

Town Board- Minutes January 8, 2008

State of New York

Warren County

Town of Bolton

Present: Supervisor Kathleen Simmes, Councilmen Owen Maranville, Robert MacEwan, Councilmember Deanne Rehm, Town Counsel Michael Muller and Town Clerk Patricia Steele.

Absent: Councilman Jason Saris

Supervisor Simmes called the meeting to order at 7:22 pm.

Supervisor Simmes thanked all that were in attendance and wished them a safe, healthy and happy new year. She introduced the board members since there are two new members. Deanne Rehm is the newest Councilmember. She stated that Jason Saris was absent due to a family illness, and that he will be serving as her Deputy Supervisor. She extended her condolences to Owen Maranville and his family in their recent loss, Robert MacEwan, Patricia Steele, as Town Clerk, Counsel Mike Muller, Kristen MacEwan, Recording Secretary and Donna Boggs, Bookkeeper and Secretary to the Supervisor.

Pledge of Allegiance: Supervisor Simmes

Organizational Meeting:

Councilman Maranville moved, seconded by Councilmember. Rehm to adjourn Organizational Meeting. All in Favor. Motion Carried.

Regular Meeting: (Began at 7:16 pm)

Public Hearings: None

Public in Attendance:

Lichtenstein septic variances: This is an update discussion to bring the two new Board members up to speed. No decision tonight. Open the floor to Mr. Lapper.

RESOLUTION #19

Councilman Maranville moved, seconded by Councilman MacEwan to convene as the Board of Health. All in Favor. Motion Carried.

John Lapper representing Lichtenstein presented an overview of the current project. J. Lapper stated that the Lichtensteins have owned this property for 36 years and if they do not get a variance for the septic system the property cannot be built. He stated that the system was designed to be as sensitive as possible to the site and to minimize variance as necessary. He stated that although there are a number of variances required, he stated that they characterize those as somewhat technical in nature. He stated that the system should be 200 feet from the lake under current ordinance and it is 175 feet, which is measured from the toe of slope, so the actual leaching facilities are just about at 200 feet. He stated that the system does respect the 100 feet from the neighbor's well, which is on the

property line. He stated that at the meeting in the fall the Board had several questions they asked T. Nace to address which their project engineer would go through. However, they did get letters back from T. Nace indicating his approval of all of these issues.

Bob Holmes (Jarrett Martin Engineers), Project Engineer, stated that the system proposed will serve a three bedroom residence. He stated that due to the size and configuration of the existing lot they are seeking six variances from the Town Code as follows:

1. Placement of a fill system within 200 feet of Lake George. He stated that they are asking for a variance of 25 feet to place it at 175 feet of the shoreline of Lake George.
2. Separation from the toe of fill to north property line. He stated that they are asking for 5 feet and Town Code requires 10 feet. He stated that this 5 foot setback also coincided with a variance request from the ZBA. He stated the toe of fill is being retained by a retaining wall and the retaining wall structure itself was what was before the ZBA to seek relief for placement of that. He stated that this covers both the north property line being setback of a 5 foot and to the west of the right-of-way seeking relief which was 1 foot. He stated that these were ZBA requests and they have been granted.
3. Board of Health- Separation from bedrock and groundwater to the bottom of their leaching devices. He stated that the Town Code requires a 5 foot vertical separation and they are proposing a 3.6 foot vertical separation. He stated that they are seeking this because they can provide a better quality treatment utilizing the advance treatment units which are proposed. He stated further that if they have a retaining wall in excess of 6 feet in height it is considered a structure and they would have been subject to different setbacks.
4. Board of Health- Slope of natural ground for a fill system. He stated that they are approximately 17% slope on this site toward the lake and the Town Code allows for a 10% maximum.
5. Board of Health- Occurrence of naturally occurring soil. Code requires a minimum of 3 feet of naturally existing soils, and they have 1 foot or less in this area.
6. Board of Health- Gravity Dosing. He stated that this is not specifically within the Town Code, but it is a specification from the NYS DOH. He stated that this is a mound system that is required to have pressure distribution, but due to the placement and utilization of the advance waste water treatment units, the peak flow systems that they have, they are only able to gravity flow. However, they still feel that they can get adequate distribution into the waste water system.

