted affirmatively or negatively on this request. The matter is under deliberation by the TB.

Councilman Saris asked about the implementation of the contents of the facility plan and asked if it is a written plan. Ray Ciccarelli said that it is not a plan in text, but it is a compilation of text, maps and remnants of things that are possible. He said that the school district has not made a formal decision, because they want to keep the spirit of which they have been discussing this collectively. He said the school is willing to relinquish its land (tennis court/parking lot currently opposite the Fire District) in addition to relinquishing the claim of the original land grant to the Fire District. They have discussed use of the lower field during July and August under the jurisdiction of the joint grant or leasing it to the town in proverbial terms, as they are not looking for any monetary exchange. He added that the Bolton School Board is now under the NYS Education timeline to spend the money granted in a timely fashion, so they are anxious to move forward. Councilman Saris asked if the facility plan is a work in progress and Ray Ciccarelli said yes. Supervisor Gabriels said that there are still outstanding issues on the stormwater abutting the Hendricks Road Connector, which he hopes the Town Engineer and the developer will be able to work out, but there won't be any redevelopment of those stormwater issues during the summer season, because that would negatively impact Adirondack Extreme business. Ray Ciccarelli said that the Bolton School Board understands and is aware they can't take title of the property until that matter is resolved. Supervisor Gabriels asked the sense of timeline for the project and Ray Ciccarelli said that there are some field items they can take care of once they take ownership of the land, but they don't want to proceed until they have collaboration from the TB and Fire District. Councilman MacEwan asked what condition the road would be in when it was taken over and Ray Ciccarelli said that he knows the road was built to town specifications, so it will be that or better, because the Town Engineer will have signed-off on it prior to any transaction. Supervisor Gabriels said that the Town Engineer sign-off is in no way based on these deliberations and Ray Ciccarelli agreed. Supervisor Gabriels said that he thinks the community would like to see the plans once the Bolton School Board has them, so there is a clear understanding of the project. Discussion ensued about the options for the assumption of the road. Supervisor Gabriels said that the decision for assumption of the road will not be made by the attorneys, but by the two boards. He added that the TB and Bolton School Board will entertain any comments, questions, or concerns from any portion of the community at large on any particular aspect of this because they are trying collectively to have this a win-win situation all the way around. Ray Ciccarelli asked if the TB requires any additional information from the Bolton School Board at this time and Councilman Andersen said that he'd like to see the Fire Department's plan for parking in a drawing format and also the facility plan.

#### Bolton Historical Society presentation - expansion plans

Ed Scheiber, president of the Bolton Historical Society, handed out plans to the TB members. He then said that they propose to enhance the gallery space for storage and archival space, to accommodate more items and for climate control. He added that they want to design an addition that doesn't take away from the church, so their plans will complement it in order to keep with the surrounding environment. Ed Scheiber said they have trouble with wiring, so they want to do a complete analysis to make it a better facility. He added that they want to be able to offer the facility for community meetings/presentations/research. He then gave a detailed overview of the proposal saying that they are looking for 3,000 sq. ft. of new space to be added. Supervisor Gabriels said that Town Counsel needs to research the legality of the project going forward in terms of the property. The addition would encroach on town property. The TB would have the responsibility of making the decision whether that area of the park for this particular purpose is an acceptable proposal in terms of legalities and the TB decision, because if the TB says no this plan doesn't go forward. Councilman MacEwan asked if there is any grant money available and Ed Scheiber said yes, they are exploring options including state monies. Councilman Saris said the proposal looks great and it is a great cause in preserving Bolton's history. Councilman Andersen agreed, saying his only hesitation is the securing of the legal authority of the title restrictions. Councilman Maranville said that he thinks it is a good plan, but it may be too large. He also questioned the location of the proposed handicap entrance and Ed Scheiber said that they would introduce a new entrance that includes a handicap entrance and would incorporate signage for direction. There were further questions on the proposed design, clarified by referencing the drawings. Supervisor Gabriels asked about possible lot line adjustments and Counsel said that in terms of the lines of the parcel where

they put the structure, it would still need to meet setbacks, but there needs to be some certainty as to what is needed. Ed Shiver said that they are willing to present the proposal to the PB and ZBA as well if that is warranted.

