

TOWN OF BOLTON

Town Board Meeting

December 30, 2008- Minutes

PRESENT: Supervisor Kathleen Simmes, Councilmen Robert MacEwan, Jason Saris, Owen Maranville, Councilmember Deanne Rehm, Town Counsel Michael Muller and Town Clerk Patricia Steele and Pam Kenyon, Zoning Administrator

Meeting Called to order 9:07am.

- ▶ Brozyna- 11 Beach Avenue, in the South Beach Association (Tax Map #200.14-1-12). TB needs to decide if construction constitutes Renovation or New Construction. The newly re-constructed camp will be seasonal only, mid-April through mid-October and will have the same functional floor plan as the original. This layout includes a small kitchen, sink, no dishwasher, one bath with sink, toilet and shower unit, and three small bedrooms. Mr. Brozyna's intention is to provide a holding tank system rather than a conventional engineered system.

Supervisor Simmes stated that Mr. Brozyna wants to tear down the existing structure and put another one up in the exactly the same spot. The structure will be increasing in size from 710 sq. ft to 748 sq. ft. She stated that they would need to determine whether or not it is considered a renovation or new construction. Supervisor Simmes stated that they have seen something like this before on the Metzger property. She stated in that case they determined that it was a renovation rather than a new home construction.

Councilman Saris stated that in the past they did not consider it new construction, but replacement construction. He stated that calling this situation a renovation is a bit of a stretch but he feels that it would fit under the term replacement construction, which means that it is more efficient to replace a structure as opposed to renovate one. He stated that they do not want to take away anyone's right to rebuild, repair or improve their home.

With regard to the holding tank system, Councilman Saris stated that he thinks the whole purpose of the DOH regulation, granting an exception for holding tanks in pre-existing properties is to not drive people out of their homes and he feels that this too would qualify in the spirit of their regulations.

Tim Gallagher, Architect for the project stated that currently there is a septic system in place on the property but it is very old and has not been pumped out in approximately 50 years. He stated that it is probably operating well below any kind of efficiency standards. He stated that the applicant's intent is to replace the camp and to install a holding system that will still be engineered and alarmed and pumped out several times a season. He stated that the holding tank would be more environmentally sensitive than the current system. The applicant has indicated that two other camps in this area have put in holding tanks because of the high water table, which makes it difficult to engineer a septic system that will work properly. Pam Kenyon agreed.

Councilmember Rehm stated that since they are not looking at the system itself the Zoning Office would need to permit and check for proper safeguards. Counsel asked if the TB was meeting as the local BOH. Pam Kenyon replied that the TB is to decide whether or not the applicant will need a septic variance based on their decision on whether or not this is new construction or replacement construction. Counsel stated that clearly the replacement house is logically and lawfully the type of construction that would permit the holding tank. The holding tank normally would be an alternative system and procedurally those decisions are made at the local BOH level. Counsel stated that if the TB determines this to be a replacement house and not require anything further then the applicant

would need to get a certificate of compliance and since they are putting a holding tank there they will be back just for permission to put the alternative unconventional system in. He stated that all the safeguards would be required for the holding tank as outlined in Schedule 75A.

RESOLUTION #240

Councilman Saris moved, seconded by Councilman MacEwan determined that the Brozyna property, 11 Beach Avenue (Tax Map #200.14-1-12) be considered replacement construction that meets all of the criteria of an existing dwelling. All in Favor. Motion Carried.

Consideration of the Town of Bolton accepting Saddlebrook Road and the 65 acres that goes along with the road.

Dennis Dickinson gave details of the subdivision and plan. He stated that it is a 23-lot subdivision. The road is a little over 6,000' and has a large loop at the end instead of a cul-de-sac, which is easier to get around with a plow. He indicated the six stormwater facilities that go along with the road. He stated that the road meets all Town requirements including centerline grade and the maximum grade is 10%. He indicated the fire pond on the map stating that it is excavated into the ground water table so that there is water year round. They have also set up dry hydrants to be able to get the water. Councilmember Rehm asked if the wetlands were part of the 65 acres. Dennis Dickinson replied that the 65 acres is made up of that corridor and the road right-of-way. Supervisor Simmes asked if all of the property around the stormwater ponds was included in the common area. Dennis Dickinson replied that some are right next to the road while others have easements around them for access. Supervisor Simmes asked who would be responsible for those ponds that are not in the common area. Dennis Dickinson replied that the stormwater is an adjunct to the road and whoever accepts it would be responsible for it.

Councilman MacEwan asked what maintenance would be necessary. Dennis Dickinson replied that the ponds are temporary holding devices for run-off and siltation. Sand, salt, antifreeze or other contaminants can be caught before entering the basins. Once the road cuts and fills have re-vegetated and there won't be siltation migration the maintenance will be minimal. The only siltation that would now be occurring would be from the sanding of the road in the winter. Most of the ponds have fore-bays or holding areas prior to the actual basin, whose primary goal is to isolate the siltation in that area. He stated that these are adjacent to the highway. Depending upon the winter season annually or every few years there may be some manual work to shovel out some accumulated sand. Dennis Dickinson stated that every few years there might be a large enough accumulation that they may have to use a hauling truck to remove the sand from the fore-bays. He stated that the only maintenance on the rest of the area is routine highway maintenance, such as checking all the culverts for debris.

Councilman Saris stated that it was suggested at their last meeting that one of the ponds was a wet pond and was to have wetlands growing in it which would also require maintenance. Dennis Dickinson replied that some of the ponds are wet ponds. However, once the wetland is established there will be no maintenance. He stated that the only maintenance would be if they did not take care of the fore-bays and it filled up with silt. Councilman Saris asked if he would anticipate the plant life in the wetland area needing any maintenance. Dennis Dickinson replied no. He stated again that the primary maintenance would be cleaning out the siltation in the fore-bays and if that is done on a regular basis then maintenance would be minimum.

Councilmember Rehm asked if the road would be constructed in phases. Dennis Dickinson replied that the road is to be done by a single contractor and will hopefully be continuous for 5 phases of the road. He stated that they have to be careful with stormwater because when under construction the DEC limits to what can be disturbed to prevent potential erosion in a large storm. He stated that DEC requires that they have 75% growth coverage before moving on to the next phase. He stated that they would seed and use enviro-mats to aid in the re-vegetation to prevent the soil from migrating.

Rolf Ronning stated that one of the issues that seems to be a concern is the culvert that is directed toward Indian Brook near the Somma property. He stated that a lot of people have been concerned about this for a few years now and asked for Dennis Dickinson to explain the reasoning for the culvert and why it cannot be moved from there if they comply with all of the rules and regulations that they are forced to comply with.

Supervisor Simmes asked where the 2005 stormwater came from. Dennis Dickinson replied everywhere from the Indian Brook watershed from their house upstream. Supervisor Simmes asked if it involved any culverts. Dennis Dickinson replied no. He indicated on the map where this culvert would be located. He explained that it is a large basin and it is one of the infiltration basins that will not have water in it all of the time. Dennis Dickinson stated that the basin is on the north side of the road and it needs to discharge on the south side of the road so a culvert has been put in under the road. He stated that there are drainage patterns there already that will then lead the water into the brook. Dennis Dickinson stated that they are required not to discharge any more water after development than there was prior to construction. He stated that these ponds will hold the water and allow them to discharge the water at a slower rate over a longer period of time. He stated that they use different computer models to the plan for different vegetation, slopes, soils, rainstorms and sequences. He stated that they have a stormwater plan and that they have labored over this plan for years and Tom Nace has reviewed it and has granted his approval because they have met the requirements. Dennis Dickinson stated that the culvert in question meets the regulations because it will discharge the same or less water during every storm occurrence after they are done developing.