B. Holmes presented the plans for the septic system. He asked if the Board had viewed the site. Supervisor Simmes stated that she has not. Councilmember Rehm stated that she tried to go on Sunday, but it was not plowed. B. Holmes stated that the lot was accessed through Lagoon Manor road just south of the Lagoon Manor property and is located on the lake side of the road. He stated that the property is approximately 210-215 feet in depth, which with the 200 foot setback confines them to a specific location. Supervisor Simmes asked how big the lot is. B. Holmes stated that the lot is a little more than half an acre, which was verified by survey. He stated that they have met the setbacks from the neighboring well to the south (O'Hearn). He continued that the previous Board had some concerns and wished to receive some clarification from T. Nace as to what is considered down gradient from a waste water system. He stated that Town Code and the New York State DOH states that a well is not to be placed directly down gradient of a waste water system unless that separation distance is significantly increased. He stated that there were two letters from T. Nace sent to the Board on 10/9/07 and 11/19/07, in which T. Nace agreed that this system was not located directly up gradient of the neighbors well. He stated another issue that T. Nace looked at was suitability of the system for sporadic use as a vacation home, and T. Nace indicated that it would be suitable provided that frost protection measures be taken. He stated that with regard to a ZBA ruling, when they originally went before the ZBA, they had asked for 1 foot setback from the north property line, instead of the 5 foot shown on the plans currently. He stated that when they were asked to increase that, they went back to the drawing board and reconfigured the calculations for the sizing of this waste water system and he spent quite a bit of time discussing this with T. Nace in this regard and T. Nace came to the conclusion that this was an acceptable way of reducing that setback to the north property line, while maintaining adequate area available for the waste water disposal.

Councilmember Rehm stated that she wanted to be sure that nothing in the treatment or leach area would cross over into the right-of-way, because she understands that the adjacent property owner has an access across the back. B.

Holmes stated that if she looked at the blow up of the waste water system that she would see that they are located outside of the right-of-way.

Councilmember Rehm stated that she read the minutes from the last time they were before the Board and there was some reference that there may be some deed restrictions or covenants that have to be met on this lot. J. Lapper stated that the deed restrictions were in reference to where they could place a building and it was in a prior contract and didn't make into the deed of record.

Councilmember Rehm asked if they know where the O'Hearn's septic is and what type of system they use. B. Holmes stated that he can only approximate the exact location, type of system and condition.

Councilmember Rehm stated that with regard to the sixth variance, that all the others seem to be variances from Town Code and the sixth is from the NYS DOH. J. Lapper stated that they will need that additionally, but cannot get it until they get the necessary variance from the Town. B. Holmes stated that in order to complete the approval of the waste water system they have to take it to the NYS DOH because this is considered an alternative system and new construction. He stated that once they finished with the Town, if successful, they would take it to the NYS DOH for approval. Councilmember Rehm asked if the sixth variance applies to them. B. Holmes stated that in his mind yes it is applied, because if the Town has provisions in the Code for a mound system, it does not specifically refer to pressure distribution versus gravity distribution with the basis everything being appendix 75A through the NYS DOH. He stated that is was his thought to play it safe and get the variances and be upfront about the project. Councilmember Rehm asked that even if the Town were to agree, they could still be unsuccessful with the NYS DOH. J. Lapper stated that they do not expect that, but it was a possibility. Councilmember Rehm stated that she would rather that they got the NYS DOH first, because they are a State agency, and if they find it acceptable, she would feel more comfortable. J. Lapper stated that would be a question of timing. B. Holmes stated that he could not successfully predict the timing, and that once they have submitted the request, an initial response might come within 6-8 weeks. J. Lapper stated that he would look into that and advise Supervisor Simmes.

Supervisor Simmes asked if any public in attendance had any comments on the matter.

Barbara Weinschenk, asked how large the proposed house will be, and asked if the distribution system was in the back of the house and how close it was to the house. B. Holmes stated that he didn't have exact dimensions of the proposed home; he did state that because of the location of the system and once the development starts for the home, the home itself is subject to site plan approval and that they were using a generic three bedroom home which will be conforming to all of the setbacks.