#### Don Kingsley guidance sought for closure of Westwood Forest West project

Don Kingsley said he is looking for guidance from the TB regarding the road they are constructing for Westwood Forest West in terms of getting a sign-off for the project. All items have been addressed except for the last basin. He took the last two basins in the field and combined them into one as per discussions on-site with Town Engineer Tom Nace. They put the last basin in per the plans approved by Town Engineer Tom Nace, but not by the Bolton PB. He added that the sign-off is holding up the ball fields and the road as well. Supervisor Gabriels said that all he knows is that in speaking with Tom Nace, there is a stormwater issue that is unresolved. Don Kingsley said that there is a berm by the basin that is all grass seeded and mulched and now they want that torn up and a clay barrier put in. He said that he understands the request, but it is an addendum to the plans that were signed-off on, so he is in limbo in closing the project. Supervisor Gabriels said that he agrees with the road portion, but doesn't understand the stormwater aspect of it. Councilman Maranville asked if all of the items Warren County Soil & Water requested have been completed and Don Kingsley said that they have done everything requested except the clay barrier in the basin, which is between the design engineer and Town Engineer Tom Nace. Councilman Saris asked what jurisdiction Warren County Soil & Water has over stormwater and Counsel said none. Counsel added that he is not aware of the magnitude of the change that is agreeable to Tom Nace, but to whatever extent it constitutes a change departure from what was approved by the PB, it requires PB action, so they need to hold the developer tight to the initial approval or admittedly, if there had been a better plan developed on-site as built, that thing needs to get back to the PB because the PB has the only authority to accept that which has been re-configured and the cast of characters there would be the design engineer, the developer and obviously Tom Nace has agreed in principle to what that is. He said that what makes him uncomfortable is that he thinks there is unfinished business there that is that something departed from what was the stormwater approval. Somehow the developer managed to arrange with the PB on a different subdivision that the first \$150K held in escrow for Westwood Forest West can only be released upon Counsel receipt of a document signed by Tom Nace saying that this project is substantially complete in conformity with the stormwater permit grant, which has yet to be received. Counsel said that somehow the developer of the next subdivision, Saddlebrook, which is the same developer, has reached an agreement with the PB with the same \$150K and some other personal guarantees and personal sureties come on as a performance bond on the next project. Counsel said that he explained that he can allow project number 2 (Saddlebrook) to even launch unless it has money, so there is the incentive that the developer needs to get his business done on the first project (Westwood Forest West) before he can start on the second one (Saddlebrook). Counsel said that it seems to him that there is a tremendous advantage on why the first project needs to be done right, complete and as amended. Counsel said that what drives him insane is that somehow, Rolf Ronning reached an agreement with Michael O onnor that they had discussed Counsel will hold the money on the first subdivision until some private individual, who he is now guessing is Adirondack Extreme, is super satisfied with whatever it is that is out there. Counsel told them that he is not held to that standard, but he is held to Tom Nace standard. Don Kingsley said that the standard that he is being held to now is not the approved plans, as the approved plans are done, so the standards he is being held to now is suggestions from Warren County Soil & Water and the people on the road. P. Kenyon said that the PB gave Town Engineer Tom Nace discretion to make changes in the field as he deemed warranted. Councilman Saris said that he is concerned that Warren County Soil & Water has no authority over stormwater or over the PB. P. Kenyon said that she believes Tom Nace agrees with some of Warren County Soil & Water suggestions. Don Kingsley said that he asked Tom Nace, who he met with on-site, and two items Tom Nace had were the cul-de-sac and the weirs coming off the basin, which they addressed. When he told Tom Nace that their work was done and he wanted him to do the walk-through to verify the sign-off, at that point, Tom Nace told him Warren County Soil & Water has some concerns. He then asked Tom Nace where Warren County Soil & Water come into play on the process, because

Warren County Soil & Water were not in the design process or approval process, so he doesn't know how he supposed to adhere to what they want, when he did the job according to the plans that were all designed. Councilman Saris said that as far as Don Kingsley's payment goes, that is a matter between Don Kingsley and the developer, so if the job is completed as it was supposed to be, it seems that Don Kingsley needs to renegotiate with the developer. Don Kingsley said that his contract reads that he gets paid when the Town Engineer is satisfied and signs-off on the project. P. Kenyon said that Tom Nace won sign-off. Don Kingsley agreed saying that Tom Nace won sign-off because of the concerns Warren County Soil & Water had. Councilman Saris said he understands and it almost seems that it would really only be appropriate for Warren County Soil & Water to voice those concerns at a PB meeting. He said that he is a little uncomfortable with that task and with the Bolton PB being cut out of that and another agency seemingly gaining some authority on those matters in our town. Don Kingsley said that he wants to finish this job e'll do whatever he needs to do so he can finish this and get paid. Further discussion ensued on the matter. Supervisor Gabriels said that his understanding is that some of the problematic stormwater involved is on the property of the Adirondack Extreme Group. Don Kingsley said that is correct, but when they were contracted to do the job it was all owned by Rolf Ronning, then the property was sold to another owner, which opened a can of worms, because they built the basins according to plans, but his gut feeling is that it doesn't fit Adirondack Extreme Group view of what they want on their property. He added that he is bound by contract and what the PB approved. Supervisor Gabriels said that they had a lot of infrastructure that was planned, but not developed before beginning to sell land off and he would like to see legislation to change the Zoning Code so this doesn't happen in the future. P. Kenyon said that she brought it to the PB attention before Saddlebrook came along, because there was a discussion as to whether or not they should sell the lots before the infrastructure was in and it was a struggle. Councilman Andersen said that he thinks the TB should have asked Tom Nace for his task as set up by the PB in addition to what he feels still needs to be done. Councilman Maranville said that he thinks Tom Nace did do that, but somehow Warren County Soil & Water got involved. Councilman Andersen said that he doesn't care what Warren County is doing in this whole role and it needs to be that Tom Nace is not working for Warren County Soil & Water and what he needs to do is lay out what he needs. Don Kingsley said that they are getting no communication as far as what they are looking at and he would like to see something in writing as to what they have to adhere to, so they can address the situation and get closure on this. Supervisor Gabriels asked if "as-builts" have been delivered to Tom Nace and Don Kingsley said yes, last Friday. Councilman Saris asked if there is a way in the future to direct all interested parties of stormwater be it Warren County Soil & Water or the LGPC, who also seems to have some interest in administering stormwater in this town lately, to the PB if they have concerns. Counsel said that you can put them on notice, but you can't compel them to come. Councilman Saris asked if the requests could be ignored if the interested parties don't go through those proper channels. Counsel replied by saying yes, that is a simple answer and in Wayne Smith's case he was told the LGPC wouldn't even entertain the application until the stormwater items they requested were completed. He said that the point is that Bolton has some stormwater regulations that they try to enforce then you get oblique experts coming in. Councilman Saris said that you can keep tweaking a plan, but you have to allow somebody to complete things at some time. Counsel said he agrees and he thinks Don Kingsley is complete on this project. Councilman Saris said that the time for those people to submit their suggestions on how it can be done better is at the PB meeting when the PB is considering approval for that plan. Counsel agreed and said that he is never comfortable when he hears the PB gives approval for individuals to make additional changes at their discretion even if it is the Town Engineer; it just isn't good. Councilman MacEwan asked if it is accurate that even if Don Kingsley were asked to fix it, that Adirondack Extreme Adventures don't want him on the property until after the season. Don Kingsley said that the way he understands it, he is not allowed on the property until at least October and P. Kenyon can attest to the fact that during one of their conversations there, Adirondack Extreme didn't like the basins and they were told to leave the property or they would be arrested. Councilman Maranville asked what the theoretical replacement cost of the road would be if it was a total washout and Don Kingsley said about \$60,000. He added that the additional basin is an addendum to what he was contracted to do, so as far as he is concerned that should be beyond his scope of the work and what is acceptable as being a completed project. Supervisor Gabriels asked what the liability would be when the project is complete regarding the basins on