Councilman Saris stated that although it will discharge the same or less water the concern is that it is now concentrated in one spot. He stated that he can understand the Somma's concern and wonders if that culvert could be placed farther down the brook closer to the road. Dennis Dickinson stated that this pond and culvert will not be servicing all of the stormwater for the entire property. He indicated on the map the portion, stating that approximately 20% of entire area would be utilizing this basin and infiltrating into the ground. He explained that they will only be dealing with a small percentage of discharge when the storm frequency is high enough to fill the basin to discharge into this culvert. He stated that given all of these things put together less water will be discharge from this area than is right now. Supervisor Simmes asked if the Sommas will get less water discharged than in the 2005 storm once the pond and culvert is in place. Dennis Dickinson replied absolutely. Supervisor Simmes asked if Tom Nace and Chris Navitsky agree with that. Tom Nace replied yes for a 100-year storm, but the 2005 storm was over a 100 year storm. Dennis Dickinson replied that it would be less for a 500-year storm but they did not run those numbers. Councilman MacEwan stated that in the 2005 storm there was no stormwater management. Dennis Dickinson stated that it will have to be less water as they have 5 ponds to assist that process. He stated that these 5 ponds will collect the water and slow down the discharge process. He stated that it will do nothing but improve the Sommas' situation.

Ann Marie Somma stated that she is not as concerned about the storm of 2005. She stated that flow of water surpassed the brook bed because the flow was so strong that it brought the boulders down the mountain. She stated that the boulders built up and blocked the streambed and it had nowhere to go and started backing up and filtered around her house. She stated that she would be concerned about it in another big storm but that is not her concern related to this specific project. Ann Marie Somma stated that currently the stormwater filters into the stream and for the most part stays in the streambed. However now it will be directed through a pipe onto her property. Although Dennis Dickinson states that they meet all the requirements for stormwater, she strongly disagrees and has done so at each level. She feels that this was incorrectly approved and if the Town is considering acceptance they will need to look at it again. Ann Marie Somma stated that the Zoning code clearly states that projects have to follow DEC guidelines for erosion and sediment control. She stated that figure 5.12b in those guidelines clearly states that for 330 gallons of water/second which is what is to come out of that pipe in a 100 year storm, a rip rap apron of approximately 20' x 23' is needed to prevent erosion. She stated that they do not have that because the culvert stops 4' from her property line and that is why they have been listed in the HOA document to allow them easement to maintain that rip rap apron if they needed to. Ann Marie Somma stated that in order for them to meet the code and DEC guidelines they have to be on our property and she does not believe that is right and does not believe that the PB should have approved this project.

Ann Marie Somma stated that currently there is a 12" culvert there and they are replacing it with a 30" culvert and asked how that will discharge less water than there is now. She stated that maybe that is for the entire 65 acres but she does not believe that has been analyzed in relation to her property line. She stated that they raised this issue

before and were told that it was not analyzed at specific points but rather for the project as a whole. She stated that she is a taxpayer in the community and feels that they have not tried to stand in the way of Rolf Ronning, she just wants her rights protected. She stated that 330 gallons of water/second is a lot and Tom Nace has commented that "it is a significant amount of water". She stated that she is not against the pond or having it drain somewhere, but Rolf Ronning does not own enough property to have it drain on his own land. However, if it could follow the road and go under the driveway she would not necessarily have an issue with that. She stated that she is not against the development or stormwater controls but she feels that her rights as a homeowner need to be protected by this Town. She stated that she does not feel like they were and now they have an opportunity to look at this again and she hopes they will. She stated that they have had to spend money on an attorney to protect their property rights and she does not feel that they should have to do that.

Ann Marie Somma stated that it would not be the Town's right to maintain the stormwater basins, but rather their obligation to maintain those appropriately. She stated that it is being made out that it is not a big deal to maintain the basins, but she feels that it is a big deal to make sure that the stormwater systems work properly. She stated that she understands the Town may be considering taking over roads in the Town, but she feels that this is not an easy project to start with because there are people's property that could be damaged if this does not work. She stated that if the Town is considering doing this maybe they could start with a better project that would have less effect on the surrounding properties.

Dennis Dickinson stated that currently there is a 12" culvert and the neighbors have readily admitted that it is not big enough because the road has flooded on more than one occasion. He stated that the 30" pipe can discharge the 330 gallons/second but in all likelihood it never will in their lifetime. He stated that he has done stormwater management plan for 25 years. He stated that he designed the stormwater plan for Wrights Farm and since installation they have had several large storms. He has gone there to check the stormwater facilities and he does not get anywhere near the volume of water calculated in those basins. His experience over the 25 years is that the numbers calculated is extremely high in comparison to what it actually is. Dennis Dickinson stated that he is taking the 60-70' culvert under the beginning of a major road that will be servicing 23 lots. He stated that his thought was to make it as big as he can so that they will not have any problems. He would not want the pond to fill with water and start to discharge through the pipe and then be sorry that he did not install a bigger pipe. He stated that the volume of water will be less. Dennis Dickinson stated that the culvert according to DEC standards requires a certain amount of riprap based on the volume of water discharge. He stated that these standards tell you the approximate size that the riprap should be and the size of the stone that they will need. He stated that they have designed on their property a dissipation path according to the DEC standards for this size culvert which has been reviewed and approved by Tom Nace. He stated that it is not on the Somma's property but they have the right as upland owners to discharge to existing drainage patterns and that is what they are doing. He stated that they have met everyone's requirements including the Sommas. Dennis Dickinson stated that the pipe comes in at an angle from their property line and is not directed toward their property and he has the room to do the dissipation pattern along the property line.

Councilman MacEwan asked if Tom Nace agrees with what Dennis Dickinson has stated. Tom Nace replied that he has reviewed this and it does have a DEC compliant apron and he believes that it is all on the applicant's property, but he does not remember all of the details of that. Councilman MacEwan asked if he agreed with Dennis Dickinson's presentation on how the stormwater system will work. Tom Nace replied basically yes. He stated that the one point that he feels is necessary to bring up is with regard to maintenance. He stated that there will probably be yearly maintenance for most of the basin areas. This will include brush hogging to keep the brush from taking over the area. The fore-bays will need maintenance depending on the season but probably need digging out every 5 years and some of the steeper areas might require every year or two. He stated that the wetlands within the basins probably will not need any real maintenance.

Chris Navitsky, Lake George Waterkeeper stated that they have no opinion with regard to the Town taking over the road but they do have concerns about the maintenance. He stated that they have had a lot of time and investment in this project and they have reached an agreement with Rolf Ronning to attempt to protect Indian Brook the best they could. He stated that this agreement included 1) a 100' no cut buffer along Indian Brook to help protect the water quality 2) no salt would be used on the subdivision road, however part of their agreement stated that if the Town took over this would no longer apply. He stated that they were hoping that this subdivision could be held up to a

higher standard and shown that development could be done in a better way and they feel that they may be losing these conditions if the Town were to take it over.

With regard to maintenance, Chris Navitsky stated that there is maintenance for the wetland areas. He stated that after 3-5 years they become overgrown and they will have to go in and trim back the plants because there will be a tendency to export nutrients once the wetland plants have grown. He stated that there will also be some upfront work to make sure that these ponds get established and he is not sure whether that will fall on the developer to set it up or the Town to do. He stated that these will require maintenance and he is not sure whether or not the Town will be able to handle the workload.