Councilmember Rehm asked if they could size the system for two bedrooms and would it have been easier to design for something smaller. B. Holmes stated that the way that this system is designed using the Elgin system, the requirements that exist with the NYS DOH or utilization of the Elgin units, requires a system of very similar size. He stated that he is not completely versed in what the approval process that the Elgin or manufacturer went through when seeking that approval and stated that C. Navitski may have more of that information, and that the sizing requirements that they followed, the two bedroom unit can be similarly sized to the three bedroom system. He stated that three bedrooms is the typical size home and that two bedrooms could be possibility.

Counsel asked if the local Board of Health grants the variances sought and with the possibility that the NYS DOH will also approve this plan, will this site require Site Plan Review in front of the PB and if so, on what basis. J. Lapper stated that it does require Site Plan Review on the critical environmental area.

Councilman. MacEwan asked if three bedrooms would be the maximum size for the proposal. J. Lapper stated that the system is only designed for three bedrooms and that would make that a condition. B. Holmes stated that it can handle a structure up to three bedrooms in size and that he did not have a comfort level given the size of the lot to allow for anything larger.

Councilman MacEwan asked how they will address frost protection of the system. J. Lapper stated that they would agree as a condition to do as T. Nace has suggested in his letter. B. Holmes stated that there were two easy provisions 1) the manufacturer of advanced treatments units does provide insulated covers to go over the units to protect from frost penetration from above and 2) when they pump dose into those treatment units that they can provide a trickle back valve, so that once they are done dosing those chambers and units the force main will drain back into the pump station which is well below grade and will be protected against frost. He stated that the forced main and the distribution piping inside the advance treatments would not likely be subject to frost. Councilman MacEwan asked if they could freeze. B. Holmes stated that anything was possible once it gets to be 25 degrees below zero.

Ned Trombly, attorney for Mr. and Mrs. O'Hearn, stated that was providing a summary of the issues and concerns from his clients to all of the Board members and Counsel. He stated that it summarizes their discussions and concerns that they have had at the past two Board meetings.

Counsel suggested that Councilmember Rehm ask N. Trombly about the O'Hearn's system. Councilmember Rehm asked if he was familiar with the system on their property. N. Trombly stated that Mr. O'Hearn was present. Mr. O'Hearn stated that the system was a standard concrete block septic system. He stated that he had the system pumped before they received their building permit and before they bought the property they had the ground test for obstruction done and it was approved, and it pumps up to a fill at the rear of the house. Councilmember Rehm asked if it was a typical lateral system. Mr. O'Hearn stated yes and invited all Board members to come out and take a look at it.

N. Trombly stated that addressing some of the comments of the Lichtenstein's representatives. He stated that J. Lapper described the variances as "somewhat technical" and that he submits that J. Lapper's family will not be down the hill from this system and that if they were, he wouldn't be viewing these variances as technical. He stated that by their count there are 12 or 13 provisions of the existing ordinances that would require a variance. He stated one such provision is the dispute of if Mr. O'Hearn's well is down gradient from the system and that visually it clearly is. He stated that he would be interested in viewing T. Nace's letters and questioned whether T. Nace has inspected the property. He described the site as very steep, with a lot of bed rock and a natural swale that runs toward the O'Hearn property from exactly where this system is to be located which is barely 100 feet away. He stated that their position is that the requirement under the ordinance of 200 feet is what applies. He stated that there are other serious and potentially harmful provisions in the ordinance that they will have to essentially ignore in order to approve this. He stated that this does not just affect the O'Hearn's property but the lake and environment as well. N. Trombly asked the Board and Counsel to read this summary. He stated that he cross referenced sections of the Code as where they are looking for variances, or where they should be looking or where they would be granting them variances, even though not necessarily asked for, if they approve their application. He stated that in summary, if they grant all of these, in their view, they are saying that the ordinance doesn't apply to this project. He stated that they are sympathetic to a certain degree that there is an economic disadvantage. He stated that may very well be, but the economic disadvantage in their view, is that the significant greater value that the property has now, even as an unbuildable lot, is more than compensation for what he Lichtensteins paid for the property in 1971 and that the health of the lake, O'Hearn Family and the health of anyone occupying the Lichtenstein property shouldn't be put at risk. He asked if T. Nace's letter addressing the down gradient issue, also addresses the well or whatever water source is going to be on the Lichtenstein property. He stated that at the last meeting that they suggested that they would be taking the lake water as their water source and if that is within 200 feet of this system it is of concern. He stated that even if this system doesn't fail, that there is concern because it is over bedrock which is impermeable and it has to go somewhere.