Adirondack Extreme property. Counsel said that in a well-planned subdivision with covenants and a stormwater permit that is issued, where the covenants are recorded in the clerk office in addition to the stormwater management plan that is recorded in the clerk office becomes a covenant of the property and the parties obliged to maintain them and to repair them have access as well as responsibility. The parties that are chargeable with repairing and maintaining are the collective lot owners, certainly in the initial stages that is the developer because he owns most of the lots, but eventually it pairs off into ones and twos then the subdivision has 12 lots with 12 owners. Counsel said that it is a covenant and any one of the lot owners in there that finds that there is say failure on the part of the other 10 or 11 could claim a proceeding in court. Supervisor Gabriels said that the TB would request in writing comments from Tom Nace on this issue.

#### Farmer Market Request

Councilman Maranville said that he received an email from Dave Cummings requesting to be able to do a farmer's market at Rogers Park on Saturdays in the fall. The TB members said they would like to have Dave Cummings make a presentation at the next TB meeting.

There were no additional public comments on this or any other matters at this time.

#### Correspondence:

Letter from Rolf Ronning on Saddlebrook

Correspondence from APA on a minor project on East Schroon River Road

Correspondence from Nancy Hyman on public maintenance issues for Blue Water Manor, cinder block storage building on 9N and Chelka Lodge parking on 9N

Reply from Warren County Fire Prevention Building Codes

Letter of complaint on lifeguard attitudes/issues

Comment received suggesting a fence at Federal Hill Cemetery to keep cars parking in that area.

Complimentary email regarding the marathon swim

Notification from NYSDOH of an investigation of the Bolton Water Plant stating things came out very well

Landfill closure monitoring chemical analysis for early July

Correspondence from NYSORPS that the equalization rate for the coming year is 64%; it has dropped 12.5% in the past year

Referrals from Zoning Enforcement Officer / ZBA / BPB:

Timothy Harrington, 4 Forbidden Forest Lane, [156.00-2-28] extensive tree clearing without permit - BPB recommendations

Correspondence received on this matter from Atty. Mike Stafford. Counsel said that there are items mentioned by Atty. Stafford that he doesn't disagree with in part, but many of the statements made don't get them to a resolution and they have given Mr. Harrington an alternative remedy to court action. Atty. Stafford's position is that his client didn't develop anything. Counsel said he respectfully disagrees, as the Bolton Code Section 200-8 defines any land use or development as any condition that materially changes the appearance of the land which is the proper approach the Bolton Code Enforcement Officer has taken. He believes this is an item that would have to be decided by a judge. Regarding the comment Atty. Stafford makes in his letter that if a PB imposes some mandate, it must as a mandate be in the conditions of approval as part of the resolution Counsel said that he agrees with that in that he tells the PB if they discuss it, think it is a great idea but miss putting it in the final resolution, then it was just an element of discussion and not an element of requirement for this applicant. Counsel said that Atty. Stafford stating the law correctly and he having agreed with it, he can find a place to glue it on these facts in that it is like they agree on that fundamental premise of the law, but that which was approved is an approved subdivision map which is on record and says o development Atty. Stafford's last point about somehow if TB still accepts the notion and possibility that Mr. Harrington is a cooperative property owner and wants to continue through the process of alternative remedy, Mr. Harrington is prepared to still show the TB his yet-to-be-defined or presented planting plan, but under no circumstances does Mr. Harrington want to show it to anybody but the TB. He doesn't want to show it to the PB, because Mr. Harrington feels that the PB is not an enforcement body. Counsel said that is not enforcement, but it is the proper place for some agency or board upon this municipality to figure out what is an appropriate place and frankly, they did informally give Mr. Harrington a lot of space and enough room to get a good result and easy result if he could have offered some cooperation, because they took his property into three segments. He added that it has been 6-8 months later saying that Mr. Harrington is not fully prepared to complete an alternative remedy in the manner the Town of Bolton usually offers. Supervisor Gabriels asked if the town has a reasonable case to bring this before a judge and Counsel said that the town has a reasonable case, which is one that will define what constitutes development and if the judge follows the Town of Bolton code definition, then Mr. Harrington will have put himself in a tough spot unfortunately when he didn't have to. Supervisor Gabriels asked about other options and Counsel said that the other option is that Site Works and Mr. Harrington will eventually have a proposed planting plan which Mr. Harrington will voluntarily undertake in the scenic corridor area, which will consist of 20 white pine trees 5 or 6 feet tall each year for the next three years, which according to Atty. Stafford costs in excess of \$10K to do that, so that is what they would offer. Supervisor Gabriels said that the TB does have the option to refer the proposed planting plan to the PB for their consideration. Counsel said that he doesn't think that is an option as Mr. Harrington said that he doesn't want to go before the PB and the whole alternative remedy is a voluntary homeowner/property owner who is trying to solve a problem civilly not necessarily in a court of law, approved by the TB and then bring it in conformity with the town code. Counsel said that to bring it into conformity with the code, the TB wouldn't be approving a subdivision or granting a variance, and the TB has no jurisdiction to approve a planting plan. Councilman Saris said that he is not so concerned about the planting plan as he is from Mr. Harrington's letters in that Mr. Harrington is taking the position that what he is doing is not development or disturbance, but maintenance, which he plans to continue to maintain his property. Mitzi Nittmann said that he does. Councilman Saris said that basically what he is telling us is that he is going to continue cutting down there. He said that he knows what the PB intended when they put that restriction on that part of the property and the PB intent was that that property was cleared illegally and that it needs to regenerate itself by staying out of there. He said that in fairness to Mr. Harrington, yes, it was done prior to his purchase of it and he probably didn't know, but based on now that he is educated, he has a real problem with Mr. Harrington basically saying that he doesn't agree with that and that he (Harrington) is going to maintain it. Supervisor Gabriels asked if the TB wants to support the PB and Councilmen Saris and MacEwan said yes. Councilman Maranville asked if the information about being not able to cut there was in the deed when Mr. Harrington purchased the property and Counsel said no, it is not set up in a written covenant in the deed, it is actually just specified