With regard to the culvert, Chris Navitsky stated that they refer back to the 12" culvert, the pre-existing flows do not run those acreages through a 12" culvert and that is the main flaw that they found with the stormwater management report. He stated that they used a 2" x 6" swale and they didn't apply this culvert. He feels that this is something that needed to be done and thinks a lot of times this stuff get lost in the whole project.

With regard to the tributary area down to the pond, Chris Navitsky stated that they also have a pond above it which is not an infiltration pond that drains down to the end pond as well. He feels that at this point tributary to the Somma property there will be more water after construction because the pipe was not included in the calculations.

Councilman MacEwan asked Chris Navitsky if Rolf Ronning did not need the Town to take it over would he be in agreement with the project. Chris Navitsky replied that they signed an agreement because they disagreed with the original plan. They have now included improvements to the plan but it still came down to this culvert. They tried to work with the Town to improve the process but the Town was not willing to sign the agreement because they were not part of the agreement so they tried to get the best possible measures to protect Indian Brook in that agreement. They did not go back to the culvert and felt that if they could get the conditions met in the agreement it would go a long way. He also stated that if they agreed to weekly inspections it would also go a long way. He stated that they felt that these measures will provide some insurance for water quality protection besides going the route of litigation. Chris Navitsky stated that some feel that this is blackmail but the Lake George Waterkeeper feels that if these measures could be included this subdivision could be used as a standard for future development in the Town of Bolton.

Dennis Dickinson stated running the risk of being sued may not be blackmail but certainly changes your outlook on things that you would like or need to do. He stated that Rolf Ronning has had extreme patience. With regard to the comment that they need to hold this project to a higher standard, Chris Navitsky has already made the project comply to a higher standard. The Waterkeeper has requested, required and badgered Rolf Ronning into making concession that are on no legal documents. He stated that this subdivision is held to higher standards than Bolton and Rolf Ronning has agreed to it. He stated that he is in agreement with the LG Waterkeeper that the Town should not salt the roads, but until they can come up with a better solution they will need to continue to salt the roads for safety. Rolf Ronning has agreed not to salt the roads but there are grades of 10% or more in some areas and if the Town takes it over they should be salting the roads to prevent any accidents. To reach a higher standard they have put in the 100' buffer zone along Indian Brook which really didn't affect the subdivision except in a few isolated areas that had the best building sites. He stated that they have had to move those homes from the best building sites to accommodate the buffer zone. With regard to the culvert issue raised by the LG Waterkeeper, Dennis Dickinson stated that he has engineered a system to collect all of the water, run it down the side of the road and treat it.

Dennis Dickinson stated that as an engineer and past fiscal officer in WC towns that took over roads there are 2 issues here: 1) Higher assessed value of homes. He stated that maintenance of the road takes manpower and money. However, in assessing property, homes or building lots that are on Town roads have a significantly higher assessed value than that same building lot on a private road. He stated that if they look at the other subdivision roads in Town they are improperly built and maintained and most are not even paved. Even more bothersome is that school buses do not go down most of these roads because they are a mess and the kids have to go to a Town road to be picked up. He stated that if they build the road to Town standards so that the Town can take them over and a school bus, ambulance or fire truck could safely service all of these people. 2) The Donovan Plan- which was a highway plan where the local taxes collected and sent to the County, State and Federal government they would have an opportunity to get some of that back. He stated that this Donovan Plan used to be used and he was not sure if it

was still in existence but knows that there still is something if the Town does not start taking these roads over they will not qualify to take better care of the roads.

Supervisor Simmes stated that they have a CHIPS program for road improvement and they spend that money every year. She stated that this year they received \$93,000 for work that was done on the East Schroon River Road. She stated that it is based on improvements and not maintenance. Dennis Dickinson stated that the more roads they have the more money they will get back and will offset the maintenance cost that they are talking about. Supervisor Simmes stated that she would be skeptical that they would even receive that kind of money next year with the way the State budget goes. Dennis Dickinson stated that they would get their money back. Supervisor Simmes disagreed and stated that the State sets the amount of money that they will receive. Dennis Dickinson stated that the taxes alone in the increased value of the lots and in their service to the community to provide their people a higher living standard by maintaining these roads. He stated that he feels that this is not just a request for Rolf Ronning but he feels that the Town should start to consider taking over roads for future subdivisions because they need to improve the quality of the subdivision roads and stormwater.

Councilmember Rehm stated that in the conditions of approval for the subdivision it makes reference to the stormwater maintenance agreement but for Indian Summit and Bell Point Shores the PB required semi-annual inspections and a report to be filed to the Town and asked if that same condition was placed on Saddlebrook. Dennis Dickinson replied yes and it is twice a year. Councilmember Rehm asked if now the Town would inherit that responsibility. Dennis Dickinson replied yes. He stated that he does the inspections twice a year for Indian Summit, usually before fall and then again in spring. Councilmember Rehm asked what kind of fee would be associated with that. Dennis Dickinson replied that he gets approximately \$350 for the inspection and he includes a letter of any findings. He stated that with Indian Summit for the past 3 inspections he has not recommended any remedial action. Councilmember Rehm stated that this would be something that they would ask Tom Nace to do. Dennis Dickinson agreed and stated that it is rather simple inspection because the facilities are along the road and he may not even need to get out of the car. Councilmember Rehm stated that there is one that is on private property which would require him to walk to the facility for inspection. Dennis Dickinson agreed and stated that they moved that pond off the road because there is an intermittent stream that the LG Waterkeeper was concerned with. It has some areas of significant biological activity so they added it on as a stream discharging into a Class A stream and put it on their official map and required them to move it further off the road.

Tim Coon, Highway Superintendent, stated that when he first spoke to Rolf Ronning he did not know about the wetlands or retention ponds. He thought there were only catch basins and sediment traps which can be cleaned with the State catch-vac for free in the spring. He was not made aware of all of the ponds and facilities. In principal he stated that he would probably be for taking over the road but the biggest problem that he has is taking a road over that only exists on paper. He stated he has been with the Highway Dept for 36 years and in the last 21 years the fact that New Vermont Road has flooded out 3 times. He stated that the National Weather Service declared the 2005 storm a 500 year storm, with 15" of rain in 3 hours and then again 3" of rain in about 1.5 hours. He stated that he really needs to see the road and how it is done. He stated that it is not his decision to make and he is not against it but his problem is that it doesn't exist currently which makes it difficult to see how it will work. He stated that currently he has 2 huge retention ponds now that are 2 years behind because they got behind on doing road projects. He stated both Artist Falls and Woodshire which are full and are week long projects that have to be done and they have not gotten to them. He stated that when they fill up and need to be maintained it can put them behind schedule because he is short staffed as it is. He stated that he has roads that he cannot even take care of now because of time and money. Tim Coon stated that he would prefer to see the road before committing to it and he would really like to sit down and talk with the TB because they really haven't been able to talk about it. He stated that he has been extremely busy given the season already and has not had the most time to even review these plans more in depth.

Councilman Saris stated that they have heard from 3 engineers with differing opinions about what might be required for maintenance of the road and stormwater facilities. He stated that he knows that Tim Coon is familiar with this type of maintenance but asked if he would be prepared to handle the worst case scenario of the maintenance described by the engineers. Tim Coon stated that he does not own a brush hog, he only has a mower with a boom oar on it. He stated that Artist Falls was supposed to have been something that would last 5-10 years before they had to do anything to it but they can't get much past 1-2 years of maintaining it. He stated that one year they were unable to do it so WC Soil and Water got a grant to have Ellsworth go in with an excavator which took about 4-5

days. He stated that when Woodshire was built the engineer stated that it would be very little maintenance but again they are needing to do that every 2 years.