Supervisor Simmes read a letter from Meredith McCombs of the ZBA in which she stated that the ZBA granted a variance for the retaining wall for the system which she voted for and she is now in opposition to the project.

J. Lapper responded to M. McComb's letter, stating that she is not an engineer and is not sure why she is trying to characterize the variances, because they all know what they are. He stated that they are providing 175 feet to the toe of the slope, and that it is almost 200 feet to the actual infiltration facility and he doesn't know why she is coming with such an attitude because she did not have this attitude when they went before the ZBA. He stated that T. Nace does not just sign off on things, that he scrutinizes them and it is hard to get his approval. He stated that they are not

there asking them to do something that is unsafe for this lot or the neighbors, because they would not have gotten this far with the Town Engineer. He stated that they believe that everything that they are doing is fair and reasonable to the Town and the neighbors. He stated that N. Trombly mentioned the neighbors well, which is 1 foot from the property line, which is not permissible, but that is where it is, and that they can move their well, but they do not have to because a 100 foot setback is suitable. He stated that they do not want to talk about a taking, because this is a reasonable application and if their decision is that they should go to the NYS DOH first, then that is what they will do. He stated that they think the lot can be developed this way, because it is an advanced treatment system, which is a peat system and T. Nace took all of that into account.

C. Navitski, Lake George Waterkeeper, had two questions regarding the construction. 1) If there was going to be blasting involved in either the construction of the septic or the foundation? B. Holmes stated that it would be reasonable to expect for the placement for the pump station and the septic tank, but cannot be definitive until they get further along. 2) Asked about the amount of re-grading or fill that may be needed to be brought in to cover pipes or for the routing of pipes, is that feasible or is there a cover, or will they have to be mounded as well? B. Holmes stated that it could be a balancing act. He stated that as far as the force main between the pump station and the advanced treatment units in the mound itself, that in other designs he has had them very shallow in the ground, provided they have the drain back capacity to prevent the freeze up. He stated they have the potential to minimize it, but felt it would be reasonable to have a mound of approximately a foot or so of material.

B. Holmes stated that he had one other point of reference with regard to the upgrading or general path of drainage between an up gradient waste water system and a well. He stated that in the 10/9/07 letter from T. Nace not only provides his opinion on the issue, but refers to a phone conversation that he had with Mike Shaw, NYS DOH Engineer, in which he concurs with that definition. He stated that not only is it his interpretation, but he has some backing from the T. Nace and NYS DOH.

Mr. O'Hearn stated that in regard to the relocation of the well. He stated that Mr. Lichtenstein had asked him previously about relocating the well. He encourages everyone when the weather permits to go and look at the site, because the reason they put the well there was because in looking at his house, there really wasn't any alternative given the septic system. He stated that to the immediate south between him and his neighbors, there is a large ravine and a 20-25 foot drop on solid bedrock and he doesn't know what the alternative would be. He stated that even if he felt that moving the well would satisfy part of this situation, which he doesn't, he would be into his leach field. He stated that he understands that there won't be a decision tonight and requested that before a decision is made that they all have a chance to look at the site.

Councilmember Rehm stated that as she sees this, her comfort level with the Town taking any action is going to require two things 1) for them to get complete approval from the DOH, who can determine the down gradient issue and 2) for them to wait until the weather clears to visit the site, which may not be until April. J. Lapper stated that it may take them that long to get the DOH to look at their application anyway.

RESOLUTION #20

Councilmember Rehm moved, seconded by Councilman Maranville to adjourn the Department of Health meeting. All in Favor. Motion Carried.

Opposition to the amendment that was recently adopted for Ordinance #28 for the 5 mile per hour zone in Sawmill Bay.