on the map which is filed in the clerk office and that is public notice. Mitzi Nittmann said that in her last discussion with Atty. Stafford, that because of that aerial photograph in possession of Mr. Harrington showing that the whole line was already cut when he purchased that and Mr. Harrington wants to maintain it forever, totally. Councilman Saris said that it was cut when Rolf Ronning developed it, which is why the no development zone was created and you can just keep cutting it, because it will never grow back. Supervisor Gabriels said that it seems the TB no longer wants to pursue the alternative remedy strategy. Counsel agreed saying that he thinks the alternative remedy in this particular effort is not succeeding and if it was taking some time but there was progress being made, he advise the TB to wait, but that is not the case.

#### RESOLUTION #142

Councilman Andersen moved, seconded by Councilman Maranville, to authorize Town Counsel at his normal hourly rates, to send Atty. Stafford a letter outlining all that was discussed at this meeting, giving them one last opportunity to comply to the alternative remedies at the September 2007 meeting, after which if Mr. Harrington doesn't comply, they will be notified the matter is going to litigation. All favorable. Motion carried.

Discuss Code Enforcement finding Jacoba Barboza and expansion of structure without permit in 1999 vs. Theta Curri Maille - alternative remedy Nov. 2005 - no SPR/ structures

Item has been tabled pending further deliberation.

Mavros - 4 Island View Loop - (TMN 200.18-1-39) lost and / or dated (2003) outstanding warrant

Supervisor Gabriels said that his understanding is that Mr. Mavros constructed a deck without a permit, the original warrant paperwork was lost without Mr. Mavros being properly served and now the Town of Bolton has been notified that Mr. Mavros is back in town. The situation is that there is still a deck without a permit. Counsel said that it is still a deck without a permit, the whole thing has been recast because whatever happened to the original papers from 2003 is unascertainable and a new set is done and signed. Mitzi Nittmann informed him that a complete package of materials including the warrant is with the court. Councilman Saris said that if the Mavros return to Bolton then the Town of Bolton is prepared and Counsel agreed. Mitzi Nittmann said that even with this set, the court clerk would not take the original until Mr. Mavros is arrested, so there is no original in this file, just copies, as the original was given to the Bolton Police and in 2003 the Town Police would not arrest Mavros without an original warrant. Counsel said that was correct and that now the Town has an original.

Elmer Clark, 824 Trout Lake Road (TMN 186.00-1-20) dilapidated structure

Councilman Saris asked if the town would need to ask the owner permission before inspection by Tom Nace. Counsel said no, because it is part of the emergency powers and the TB can ask permission if it wishes, but if the TB believes there is a health code violation, the town authorities can go up on the premises, which he believes is Town Law Section 128. Mitzi Nittmann said there is also an open well/cistern. Counsel said that would also make it a violation of penal law and he thinks it is in the town best interest to take whatever emergency immediate steps necessary since there is an open cistern.

#### RESOLUTION #143

Councilman Andersen moved, seconded by Councilman Maranville to authorize Town Engineer Tom Nace and Code Enforcement Officer Mitzi Nittmann to inspect the dilapidated building and the open well at 824 Trout Lake Road owned by Clark Tax Map #186.00-1-20. All favorable. Motion carried.

Counsel asked if anyone knows why there are NYS Police postings on the property and Mitzi Nittmann said that they are very old postings. Supervisor Gabriels asked if the emergency of securing the open well with a suitable top is embodied in the supervisor authority, cost to be charged back to the property owner and Counsel said yes.

Giknis - entry on property - if oral permission for entry is legally sufficient

Counsel said that oral permission is acceptable, but it is always a question of fact at some later date if somebody says that is not what he/she said. He said that Town Law Section 128 certainly allows code enforcement officials to go upon premises for visible inspections and to temper that the United States Constitution and the 4<sup>th</sup> Amendment to the Constitution protects all of us from unreasonable searches of our homes, places of business, on our property. He said that if there was ever a question of how Town Law 128 counterbalances the 4<sup>th</sup> Amendment of the United States Constitution, there is not much of an even weight there, that is that the 4<sup>th</sup> Amendment rights prevail. Counsel said that preference is you get consent of the owner. If you can obtain it and it is informal and oral, it is more than satisfactory, it just has some shortcomings, so written is preferred. Councilman Saris asked if there is a form to be filled out and Counsel said that Mitzi Nittmann has a proposal he would like to review.