Councilman Maranville asked when the last time the Town took a road over. Tim Coon replied when his father was in office, he believes it was Hendricks Road but that road was finished. Councilman Maranville asked if most roads are adopted by municipalities after the roads are built. Tim Coon replied that since he has worked there, the Town took over Indian Brook and Hendricks Road both of which were already built. Councilman Maranville stated that his opinion matters on this and they will consider it.

Dennis Dickinson stated that he is not familiar with Artist Falls stormwater issues but he knows first hand about the property because he surveyed that property. He stated that if the Town decides to take over the road the developer is going to build the road with a contractor. In other Towns and municipalities the Highway Superintendents are notified and has every opportunity to inspect the project during construction and his input is wanted and asked for. He stated that once the road is complete it will be inspected by Tim Coon and Tom Nace to insure that it is built according to the plans and done in a workmanlike manner and if there are any issues they can have it repaired and installed properly before the Town is recommended to take it over. He stated that Tim Coon will be the ultimate guardian over the road and will have tremendous input to the project every step of the way.

Pam Kenyon asked if Dennis Dickinson could explain the requirement of the bi-annual inspection. Dennis Dickinson replied that the requirement for the bi-annual inspection is in that agreement that the developer signs with the Town, which requires that it is inspected twice a year by a licensed architect or engineer who will submit a report in writing about their findings. Herb Koster stated that he thought the requirement was by DEC and not by the Town. Dennis Dickinson stated that it probably is, but either way it is a legal requirement. Rolf Ronning stated that it was his understanding that the Town maintenance agreement would only need to inspect the road every 5 years. Herb Koster stated that he thought it was a requirement of the DEC. Pam Kenyon stated that they have required it in the past but it was not included in this PB resolution.

Herb Koster stated that as Tim Coon stated he is busy enough and does not have time to do this. He stated that if the Town is going to consider taking over the road it should be inspected on a daily basis as it is being constructed. He stated that it has to be done in proper order with proper procedures followed. He stated that waiting to inspect it in the end would be too late to make the necessary repairs. Dennis Dickinson agreed. He stated that Tim Coon is welcome to be there every day or to provide information as to what he would like to see done. He stated that he has a contract as a professional engineer and land surveyor with Rolf Ronning and his lending institution to be responsible for the road and he will be there every day to make sure it is done properly. He stated that he is sure that Tom Nace will be there weekly to oversee the process as well.

Ann Marie Somma asked for Dennis Dickinson to show her on the approved plan that includes the DEC approved riprap for the 30" culvert. Dennis Dickinson replied that it is in the approved plan as well as in the stormwater plan which he did not have with him and he will get her a copy of it.

Rolf Ronning stated that he appreciates Herb Koster's concern of monitoring the road construction. He stated that other than Dennis Dickinson overseeing the road, he also has Bruce Fifield who will be constructing the road. He stated that Tim Coon is familiar with Bruce Fifield's work because he built the road at Wright's Farm and other roads in Town which have stood up very well. He stated that he would be cutting his own throat if he were to take any shortcuts and that road will be built to the exact specifications of the plan. He stated that is why there is a \$100,000 bond. He stated that Tom Nace will also be inspecting the road and as part of the agreement with the LG Waterkeeper, it states that the Waterkeeper may come up for inspections as well.

Bruce Fifield stated that they bid this job 24 different times to accommodate all of the changes over the 3 years that this was before the PB. He stated that the pond that everyone is concerned about has infiltrators in the ground which increases the volume of the pond but shrinks the water even more. He stated that he was the contractor for the Diamond Ridge Subdivision and that road was 5,600' long, with high hills and steep banks. He stated that the erosion of the land before the road was built was more than it is now because everything is in a controlled sense for stormwater. Although the stormwater system for Diamond Ridge is minute in comparison to this project it doesn't

even reach it full capacity like Dennis Dickinson has explained will be the case for Saddlebrook. Bruce Fifield stated that he flies airplanes and if you were to fly around Lake George after a heavy storm 90% of erosion is on the State and Town land where it is not maintained and not in these subdivisions. He stated that he worked for Kubricky for 14 years before he went out on his own and he has never seen such overkill on a single subdivision as what is in these plans. He stated that the plans for Saddlebrook are quadruple of what is normally required.

Rolf Ronning stated that he has asked Dave Rosebrook to speak because at the last meeting there was concern about the cost to the Town if they were to accept this road. He stated that the assessment and value that will be generated by the Town accepting the road will far offset the cost of maintenance. He stated that at last week's meeting he also offered some of the bond money to offset the short fall until the houses are built and balanced for the services provided.

Dave Rosebrook stated that he would speak in a general development sense and not specifically for this project. He stated that the market pays the most for properties with the most municipal services such as Town highways, water and sewer. He stated that the market bears the cost of the services it expects. He stated that he has just started his 13th year as the Town Assessor and one of the things that he hears most complained about is that owners state that they live in Bolton but they do not have any of the services. He stated specifically these are expensive properties sitting up on the mountainside and not located on Town highways and they are paying an inordinate amount of taxes. Most of these individuals do not even send their children to the school, they are not being serviced by a Town road and they are not using the landfill. He stated that when these individuals come in and complain, in a sense they are correct because their property which is sitting on a private road is not costing the Town as much in services but they are certainly paying the tax load.

Dave Rosebrook stated that their policy has been that as a result of properties where there is private development and the road is privately owned usually a HOA is formed and once the project is complete the developer turns the property over to a HOA and at that time that property although it has a tax map number, it no longer gets assessed because it is their policy and throughout Warren County and most of New York that the assessors pick up all of the value on the individual lots themselves. He stated in his experience the more municipal services a development has the more people are willing to pay for those properties.

Dave Rosebrook stated that over the last census period the Town of Bolton has grown by 262 people. In this 10-year period from 2000-2010 they will see an even greater increase in their population. He stated that the number of parcels has also grown significantly. He stated that they have been putting on the assessment roll as a result of development, on average about 15 million dollars/year in increased assessed value because of new homes. He stated that all of this extra money added on year after year has not been going out to provide services because they have been homes built in private developments. He asked what is the Town's philosophy here. He stated that he travels the road often and he is shocked that they have all of these million dollar properties on ten-cent infrastructures accessing them. He stated that he is not suggesting that the Town take over some of these exceedingly dangerous 15% grade properties but he does feel that maybe it is the time for the Town to consider its policy of taking over roads. He stated that he is suggesting it because right now all of the new subdivisions in the last 10 years have been turned over to HOAs, which are supposed to be real associations when in fact they only exist on paper. He stated that they have people that live here only seasonally and they are put in charge of maintaining these road systems which in his opinion is a disaster waiting to happen.

Councilman MacEwan stated that the Town would have to set a standard and developers would need to design a road to meet those standards. He stated that it would need to be inspected and approved before the Town would take it over. Dave Rosebrook agreed and stated that the Town should set a standard and the time to take over a road would be when they are new. He stated that if the road is built to this standard than it should be several years before any major work needs to be done. He continued that he would feel more comfortable with the Town taking over a subdivision road instead of it going into the hands of a HOA. Supervisor Simmes commented that the Town of Bolton only has one HOA that they have a problem with on a semi-annual basis.