Ike Wolgin, Lake George Kayak Co., stated that he has sent a letter which they all have a copy of. He apologized for not being present during the meetings in which this topic was discussed. He stated that even though the area north and south of the bridge in the 5mph zone looks like large space, it has a phenomenal amount of activity. He stated that inside that space, there are two Town beaches, six commercial marinas, a few "Class B" marinas, a lot of boat storage, public access and a dock builder and that it is not unreasonable to ask people to slow down in that area. He stated that although his letter addressed primarily small boating and what it will do to canoes, kayaks and no-octane craft that use that zone, that they should look at all of the activity in that zone. He stated that he knows

that the previous Board has already looked at this and adopted it, but he is requesting that they look at it again because it is important for the safety of all boaters. He stated that for small crafts, this is one of the few areas on Lake George where they can load and unload and position themselves in a manner as to not be in the path of larger boats. He stated that in the last ten years he and others have spent a lot of time convincing small boaters to come to Lake George and giving those who canoe and kayak a reason to come here. He stated that they have wanted Bolton to be the preferred gateway or jump off point to the islands and the Town was willing to invest in a marina to maintain public access to the islands and they want to encourage all types of boaters to use Bolton Landing and feel safe. He further stated that he doesn't believe anyone who owns a big boat will stop using Lake George because the 5 mph zone is too long, but that small boaters will use other put-ins if it becomes too difficult to use or unsafe and that he will discourage the use of the Bolton Landing put-ins. He stated that he didn't see the advantage of restricting the zone to such a small space. He continued that on a personal note, putting the demarcation of the 5mph zone at the Lake George Kayak Co. dock will create a severe hazard due to the full throttle starts and "hockey stops" that happen at the 5 mph zone which create excessive wakes either outside or inside of those zones and they are asking for some relief for having that line moved. He stated that they have approximately 4,000 plus people that use their dock, through rentals and the free access that they provide to kayakers and canoers, since the Town discourages put-ins at the Town beaches and they would like to continue this service in a safe manner. He stated that he knows that this ordinance has come and passed but is asking the TB to reconsider this and come up with a more reasonable zone.

Councilman MacEwan asked if he had any suggestions. Ike Wolgin stated that they all know that the line is arbitrary, but would suggest incorporating the Town beach across to the State docks. He stated that he is not advocating to make the zone bigger than it was before, but it needs to be more reasonable. He stated that if they incorporate the Town beaches, the State docks, all the Sagamore Sailing School, the Sagamore docks inside that zone, they could all move in and out of their docks safely.

Councilmember Rehm stated given the previous zone went from the mouth of Finkle Brook over to 300 feet south of the north tip of the island, and asked if it would be reasonable if they maintain the Finkle Brook as the pivot point and land it just north of the State boat house. Ike Wolgin stated that he felt that would be a reasonable line. He further stated that he was concerned that the new zone does not include the Town beach. Councilmember Rehm stated that it does.

C. Navitski, Lake George Waterkeeper, stated that they have their boat docked right by the Bolton Fire and Rescue Boat and they were not aware of the change. He stated that in his experience in the summer this area gets extremely busy and the proposed change appears to affect their dock and boat, which raises some safety concerns. He stated that he felt that there was some merit in what Ike Wolgin said and would encourage a second look at this. He agreed that the Sagamore Sailing School should be incorporated and that there are many paddlers that come out that are not as experienced with having to navigate and negotiate with other vessels and with this change they add another potential concern of boaters that are opening the throttle up or suddenly breaking. He stated that he supported the request for the TB to take another look at this Ordinance.

Supervisor Simmes stated that she had this issue listed under correspondence because she had received emails from Walter Rehm, Russ Ferris, Robert Todd, Peter Rosenthal, Andrea and Kevin Barnhart and the letter from the Lake George Kayak Co. in opposition to the amendment that was recently adopted for Ordinance #28 for the 5 mile per hour zone in Sawmill Bay. She stated that she also called the State boathouse and spoke with T. Hendricks, who was also not aware of the change and felt that it was going to be a problem. She stated that she also had someone from the Police come in and stated that as a police officer, he had no comment, but as a private citizen he is opposed. She stated that she asked him to write a letter stating his opposition.