Board of Health/Water Commissioners:

RESOLUTION #144

Councilman Maranville moved, seconded by Councilman MacEwan to adjourn as the Town Board and to convene as the Local Board of Health. All favorable. Motion carried.

Septic System - Benham, David, 4838 Lake Shore Drive - 3 specific variances required, Nace has approved.

Supervisor Gabriels gave an overview of the variances requested per documentation from Zoning Administrator P. Kenyon. He said that Tom Nace's concerns have been addressed and he has reviewed and approved the plans. Supervisor Gabriels noted that the owner/applicant is not present. Deanne Rehm asked if it is an existing house and is it just the system. P. Kenyon said that Mr. Benham wants to turn a garage into a guest cottage. Councilman MacEwan asked if what is being proposed is adequate for the addition and P. Kenyon said that she believes that is what he addressed. Councilman Andersen said that he would like the applicant to be present before voting on the matter and Supervisor Gabriels agreed, saying that this would be the first variance the TB would have acted upon without an applicant presenting or being ready to answer any questions. Supervisor Gabriels said that with all due respect, P. Kenyon did support the applicant in all this, but she is not the applicant. P. Kenyon agreed completely saying that she is not here supporting it, she is just providing the information to the TB. Supervisor Gabriels agreed.

RESOLUTION #145

Councilman MacEwan moved, seconded by Councilman Maranville to approve the following three variances: sought by David (Victor Benham) property location 4828 Lake Shore Drive, parcel ID#213.09-1-13: (1) 0.5 from tow of fill for leach field from north property line (2) 34 of naturally occurring soils over an impervious layer. (3) 11% grade on the existing most southeasterly corner. Three favorable (MacEwan, Maranville and Saris). Two opposed (Andersen and Gabriels). Motion carried.

RESOLUTION #146

Councilman Maranville moved, seconded by Councilman Saris to adjourn as the Local Board of Health and reconvene as the Town Board. All favorable. Motion carried.

Reports:

Water Dept.:

Water made: 10,239,498 gals for a daily average of 330,306 gals. The department took the bacteriological tests for the month of June and they passed. NYSDOH did its sanitary survey; the Water Dept. did very well and was in compliance. All water meters were read and the readings were turned in to Town Clerk Kathleen Simmes. The power went out on 07/13/07 and they put in one application of copper sulfate to the pond to cut down on algae. It will be done two more times. They had to change the electric motor on the main compressor that runs to the plant, as it had burned out. They mowed the grass around the hydrants again and continue daily maintenance.

Police Department:

They received Red Cross emergency medical training and certificates in responding to emergencies and CPR and the AED certification. Both vehicles now have medical bags that were provided by the Bolton Rescue Squad. The Police Dept. is also in possession of an AED provided by the Sheriff Dept.

Assessor:

Dave Rosebrook wanted to thank the TB for their confidence in him for his reappointment last month.

Supervisor's Report:

Total receipts: \$775,515.87 and Total Disbursements: \$525,416.91.

Warren County: Gaslight Village property and social services building are both pending

Stormwater: None

Unfinished Business:

Walter Law - dilapidated building

Supervisor Gabriels gave an overview and read a letter dated 08/06/07 from Barbara Law regarding their intent to accept a proposal from Ed Bennett Excavating to remove the house. Supervisor Gabriels then gave contract details. Counsel said that one timetable he didn't want to miss was to give proper notices and have it posted and if the TB decides to do so. An option is to make sure the notices are distributed and the notice is posted and that Mrs. Law has complete information that the town is also acknowledging the town is ceding the process if she and Mr. Bennett advance on their proposed contract, the town will step aside.

RESOLUTION #147

Councilman Andersen moved, seconded by Councilman Saris, to adopt the following resolution:

It is hereby resolved that upon due deliberation and consideration of the

Engineer's certificate for payment of balance of \$5,988.00 received from Carl Schoder on 07/26/07 regarding Rogers Park Retaining Wall - resolution to pay

#### RESOLUTION #148

Councilman Anderson moved, seconded by Councilman Maranville to research the correct amount then pay the balance to Schoder River Associates for the Rogers Park Retaining Wall. All favorable. Motion carried.

Consider entire new boiler proposal Town Hall from Thermal Associates

Item is pending.

Dated estimate from Thermal Associates to replace horizontal heat pump in court / police - then estimate \$6,000 - future action possibility

Item is pending.

Discuss Town's reaction to private use of Town property without permission per Town Counsel's letter dated June 11, 2007 - meeting held Attys. to prepare alternative analyses

*Note: Councilmen Andersen and Saris recused themselves from this matter due to conflict of interest, as they are in marina businesses.*

Counsel said that the important part about the position taken by Wayne Smith and his attorney in that they believe they may have acquired property, which is actually owned by the Town of Bolton, requires that the TB take the quantum leap on the facts and generally speaking, adverse possession by which an individual may acquire a property right superior to the record owner of the property, superior to the deed owner of the property, if the adverse possession is open, continuous, etc. He added that it does not apply for adverse possession against a municipality. Counsel added that Atty. Millington is correct in her statement of law saying that adverse possession may apply if the adverse possessor claims to have occupied and used adverse to the municipal owner, parcel of land is owned by the municipality for its proprietary purposes so the municipality has proprietary and sovereign purposes. He then gave examples. Counsel said that he respectfully does not agree with Atty. Susan Millington characterization that he permanence of that roadway where it leads to the lake is proprietary property. He said it is definitely public property and it is not something that is mystery, because it is in the deed dedicated to the Town of Bolton as a road access and for public access, which is a sovereign purpose. Counsel said that factually, Atty. Millington case is not grounded in these facts and these facts are that that particular piece of property that is owned by deed by the municipality is encroached upon substantially as depicted in a map that was done by a surveyor hired by Wayne Smith, so it is a clear indication it is not in the right spot. He added that it has been there a long time and there is some spotty history of correspondence that is probably 30 years old, where he believes it was Wayne Smith father who asks a prior supervisor for permission to use that area and it is not granted. Counsel said that it shows there is a factual acknowledgement that they (the Smiths) don even own it. Counsel added that one of the other compulsions made by Atty. Millington is asking if the Smiths can lease it if it is found to not be there and if the Town of Bolton had any interest in letting that property interest out, it would be important not to diminish the public uses or purposes in that roadway and the public access to and from the lake. He added that there is a substantial body of law that says if the Town of Bolton is interested in letting/leasing it, it needs to be open and competitive to others who may be similarly interested. He said that the Town of Bolton does have adequate insurance to cover essentially all the types of civil liabilities that can be imagined, but where the Town still stands exposed is with any potential spillage that is not covered by insurance and would constitute penalties imposed by NYSDEC, which he is not suggesting is