Councilmember Rehm stated that the standard for assessment is market value. She stated that as the assessor, Dave Rosebrook would not give some sort of discount to someone that does not receive Town services. Dave Rosebrook agreed and stated that the standard is based solely on market value. However, it may dictate what buyers are willing

to pay for it. With regard to buyers looking at their costs involved in owning property in private developments, Councilmember Rehm stated that if the Town were to take it over they would just absorb all of their cost because their highway department will take over that cost and it just won't go away, they will pay for it in one check or another.

Councilmember Rehm stated that she has heard from some people who have bought in HOA developments that there is a downside and they have to be on top of maintenance but they perceive it as a privacy factor and they like that they can keep the public out of their development. Dave Rosebrook stated that all properties and developments are unique and it is often difficult to make comparisons and he was just speaking in a general sense regarding additional value because the market will pay more for as many of the municipal services it can get.

Supervisor Simmes asked Rolf Ronning why it took him until November to apply to the Attorney General's office for the HOA when it was approved and settled with the LG Waterkeeper in July. Rolf Ronning replied that the approvals came in July but by the time the mylar was signed and filed then they had to wait because the Article 78 proceeding was still looming over their heads for 90 days and the banks and lending institutions did not want him to proceed which brought them into the fall. He stated that his attorney Rob Simons has been preparing the HOA application but they have had to wait for the Article 78 timeframe to pass and then they had to incorporate the agreement with the Sommas and the LG Waterkeeper in the HOA application because the HOA would need notice that they would be obligated by that agreement. Rolf Ronning stated that it was submitted to the Attorney General's office and it has been held up there as well. Rob Simons stated that the HOA application was held up in waiting for the Saddlebrook agreement and the Article 78. He stated that as soon as he got the instruction to go ahead he did. Ann Marie Somma stated that the Article 78 period is only 30 days which would have been done by mid-August. Counsel agreed. Rob Simons stated that he was not blaming anyone in particular but there just has been continuous issues holding this up. He stated that they were also awaiting drawings depicting the setback area. Rolf Ronning stated that the final map was filed on August 29th and September 29th was the last day for the Article 78. Counsel stated that the 30 days starts to run from the date when they get written confirmation from Pam Kenyon that the PB took action.

Councilman MacEwan asked Rolf Ronning if he had financing to build the road. Rolf Ronning replied that those lots cannot be sold unless there is a HOA approved by the AG's office or the Town has committed to take the road over once it is completely done to Town standards. The lender will have security if the Town is to take it over that the lots will be sold. He also commented that the lender intends to have someone here during and after each phase to inspect the progress of the road. Councilman MacEwan stated that if he has someone that will lend the money to build the road and the HOA application is being worked on then why can't the lender give him the money and his attorney finish the HOA to be able to take it over. Rob Simons stated that the AG's office said no. He stated that if they are to go with a full operating plan, which he is not guaranteeing that they will get approved for that, it is going to take a lot more work. He stated that they did the short form because it is a fairly minimal per lot contribution. Councilman MacEwan stated that he feels that the short form is what probably shot them in the foot. Rob Simons stated that they have gotten approvals of short forms for properties that included an airport. He stated that if this were a level road, no one was threatening to sue and his financiers not declaring default then he thinks they would have been easily approved. He stated that he was told by 2 individuals at the AG's office that it would be better for them to pull the application rather than getting a letter of rejection. Councilman MacEwan stated that they should be looking at revising it. Rob Simons agreed and stated that if the Town says no they will look to do that but he does not feel that they will have a lot of success in terms of the current format and he doesn't know whether Rolf has the ability to go through setting up a full operating plan. Rolf Ronning stated that he cannot build the road until he has proof of security for the lender by way of a HOA or having the Town take it over.

With regard to the economy, Rolf Ronning stated that some people are concerned over whether or not these lots will sell. He stated that these lots will be of greater desire because they are on a Town road. This will improve the economic market in Bolton because there are people looking for lots on Town roads and there are people that want to build homes here. He stated that he has lived in this Town his whole life and doesn't think there be another 23 lot subdivision like this because there are very few pieces of land left due to topography, soils and zoning. Supervisor

Simmes stated that it was her understanding that there is a lot of property for sale in the Town of Bolton. Rolf Ronning replied that there is a lot of property for sale but not a lot of vacant lots on Town roads.

With regard to the delay of setting up the HOA, Terry Ronning stated that the AG's office is not looking at the engineering or the effects so much on the neighbor but rather the offering plan and financial situation were probably the red flags. Rob Simons agreed and stated that their concern was Rolf Ronning's financial capability to carry out obligations as the sponsor.

Rolf Ronning gave an overview of what he is requesting of the Town and the benefits and positive impact that it will have on the Town.

Supervisor Simmes stated that this is really a tough decision and she is sorry for the decision that she will probably make. She understands that he is having financial difficulty but she does not feel that it is the government's problem. She feels that she is not necessarily against taking over a road but taking over 65 acres of stormwater and knowing that the Highway Department cannot keep up with what they are doing now is not the type of road they should be looking at. She stated that they have a budget for just the Highway Department of \$1,825,000 and they have 5 roads, which people are complaining that need to be fixed. She stated that they couldn't keep up with what they have got and if they were to raise taxes, people would probably be happy if they could promise to have every one of those roads re-done. She stated that their work is never ending and to take on another road would not be good.

Councilman Saris agreed that the Town is under no obligation to bailout any business or developer in Town. However, he will note that the failure of any business in Town offers no advantages to the Town in any way. So it is in the Town's best interest that the businesses in Town are successful. With regard to HOAs, Councilman Saris stated that he feels that it wouldn't be a bad thing to not have them. He doesn't see much in the way of advantages to them because they have a few that are rather dysfunctional and even the ones that aren't dysfunctional really have very little benefit or attraction. Councilman Saris stated that he is not happy dealing with this issue given the time frame but sooner or later they will need to answer some of these questions. He stated that they have some important points from the Town's aspect to look at: 1) is the Town willing to change its long standing policy of not taking over roads, and 2) if so, the Town will have to come up with some criteria and standards when looking at future adoption of roads and 3) can they meet this responsibility of taking over roads.

Councilman Saris stated that he does think that they should consider it. He feels that there are times when HOA should be avoided and there are some roads that meet the Town's standards so why not. He stated that the only aspect of this road that gives him some concern is the stormwater devices that are on it. He stated that they have received 3 different opinions on how this will need to be maintained. He is pretty comfortable with the Highway Department's ability to do what is required as far as their skill set goes but he is not entirely comfortable with their ability to do what is required as far as time available goes and that would have to be something they would need to consider changing if they are to start taking on these types of responsibilities. He stated that just because they are not doing their job in getting the Highway Department more funding, equipment or manpower that doesn't mean that they shouldn't do what is right for the Town, it just means that they have more work to do on their own to make those things successful. He stated although he is not completely happy with the prospect of it, the Town is probably at a point in which they do need to consider these things and they need to get themselves up to speed to meet these challenges.

Councilman MacEwan stated that he sees more positives than negatives. This would positively affect the school, tax base and employment to some degree. He stated that the part that he likes best about it is that as it is being constructed, if it is not done right the Town will not take it over. Supervisor Simmes stated that she thought that they had to take it over now. Rolf Ronning stated that all he needs is the commitment of the Town to take it over if it is built to Town standards according to the plans that have been approved and filed.