Supervisor Simmes stated that as far as she is concerned as long as everyone is willing to reconsider this, they would. Councilman Maranville stated that he would like to see an impact study done on this area. Councilmember Rehm asked who they would ask to do the study. Councilman Maranville stated that he was not sure, but feels that an engineer could take a look at it, just as they would on roads looking at high traffic areas. Councilmember Rehm asked if the LGPC would have something like this. C. Navitsky stated that the LGPC just completed a recreational study.

Supervisor Simmes asked Ike Wolgin if the zone worked the way it was. Ike Wolgin stated yes and that it gives ample opportunity for smaller boats to get oriented and be out of harms way. He further stated that with the current zone they have not had any accidents or incidents inside of the zone.

Councilmember Rehm stated that she was present at the meeting in December and did not hear any lead up to this, by way of complaints or letters, in the last few years stating that it was a problem the way it was. Councilman Maranville stated that they did get 5 or 6 letters in support. Councilmember Rehm stated she was aware of those, but not aware of how this change came about.

Supervisor Simmes asked if any one else in attendance uses that area and if the old zone works well. J. Gaddy stated that he keeps his boat just north of Veterans Beach and that it is nice to have that reduction of speed of people coming off the lake. He stated that the area is very congested and that in terms of the amount of time that is going to be saved by reducing that line is probably a matter of 30 seconds or a minute. He stated that he felt currently the amount of time to go through there is not a burden.

Supervisor Simmes asked what the TB would like to do. Councilman Maranville stated that he would like to get all interested parties together to discuss the matter. Supervisor Simmes asked if they would like to have a public informational meeting at the February meeting. Councilman MacEwan asked if they could have a public hearing that evening as well. Supervisor Simmes stated no, because they have to notice the public hearing. I. Wolgin stated that he would be agreeable to that. Councilmember Rehm suggested that I. Wolgin look to the LGPC Recreational Study to find some numbers and statistics about the number of water craft in that bay and usage as Councilman Maranville had suggested.

Supervisor Simmes stated that the public informational meeting for this issue will be at 7:00 pm before the regular TB meeting in February.

Current Projects:

Grants:

1. We are applying through Local Records Management for upgrades to our water meters for drive by readers. Applications are due 2/28/08
2. NYS DEC Adirondack Park Community Smart Growth grant application has been sent in under the category: "Sustainability Plan for the Hamlet of Bolton". This is a \$50,000 grant if awarded and does not require matching funds. Need to pass the Resolution regarding this grant.
3. Submitted to the Local Waterfront Revitalization Program. For a Rogers Park Master Plan & Town Pier Improvement. We are applying for \$55,700; this is a matching funds grant.

Supervisor Simmes read a letter from M. McComb in opposition to this grant.

Correspondence:

Letter from Robert Ferro in opposition to a 7 lot subdivision on the Ruffolo property on South Trout Lake Rd. This subdivision is before the APA since it involves wetlands. He is an adjoining neighbor.

Notice from the APA: They have reversed the ZBA granting of a shoreline area variance for Stewart Jones property.

There will be an adult forum on substance abuse at the Town Hall 1/16/2008 at 7:00 pm.

There is a BLDC meeting January 9th at 5:00 pm at the Town hall.

NYS DOT is sponsoring a Safe Routes to School Program Workshop on 1/24/2008 at 10:00 am in Colonie.

Copy of meeting minutes for Lake Champlain/LG Regional Planning Board.

Project notice from the APA regarding a proposal to amend the PUD to allow a new expanded shoreline dock development for Brook Hill Development.

Another APA notice for construction of a single family dwelling, garage & boathouse due to more than 35 lots having been created since 1973. This is for the Anne Reid property.

Copies of the DRAFT Zoning Ordinance Update are available online and with a CD for anyone who wants a copy.

Warren County Planning Board recommended approval of zoning amendments Code Chapters 125, 150 and 200.

JH Consulting Group: Results of lead and copper monitoring for the water department were satisfactory.

Counsel letter Re: Nolan v. Town of Bolton/Smith. The Town is involved in this litigation because the municipality owns the public right-of-way to the shoreline that Mr. Smith is encroaching on. The matter has been tabled by the Smith's attorney.