going to happen nor is he suggesting it is a sloppy circumstance out there, but if the NYSDEC were to look at a map they would find the Town of Bolton is the owner and would be responsible for a \$37,500 fine per day.

Counsel continued by saying that Atty. Millington was present at a PB meeting where Agnes Nolan and her counsel, Atty. Mark Rehm, were presenting a proposal on how Ms. Nolan would develop a lot adjacent to Wayne Smith, and actually on the other side of where the Town of Bolton road is. Counsel said that he did state at that meeting that there is no Town of Bolton zoning district on the wet side of the mean high water mark, which would be a true statement, in that the Town of Bolton does not claim jurisdiction out there in the lake. Counsel said that Atty. Millington managed to somehow interpret that to mean that the Town of Bolton claims no rights for ownership that is that the Town of Bolton, its property to whatever extent it may exist in the road, stops at the mean high water mark. Counsel said that is not what he said. He said the zoning concerns stop there, but the Town of Bolton ownership is rock solid; it is in the deed and these are called literal rights where you extend out from the shoreline out into the body of water.

Counsel said that the Lake George Mirror reported that Wayne Smith proposal to have an extension and permission to have his marina permit from the LGPC was granted even though it was acknowledged that his marina is not contained on his own property. Mike White was quoted in the Lake George Mirror saying that, they approved that because it was consented to by the Town of Bolton. Counsel said that is not true.

Counsel said that he doesn't think the TB can take action on this matter tonight. Further discussion ensued. Counsel said that his observation is that you usually see when the road comes down to the natural shore, there is sand, generally natural material, but there, somebody has been improving it so that you can drive in, there is machined stone there that has been ground up and packed in and it is there so you don't sink down into the soft sand. Supervisor Gabriels said that it is his belief that has not been placed there by Town forces; it has not been placed by the Highway Dept. and not been placed by the Parks Dept. Item is pending.

Pending Items: Reviewed and no action taken.

New Business:

Consider Amount of sales tax due Bolton to be left at County to reduce Bolton share of County taxes. Amount has been \$1,150,000 (amounts by quarter - \$235, \$250, \$370 and \$295K)

Supervisor Gabriels gave an overview and said that he doesn't recall the last time the number of sales tax left down at the county was increased and if the TB takes no action at this meeting that will be the number left down there for Warren County computation purposes. Councilman Andersen said that he thinks it is important the Town of Bolton leaves money down there because it lowers the Town of Bolton rate, but at some point, there is certainly a consensus of the public that thinks Warren County is not as frugal with their money as perhaps the Town of Bolton is. He thinks at some point, publicly, maybe being mentioned in the press, maybe that number instead of \$1,150,000 needs to be \$1,000,000 and Warren County needs to understand the residents of Bolton have been complaining for years that Warren County seems to spend a disproportionate amount of money. He added that whenever the Town of Bolton gets its tax bill, the town tax may go up pennies and the percentage from Warren County is huge. He thinks it is the only method the Town of Bolton has of sending a message back that Warren County is not as fiscally responsible as a lot of the Town of Bolton constituents think it should be. He said that he wants to send a message, but he also understands the other side of that in keeping that rate reduced for those people who have to pay the taxes here. Councilman Saris said that he agrees, but if you were to change it you would have to do it with the commitment that you would then use that same amount of money to

offer tax relief from the Town of Bolton taxes; that money would be earmarked towards some other municipal purpose. He said at least the taxpayers would at least know where the money was going and who was spending it; they know it was the Town of Bolton and it was Warren County. He added that if the TB does change that formula, he would only support changing it with the commitment that whatever money did not get left at Warren County would go to lower Bolton property taxes. Councilman Andersen agreed and said that he thinks it is important that Warren County understands that is the consensus he hears annually in that Warren County doesn't seem to be very fiscally responsible and their rate increases disproportionately from other things. Supervisor Gabriels said that Bolton does pick up a percentage of the county share and it varies year to year based on the relative full market values of the towns; it is approximately 15% of the Warren County bill; it is essentially the second highest percentage of tax in throughout the county after Queensbury. Supervisor Gabriels said that he has made it known to Warren County. Further discussion ensued on the matter. Supervisor Gabriels said that what is being considered at Warren County is sales tax increases versus property tax increases and the voting works differently there where it is a weighted vote, it is not one person, one vote, so the Bolton Supervisor has had and always has had 33 votes of 999. Deanne Rehm agreed with Councilman Andersen and said that last December NYS put out a report on property taxes over about a 20-year period and the average of taxes in NYS had gone up a multiple of 3.5 times and in Warren County that multiple was 5 times. She said that if the Town of Bolton were to change the amount of money the town leaves to reduce county tax, the Bolton taxpayers will see their tax go up and it will have zero effect to the people at Warren County. Deanne Rehm said some members of the Warren County Board are seriously discussing changing how sales tax is shared. Supervisor Gabriels said that he would echo Deanne Rehm's advice in that if you don't change the way you pay the taxes, you better not change the way you divvy up sales tax; that would be devastating to the Town of Bolton. Ron Conover said he agrees with Councilman Saris in that if it were to be reduced, it should be put immediately against the Town of Bolton's own tax levy and with sales tax, it rises when times are good, but if it stays level or reduces, it is a big percentage of the property tax. Councilman Andersen said that he doesn't want to hurt Bolton taxpayers and he doesn't think Warren County is as fiscally responsible as it should be, so he feels it is the TB's job to make their constituents more aware of that. Councilman Saris said that he agrees and wishes the public were better informed on how the whole tax structure works and the taxpayers don't look at individual taxes, it's seen as all being lumped together. Supervisor Gabriels said that regarding sales tax, they do this rather conservatively, so far it hasn't dropped. Further discussion ensued. There was no motion to modify the number one way or the other.