Councilman Maranville stated that at the last meeting Rolf Ronning agreed that he would also take care of the Somma issue. Rolf Ronning stated that he agreed that if the Town Engineer or LG Waterkeeper could agree on something better that the Town will approve then he would do it. He stated that Dennis Dickinson has struggled

with this issue in dealing with all of the rules and regulations and the culvert was designed as best as they could. He stated that he cannot say that he will improve it because he doesn't feel that there is a better solution better than what they have designed.

Supervisor Simmes stated that the PB added the condition that he was to have \$100,000 bond and he is also proposing to leave \$25,000 with the Town once the road is complete, then it reduces the bond amount to \$75,000 and asked if he would increase it to \$125,000. Rob Simons stated that the bond goes away when the road is completed and then they would keep the \$25,000. He stated that the purpose of the bond is to repair anything that he did not do or did not do properly. Counsel stated that if the \$100,000 is used up to fix the road he asked where the \$25,000 will come from. Rolf Ronning stated that if they used the \$100,000 then he would have to commit to give them \$25,000 before they accepted the road. Counsel stated that the \$25,000 would have to be unconditional. Rolf Ronning agreed but it would be conditional that the Town accepts the road. Counsel stated that the road would come to the Town by fee title that comes after the Town Engineer finds it is in substantial compliance with the plans as approved. He stated that he will not be able to sell any of these lots until the road is a Town road. Rolf Ronning stated that the only one that he can convey would be Doug Wholey's property because he has deeded access.

Supervisor Simmes asked why this couldn't be done on his own in the spring with a HOA and funding. Counsel replied that Rolf Ronning has a loan commitment package that has a drop-dead date on it which is the end of this year. He stated that Rolf Ronning said that he has the financing that is committed but he needs to be able to say that he is ready to go. He stated that if the Town is to move forward with this today the PB will have to get its teeth into it because there are substantial changes within the structure of the subdivision approval and stormwater management approval and that needs to be revisited. He feels that it will also require public input, but that would be the call of the PB. Herb Koster stated that he feels it would open up the public hearing. Counsel agreed and stated that they also went through the long form SEQR and they will need to re-visit it to see if anything has changed.

Supervisor Simmes asked what the outcome could be at the PB level. Counsel replied that he envisions that the PB would be cooperative because they have been, but they could also reject this as being inappropriate for Bolton. Councilman Saris stated that it is the TB's job to determine whether or not to take over the road, but it will be up to the PB to decide if they wish to lift the restrictions. Counsel agreed that there is important work for the PB to do and he does not want the Town Board to walk into their jurisdiction.

Supervisor Simmes stated that if they take over this road they have other subdivisions out there that probably have legitimate roads that can be taken over and they would have the right to come forward and ask the same. Counsel agreed and stated that they have the right to do that now even without this request. Supervisor Simmes stated that they will be looking at increasing the size of the highway department and has no idea what size budget they would need just to be able to take care of all of this. She stated that she is concerned with those that are on fixed incomes and cannot deal with an increase to the budget for the Highway Department. Councilman MacEwan stated that these roads would have to meet some sort of standards. Supervisor Simmes stated that there are some roads out there already that meet these standards. She stated that Tim Coon has stated that Diamond Ridge has been built to Town standards and if it were to be paved he could come to the TB and request that they take it over. She stated that a brand new truck cost \$170,000 and they would need to buy a new truck as well as many other things as a result of it.

Councilman Saris stated that in zoning just because someone is granted a variance doesn't mean that they set a precedent that they would have to grant everyone that variance. He asked Counsel if they were to accept the road would it place any obligation to take over every road built to Town specs. Counsel replied as a matter of law it would not. He stated that issue will be raised but they will have standards that will have to be met and they will need to take each on a case-by-case basis. Supervisor Simmes asked where the criteria is for this road. Counsel replied that there is ample discussion of the road on record for the PB meetings. He stated that all of that was carefully considered and approved by the PB.

Bruce Fifield stated that he is the contractor that built the Diamond Ridge Road and that project was also built beyond Town specs. He stated that they are referring that this project meets Town specs but it goes beyond meeting Town specs. He stated that if they look at some of the work that has been done by the Town, County or State all of the slopes are steeper than anything on this plan. Supervisor Simmes asked if Diamond Ridge had retention ponds

and wetlands. Bruch Fified replied yes but less than Saddlebrook but the volume of water is similar and there has never been a washout there.

Councilmember Rehm stated that she has always been a student of history because history is how we are supposed to learn from past mistakes. She stated that in this instance she has to rely on the history of the last 40 years. She stated that Walter Lamb's TB took a couple of roads and decided it was a mistake and stopped accepting them. Frank Leonbruno's, Frank Dagles', Deanne Rehm's and Alexander Gabriels' TBs did not accept any roads. She stated that the Town of Bolton has flourished under all of those administrations without accepting any roads. This road and development has too many unknown factors that she would not want to put the Town in a position of being responsible for. She will rely on her predecessors to not take on roads until they in fact have a policy and then it would be set standards. From that point going forward every potential developer would be looking at the Town taking the road and the PB would review the SEQR process with the thought of the impact on the public facilities and Town services and the ability to provide them. She stated that is something for the future and she is going with tradition, not because it was tradition but because it is the right thing to do for their Town.

Zandy Gabriels stated that history does teach us a few things. However he cannot remember under which administration there was a subdivision built in the Town and the Town did not take over the road. The subdivision has come to the Town several times asking to have the Town take over their road and the Town Board did not. They also came to the Town looking for assistance in stormwater management and the Town did not do it directly, but it does represent some problems that Tim Coon alluded to earlier about Artist Falls. He stated Woodshire was formed without a HOA even though it was a requirement by State law. The developer promised to get it done and the Town relied on that promise and after 30 years it is still not there and it still causes occasional problems with the Town. He stated this part of history goes against what Councilmember Rehm just indicated about Town ownership of roads. With regard to "built to Town standards" he stated that lately over the past few years Tim Coon has been repairing roads and not only removing asphalt but also getting down into the sub-base and removing 4-6" of sub-base and replacing it with 12". The highway reconstruction is being attempted so that they get 20 years out of the roads and not the 10 or so years they are seeing now. He stated that Tim Coon is also in the process of improving stormwater on the roads because historically, our predecessors slipped up on that because they did not have the modern standards, technology, understanding, cars, trucks or mileage on all the roads in the Town of Bolton. He stated that the Town has seen growth and changed standards and this is the time to change the standard and take over the road.

Bill Bashant, real estate broker for McDonald Real Estate, stated that with regard to Diamond Ridge, there are only 2 homes up there, one of which is a spec house that is approximately 2 years old. He stated that he now has that house under contract and it will close by the end of January. He stated that it is selling for a minimum of \$200,000 less than if it were a Town road. If the Town were to consider accepting this road it will affect the assessment on this house and any other house there. He stated that he is not for or against Saddlebrook development but if it is a Town road the lots and homes going up on that property will go for considerable more than if it is owned by a HOA. He stated that most buyers are skeptical of HOAs.