Authorize Town Counsel Mike Muller to defend Bolton Planning Board in lawsuit brought by Fund of Lake George, Lake George Waterkeeper and John Gaddy at normal hourly rates address status of John Gaddy

#### RESOLUTION #149

Councilman Maranville moved, seconded by Councilman Andersen to authorize Town Counsel Atty. Mike Muller at his normal hourly rate, to represent the Bolton Planning Board in the lawsuit brought by the Fund of Lake George, Lake George Waterkeeper Chris Navitsky and John Gaddy. All favorable. Motion carried.

Supervisor Gabriels asked Counsel to clarify the position of John Gaddy in the aforementioned lawsuit as a recused member of the Bolton Planning Board. Counsel said that John Gaddy is a citizen or as is characterized in the Article 78 an aggrieved party, but it does not impair his ability to serve on the BPB. Counsel said that he was asked a question about a month ago by Rolf Ronning, who is the respondent/defendant in that lawsuit, characterized John Gaddy's status as a petitioner/plaintiff in that Article 78 that it was a violation of the Town of Bolton ethics code, but it is not, as the Town of Bolton has a specific section dealing with that, so there is nothing as a matter of law, inappropriate as to what John Gaddy wishes to do as a petitioner/plaintiff for the Article 78. Counsel said that if John Gaddy continued to serve on the BPB, and was asked again by Rolf Ronning to recuse himself on an unrelated subdivision, but it is not a blanket requirement for recusal, which is not necessarily so, in that if John

Gaddy can be fair and partial in other proceedings also proposed by Rolf Ronning he can still remain as a BPB member for those other items. Counsel said that John Gaddy assured him he could remain impartial on clearly different issues, so it is acceptable, as it would be for anybody, not just John Gaddy. Discussion on reasons for board member recusals were discussed briefly with examples given. Ron Conover said that regarding stormwater, variances are being granted before final planning approval is even being stamped, then tonight there was discussion of two drainage basins becoming one, so it seems to him that this is not all working maybe and his concern is segmenting the process. Counsel said that the process and procedure allows them to go back, take a look at it and variances are necessary. Further discussion ensued.

Discuss amendment to Zoning Code 200-8 revised definition of arcel of property to clarify Bolton usage and custom that a road dividing property does not create subdivided parcel

Supervisor Gabriels read the following amendment to Zoning Code 200-8 revising the definition of arcel of property as proposed by Counsel into the record.

Proposed definition: Parcel of property any real property in the latest adopted tax roll as a unit. Parcels separated by a public highway and owned by the same owner shall be deemed the same parcel of property. The division of any tax map parcel shown on the county tax roll as a unit by a public highway does not constitute a subdivision of a tax map parcel.

Deanne Rehm asked if it is in reference to deeds. Counsel said it does not and what they have are situations where there is a tax map parcel that may have been described unusually, but if today it consists of one tax map parcel and it is somehow divided by the town highway, that which is to the left and to the right, the issue was isn that a natural subdivision and the answer has come back no. Counsel said two deeds would make it two parcels and it does not adjoin contiguous parcels, it just manifests a clear understanding that a parcel that is a tax map unit that is cut in any way by a highway does not constitute a natural subdivision.

#### RESOLUTION #150

Councilman Saris moved, seconded by Councilman Maranville to schedule a public hearing on the proposed revised definition of arcel of property in Bolton Zoning Code 200-8 for the Sept. 4, 2007 TB meeting at 7:00pm. All favorable. Motion passed.

Authorize return to Robert Wubbenhorst \$280 for engineering services incorrectly billed to his project. Per Tom Nace memo of June 1, 2007. Also note an additional \$280 recently billed is not applicable to Robert Wubbenhorst

#### RESOLUTION #151

Councilman Maranville moved, seconded by Councilman Saris to authorize the return of \$280 to Robert Wubbenhorst for engineering services incorrectly billed to his project. All favorable. Motion carried.

Authorize return to Curtis Dybas \$65.00 for withdrawn variance application per Pam Kenyon

#### RESOLUTION #152

Councilman Andersen moved, seconded by Councilman Maranville to authorize the return of \$65.00 to Curtis Dybas for a withdrawn variance application per Zoning Administrator Pam Kenyon. All favorable. Motion carried.

Authorize return of \$60.00 to K. Winterall for refund for day camp deposit did not arrive

RESOLUTION #153

Councilman Saris moved, seconded by Councilman Andersen to authorize the return of \$60.00 to K. Winterall for a refund of day camp deposit. All favorable. Motion carried.

Noise permit Andrew Keller Bixby Estate Saturday, September 8, 2007 from 7:00pm to 12midnight 5 musician band wedding land neighbors notified

Councilman Andersen said that the TB has historically granted noise permits to 11:00pm.