Councilman Maranville stated that he is willing to have the Town make a commitment to this project with conditions. He stated that he agrees with Zandy Gabriels that the times are changing and feels that they need to move along with the times. Roads are expensive and nobody wants to take them over, but if they are built beyond the specs of the Town then he sees no problem in taking it over. Councilman Maranville asked Counsel what type of conditions should be placed on an approval so that it is a joint effort between the Town and PB. Rolf Ronning stated that one of the conditions would be that the PB would allow changes to the original approval to allow the Town to take the place of a HOA and take responsibility for the maintenance of the Town road once it is accepted. He stated another condition would be that once the road is completed and been approved and accepted by the Town

he would provide \$25,000 which could be taken from the bond or if that is used up, \$25,000 out of pocket. Councilman Maranville stated that these conditions will also need to be developed more because there may be more conditions. Rolf Ronning disagreed stating that the conditions are spelled out in the conditions of approval and all the PB would need to modify is that the Town will take the place of a HOA. Councilman Saris suggested that they include the condition of the positioning of the culvert that the Sommas are concerned with be re-visited. Herb Koster stated that history would show that they have exhausted that issue. He stated that the original plan for the applicant was to allow the overflow along the road and that was rejected by the Sommas so it was re-designed. Ann Marie Somma stated that was not entirely true. She stated that originally the plan didn't run along the road but rather at an angle to their garden and then into the brook. She stated that she met with Rolf Ronning and Dennis Dickinson and asked them to make it follow the road and underneath her driveway to enter the brook on the other side of her bridge. She stated that Rolf Ronning promised her that would be done but that he did not have enough time to change the drawings before the next meeting. The next meeting ended up being postponed and he had a whole additional month and came to the PB without making the changes on the drawings, so she fought it. She stated that she has always been in favor of the water following the road but the original plan did not do that and cut across her property. Herb Koster stated that he does not have the minutes from those meetings but that is not what he remembers. He stated that there has been a lot of controversy over this issue and it has been hashed out quite a bit by all parties over the years.

Counsel reviewed the proposed resolution that he drafted since the last meeting. Rob Simons stated that Doug Wholey's house, which will be linked to the Town road, could be closed on. He stated that if they could close on that lot it would get rid of a really difficult lender and Doug Wholey would agree to have a temporary easement until the road is completed past his house. Rolf Ronning stated that this would be the only lot that would sell until the Town takes over the road. Counsel stated that is understood because it is a pre-existing lot that was reconfigured into this subdivision.

Rolf Ronning asked for some further explanation of the wording for the \$25,000 that will be left or paid to the Town once the Town accepts the road. Counsel stated that he had to separate the two because the \$100,000 needs to stand alone and constitutes assurity which goes along with his personal guarantee that this will be completed. He stated that history would show that they have done this before and that money comes back to him with interest when Tom Nace signs off on the Certificate of Compliance. He stated that when that money is returned in full Rolf Ronning will then need to give the Town \$25,000.

Herb Koster asked what kind of guarantee will they have that the stormwater will work once they take over the road. Counsel replied that Rolf Ronning's promise may not be good enough or long enough but the policy of title insurance that will come with the warranty deed will back them forever. He stated that Bolton will own this road and stormwater. Herb Koster stated that they will also own the problems that will arise on that property. Counsel replied that there are no problems on it because the title company guarantees that they will defend Bolton should there be a claim.

Councilmember Rehm stated that at the previous meeting someone raised the issue of insurance coverage and Counsel made some comment that he was sure that they had coverage. Counsel stated that he is not certain that they have any coverage that is provided for contractual default. Some would argue that if they were to take on the obligation to maintain stormwater and they fail, they have breached the contract and they are not covered for contractual breaches. However, in that same type of lawsuit a smart attorney could argue that there was negligence but note that the negligence statute of limitations is often shorter than the contractual statute of limitations. He stated that they have a lot of insurance coverage for the municipality and they have an obligation to defend them and

they could reserve their rights as to whether or not to indemnify them. Councilmember Rehm stated that they could buy a rider for that as well. Counsel agreed that they probably could negotiate something. He stated that there was a claim during Zandy Gabriels term that a property owner claimed that a pond that had been affected by some Town activity in doing clearing which was not covered by existing policy. He stated that they defended it and got it resolved by settlement. Councilmember Rehm stated that it is in the draft of the new and possibly in the old zoning ordinance that the PB or TB would have the authority to extend the performance bond over a longer time period to be sure that it all functions as intended. Counsel agreed, but stated that in this situation it would be holding up these developers \$100,000 for a period greater than was previously discussed by the PB, which would be an important issue for the PB to discuss. Councilmember Rehm asked if the TB could include it in this resolution. Counsel replied that they could but that would usurp some jurisdiction of the PB in that regard because the regulation states that the PB shall deliberate and decide upon the requirements for the bond. Councilmember Rehm stated that given the circumstances that a couple of years grace period might be a nice insurance for the Town. Counsel stated that this bond would be a further guarantee of indemnity for a period after dedication and acceptance but he would be interested in getting the \$25,000 out so that they can see that it would be reduced to \$75,000. Councilmember Rehm stated that although she is opposed to this project as a whole she would offer up this condition to consider. Counsel stated that if that condition happens to be absent here it is still an issue that can be addressed at the PB level.

RESOLUTION #241

Councilman MacEwan moved, seconded by Councilman Maranville to approve the following:

WHEREAS Rolf O. Ronning (“Developer”) has proposed that the **Town of Bolton** (“Town”) consider taking title to a privately constructed subdivision road with a contiguous 65 ± acre parcel of land (including wetlands) coupled with the obligation to accept and maintain stormwater management devices in the Saddlebrook Subdivision (“Subdivision”), and

WHEREAS the Developer and the Town find it mutually advantageous to allow the subdivision road with contiguous lands and stormwater management devices to be owned and/or controlled by the Town upon specific terms, circumstances and understandings,

NOW AND THEREFORE, BE IT RESOLVED that:

1. The Developer shall at his own proper cost and expense prepare, install and provide a subdivision road in the Subdivision built according to exact specifications provided for in the Subdivision approval as specified by the Planning Board for the Town of Bolton and in accordance with construction drawings that have been relied upon by the Planning Board and approved by the town engineer, Thomas Nace. Construction of said Subdivision road shall be phased construction as specified by the Planning Board Subdivision approval.

2. Before the Town shall be obliged to accept the Subdivision road, the contiguous 65 ± acres parcel of land, and the stormwater management devices installed by the Developer in the Subdivision, said road and all stormwater management devices shall be complete. The determination of what constitutes a complete road and installation of required stormwater management devices shall be made by Thomas Nace as the engineer for the Town of Bolton. Such determination shall be in his sole discretion and upon a finding that the road and all required

stormwater management devices are in substantial compliance with the terms of Planning Board approval and in substantial conformity with the Stormwater and Erosion Control regulations of the Town of Bolton.

3. Upon the requirement of the Developer providing and posting a \$100,000.00 surety prior to commencing construction of the roadway and stormwater management devices as specified in prior Planning Board approval resolutions, it is understood that the sum of \$25,000.00 shall be retained by the Town constituting a fund which shall constitute a reimbursement to the Town for all anticipated expenses of road maintenance and stormwater management devices. The posting of the \$100,000.00 surety and its reduction of \$25,000.00 for the purposes stated herein shall be further specified by a separate surety escrow agreement between the Developer and the Town.

4. The Town shall not be responsible for any constructions costs, installation charges, materials expenses, all of which shall be the sole obligation of the Developer in providing the roadway with contiguous 65 ± acres of vacant land and stormwater management devices. No subdivision lot, with the exception of Douglas Wholey's, lot will be sold until the subdivision road and all stormwater management devices are completed and accepted by the Town.

5. The Developer at his own proper cost and expense shall be required to provide a Warranty Deed with lien covenant at the time of transfer of title to those lands which constitute the roadway with contiguous lands 65 ± acres and specific easements for access and maintenance of all stormwater management devices. The Developer shall provide all transfer documents required to facilitate the transaction suitable for recording in the Warren County Clerk's Office, including the recording of a Stormwater Management Maintenance Agreement and a fee policy of title insurance in the amount of \$100,000.00 naming the Town of Bolton as the fee owner.

6. The Town specifies that the Planning Board shall consider requiring that the Developer's \$100,000.00 surety shall remain and be held in escrow for a period of two years commencing from the date of acceptance of the road and stormwater devices. Such fund shall be utilized to indemnify any costs that the Town may incur in repairing, replacing or correcting any deficiencies determined within the two-year period.

Dated: December 30, 2008

Supervisor Simmes and Councilmember Rehm opposed. All others in Favor. Motion Carried.

Pay the bills

RESOLUTION #242

Councilman Saris moved, seconded by Councilmember Rehm to approve paying the following bills:

Water	\$3,996.84
Sewer	6,025.74
General Fund	12,088.57
Rogers Docks	12,525.00

All in Favor. Motion Carried.

RESOLUTION #243

Councilman Saris moved, seconded by Councilman MacEwan to pay the Highway Department bill in the amount of \$32,642.59. Councilmember Rehm opposed. All others in Favor. Motion Carried.

Transfers:

RESOLUTION #244

Councilmember Rehm moved, seconded by Councilman Saris to approve the following transfers:

From	To	Amount
General Fund		
13301 Tax Collector	14101 Town Clerk	\$ 500.00
14304 Personnel	16204 Buildings	4000.00
13301 Tax Collector	31204 Police	500.00
33101 Crossing Guard	33104 Crossing Guard	50.00
42154 Drug Control	35204 Animal Control	40.00
80304 Research	51324 Garage	5000.00
71101 Parks	71104 Parks	200.00
80104 Zoning	80201 Planning	4000.00
81602 Landfill	81601 Personnel	1000.00
86641 Zoning Enforcement	86874 Sustainability Grant	850.00

81602 Landfill 81604 Landfill 15,000.00

Sewer

81202 Sewage Collection 81101 Administration 3735.00

19504 Taxes 81101 “ 3265.00

81304 Treatment & Disposal 81204 Sewage Coll. 5600.00

81304 “ “ 90308 Social Security 600.00

81304 “ “ 90608 Health Ins. 1001.00

All in Favor. Motion Carried.

John Perry- Septic Variance- Alleges that he was not made aware that he would be responsible for paying Tom Nace's invoice.

Supervisor Simmes stated that John Perry is upset about having to pay \$280.00 for the engineer to look over his septic plans. She stated that in the past previous TBs have always mandated that septic variances are reviewed by the Town Engineer and PB has mandated that major stormwater be reviewed by the Town Engineer which is to be paid for by the applicant. Supervisor Simmes stated that John Perry applied for a septic variance and Tom Nace did review his plans but Mr. Perry did not know anything about having to pay for that service. He stated that he is upset about it and wanted to bring it to the TB's attention and requested that he not be responsible for having to pay that bill. Pam Kenyon stated that she does not remember whether or not she told John Perry that he would be responsible for this fee. Supervisor Simmes added that nothing on their current forms say anything about it being the applicant's responsibility. Councilmember Rehm stated that she thought the form had been revised to include that. Councilman Maranville stated that he never got a form. Counsel agreed and stated that there was no form for what category he fell under, but it is on the other forms. Councilman Saris stated that the Town has an obligation to notify applicants of any charges that may be associated with the project and John Perry's complaint is that he was not aware. Councilmember Rehm stated that generally when there is a dispute they find in the favor of the applicant. Counsel agreed.

RESOLUTION #245

Councilmember Rehm moved, Seconded by Councilman MacEwan to allow John Perry to be relieved of the obligation of paying Tom Nace's services based on the fact that the Town did not appropriately notify him of such fees and the Town will accept the fees for Tom Nace and make the necessary payment of \$280.00. All in Favor. Motion Carried.

Pam Kenyon asked about the earlier matter they discussed about replacement construction. She stated that they determined that to demolish and rebuild the house would be considered replacement construction. She is concerned that since it is considered replacement construction then they would not need a septic variance because that section of the code reads that for new construction they are not allowed to have holding tanks. Counsel agreed and stated that they will need to take a closer look at it. Councilman Saris stated that they asked the Metzgers to get a

variance. Supervisor Simmes read the resolution for Metzger that included pump out reports for their holding tank system with the Town and every 5 years will be required to file a report to the integrity of their electrical system for the holding tank, but she does not recall if they went out to public hearing on this. Counsel stated that he does not recall but they would have to. He stated that it is good government that even in replacement situation they want to put the adjacent parties on notice and they want to have some specific understanding as to how the non-conforming system will be worthy of the variance. Pam Kenyon stated that she is not disagreeing with that but she does not see where in the code that this will require a variance. Counsel stated that a variance is required for the installation of any non-conventional system. Pam Kenyon stated that for new construction holding tanks are not allowed to be used. Counsel agreed. Pam Kenyon stated that the TB determined that this would not be new construction and asked under what code he would be required to get a variance. Counsel stated that the applicant is required to put in a septic system that complies with Town ordinance. Currently this applicant has a septic system that is not a holding system and is not working properly and needs to be replaced. He stated that he doesn't feel that the TB can make this decision and it will need to be something that he will need to discuss with her, but he feels that it is something that will come back as a variance before the local BOH.

Councilmember Rehm stated that the resolution they made today did not add any of these safeguards. Counsel stated that they have not been on an even keel of how well all variances are presented to the TB as the local BOH, because they have missed some. In the Metzger situation they seem to have not gone out to a public hearing but they have had the TB give consideration to and impose requirements on approving it. He reviewed that resolution with the TB. Councilmember Rehm stated that they did not add any of these safeguards to their resolution today for Brozyna and feels that they should re-visit the issue and amend the original motion to include similar safeguards. Counsel stated that if the applicant left today with the impression that they need a variance then a variance is still appropriate under the circumstances and they can set their requirements and they could be sure that it gets included in deed covenants as they did in the case of Metzger.

Councilmember Rehm stated that if she wants to replace a failing system with a holding tank without any reconstruction of the house Pam Kenyon has indicated that she can just issue that permit and there is no variance required. Counsel stated that if that is their procedure then they should re-visit it because they have a system that allows people to install a holding tank as of right without requirement of a variance when they cannot build or replace a conventional system, which sounds like a variance. He asked if there was a problem with calling it a variance. Pam Kenyon replied procedurally yes because she has a problem calling it a variance if it is not a variance. She stated that if they can show her where this is a variance she will call it that. Counsel replied that he would be happy to go over the septic code with her because in their code it makes reference to the State requirements and wherever a code is stricter they go with the stricter requirement. He stated if they look in the State regulations the requirement is that if they have a non-conforming system proposed they will need to get a variance from the local BOH. Pam Kenyon stated that she and Supervisor Simmes met with Mike Shaw from the BOH who indicated that any replacement system in the Town of Bolton does not require approval from the Health Department. Counsel stated that he believes that if they take an existing system and replace it with a holding tank it is considered a replacement of a system.

Councilmember Rehm stated that they will now have this applicant who will have to come back for a variance for this one time and that he and Pam Kenyon will be able to work out future projects. Counsel agreed.

Executive Session- None

Adjourn

RESOLUTION #246

Councilman Saris moved, seconded by Councilman MacEwan to adjourn at 12:33 pm. All in Favor. Motion Carried.

Respectfully submitted by:

Respectfully submitted by:

Patricia Steele

Kristen MacEwan

Town Clerk

Recording Secretary