RESOLUTION #154

Councilman Andersen moved, seconded by Councilman MacEwan to grant the noise permit to Andrew Keller for Bixby Estate on Saturday, September 8, 2007 from 7:00pm to 11:00pm. All favorable. Motion carried.

Authorize Steve Breault request to be paid for three (3) weeks vacation time he will not be able to use. He has 250 hours before request and will have 130 hours after

RESOLUTION #155

Councilman Saris moved, seconded by Councilman Maranville to authorize Steve Breault request to be paid for three (3) weeks vacation time he will not be able to use. All favorable. Motion carried.

Rosamund Clarke area and septic variances required lawsuit authorized in June, however, proceed under alternative remedy per Atty. Muller recommendation

Counsel said that these are very cooperative people who have met with him, Zoning Administrator P. Kenyon and Code Enforcement Officer M. Nittmann and the person they thought was not being cooperative is actually deceased. He said that the family members agreed to do what they needed to do, in that they will need to come before the TB as the local BOH for an unconventional septic issue.

RESOLUTION #156

Councilman Andersen moved, seconded by Councilman MacEwan to authorize Town Counsel Atty. Mike Muller to cease action in the lawsuit authorized in June 2007 against Rosamund Clarke for area and septic variances required and to proceed with alternative remedy. All favorable. Motion carried.

Authorize new road name Lorenzo Lane off east side of Alderbrook Road approximately 1,500 feet from New Vermont Road

RESOLUTION #157

Councilman Saris moved, seconded by Councilman Andersen to authorize new road name Lorenzo Lane, off of the east side of Alderbrook Road approximately 1,500 feet from New Vermont Road. All favorable. Motion carried.

Consider request of Theresa Kennedy, 20 Goodman Avenue, to use Town Hall parking lot for delivery of modular home to property in mid-October

Councilman Maranville said that he would like to see something in writing regarding any potential damage in the process and this is a one-way thoroughfare so it will be blocking traffic for people coming in and out. Councilman Andersen said that he doesn't have a problem with it, but his fear is that sometimes it goes with contractors where there may be a house in the middle of a parking lot for three weeks. Supervisor Gabriels agreed. Item tabled pending presentation by Theresa Kennedy to the TB at the Sept 4, 2007 TB meeting.

Consider for adoption as Town of Bolton policy 08/03/07 proposed policies for new fleet vehicle

Counsel said that at a minimum, the operator be required to have a NYS driver license and has no restrictions. Councilman Maranville asked about random drug and alcohol testing and Counsel said that is the TB option. Councilman Maranville suggested annual license checks for violation and Counsel said that can be done as well. Supervisor Gabriels said that it is a working policy that is still a draft, but it is a working policy. Item is pending text revision.

Gov. Spitzer Smart Growth Initiative should Bolton consider grant application what project? UDAG Sagamore if receipt of funds - how to invest for benefit of Bolton establish a citizens committee for thoughts?

Supervisor Gabriels gave an overview of Gov. Spitzer Smart Growth Initiative to provide \$1million for the North Country inside the blue line and applications will need to be filed in the near future. TB members agreed the Town of Bolton should apply for the grant, with projects to be determined.

Supervisor Gabriels said that it has been reported in the local press that the Sagamore is contemplated being sold which opens up the possibility that the Town of Bolton stands a very good chance of receiving the \$4million that was in the 1989 memorandum of understanding between the Town of Bolton and the Wolgins during that renegotiation. He said that if that money comes through, the TB needs to go figure out if there are any restrictions or limitations on it; based on historical expenditures, when the Town of Bolton got the first \$1million, they spent it on sidewalks, sweepers, roads and a variety of other matters. He said that these funds could be very productively used for the future of the Town of Bolton and the TB needs to make sure to spend it wisely, so he welcomes thoughts from TB members on how to make sure the whole community is on board to spend this significant sum of money. Supervisor Gabriels suggested a citizens committee. Item is pending.

Discuss new sidewalks from Sagamore Road north to U. S. Post Office Buddy Foy requests

TB members agreed they are willing to look into the matter. Item is pending.

Crosswalk across Route 9N from the ball-field to the post office request submitted by NYSDOT - Reed Sholtes Thursday, July 12, 2007 at 9:30am inspection performed 07/31/07

Supervisor Gabriels said that the inspection was done and the Town of Bolton is waiting to hear back from NYSDOT. There was no further discussion on this matter and no resolution was needed. Item is pending.

Comments of Public in Attendance: None

TRANSFERS FOR AUGUST 2007

FROM	TO	Amount
Contingency 19904	Police 31204	1,000.00
Conservation Park 71504	Conservation Park 71502	400.00
Water District Administration 83102	Administration 83104	1,000.00
Sewer District Administration 81102	Administration 81104	1,000.00
General Fund	\$20,000.00 for July	
General Fund	\$40,000.00 for August	

RESOLUTION #158

Councilman Saris moved, seconded by Councilman MacEwan to approve the August 2007 transfers as presented. All favorable. Motion carried.

RESOLUTION #159

Councilman Maranville moved, seconded by Councilman Saris to pay the Town bills. All favorable. Motion carried.

Councilman Maranville moved, seconded by Councilman Saris, to adjourn the regular meeting and enter executive session at 10:48 pm to discuss possible litigation and a personnel issue. All favorable. Motion carried.

Councilman Maranville moved, seconded by Councilman Saris to adjourn the executive session and reconvene the regular meeting and adjourn at 11:15 pm. All favorable. Motion carried.

Minutes transcribed by: Respectfully submitted by:

Jennifer Torebka Kathleen Simmes

Recording Secretary Town Clerk

08/14/2007