Copies of the PB, ZBA and TB meeting dates are posted on the bulletin board at the front of the Town Hall.

Copies of December's PB and ZBA minutes are available.

Memo from the Planning Office regarding adoption of the Uniform Fire Prevention & Building Code. Both Boards recommended no to adopt the legislation.

Agenda Items:

1. Counsel letter Re: Law property. We are authorized to proceed for the demolition and removal of the residential structure. As of December 10th 2007 the Town of Bolton can proceed with the demolition.

Councilmember Rehm asked Counsel if this went through some solicitation prior to this. Counsel stated that they did solicit them, but it didn't require it because it fell under the emergency powers law.

RESOLUTION # 21

Councilmember Rehm moved, seconded by Councilman MacEwan to approve a contract in accordance with Ordinance #27, between the Town of Bolton and Ruben Ellsworth d/b/a Ellsworth & Son Excavating in the amount of \$15,600 for demolition and removal of the Barbara Law residence. All in Favor. Motion Carried.

2. Status of the Muriel Crandall burnt structure: Sent letter certified. No response yet. Procedure to next follow.

Counsel stated that he was unsure of how far they have gotten as of today, but the procedure is that the Code Enforcement Officer and the Town Engineer would each inspect the property and provide a written report, and if that has been done and the building requires demolition, that they proceed as in Ordinance # 27 and have Counsel present the matter to the Supreme Court. The ordinance would have the judge review the reports from both the Code Enforcement Officer and T. Nace and then act in accordance with allowing the property owner having exhausted all of their rights and time, they then seek the Courts approval to do something, which would be take the building down at public expense and assess that cost back onto the taxpayer on the tax roll. Supervisor Simmes

stated that both letters have been done and both indicate that this building needs to be demolished. He stated that they would need to resolve to enforce Ordinance #27 and have Counsel proceed to get the Supreme Courts permission to do it.

Councilman Maranville asked Counsel how long the property owner has to respond to the letter. Counsel stated 30 days. Councilman Maranville asked if that has passed. Counsel stated that he did not know.

Councilmember Rehm asked if it would be premature for them to approve and authorize Counsel to move ahead. Counsel stated no, but to make it subject to allowing the land owner their 30 days.

RESOLUTION # 22

Councilmember Rehm moved, seconded by Councilman MacEwan to authorize Counsel to invoke Ordinance #27 and move ahead with potential removal of the Muriel Crandall home on Valley Woods Road. All in Favor. Motion Carried.

3. Paglia unsafe wooden wall: Sent regular letter and registered letter. Hasn't been signed for yet.

Counsel stated the reason they sent both a first class mailing and a certified letter is that often times there is a refusal of the registered mail and there is a presumption of delivery when they don't get the first class mailing back, so he has been given notice.

Counsel stated that by the Code definition this is a structure, it is a retaining wall but it is substantially high and characterized to 8-10 feet high. He described it as a house in a hole and the wall that supports the higher ground next to the house in the hole is giving way. He stated that the wall itself is moving and the ground at the superior high position has got a depression. He stated that it is similar to the above because in Ordinance #27 it says, where there is a dangerous structure, the municipality can proceed and seek to have it demolished and removed. He stated that they do not want to do that, because the demolition and removal would leave nothing to hold up the high ground. He suggested that if they are ignored, they will approach this in a hybrid fashion and do their best to fit the facts into Ordinance # 27 but it does require a proceeding again in Supreme Court. This will put Mr. Paglia on notice that it is an unsafe, emergency condition and it is going to cause a collapse, property damage and possible personal injury. He stated that the legal proceeding puts the property that is owned by Mr. Paglia on public notice should it be for sale. He stated that by looking at it briefly, this issue is not obvious and that the Town should be doing something beyond written notices. Supervisor Simmes asked if T. Nace has seen the property. Counsel stated yes and T. Nace has said this is a dangerous condition.

Supervisor Simmes asked what their next step would be. Counsel stated that he would urge the TB to authorize Counsel to enforce Ordinance #27 to the extent that it applies and can be enforced and to seek whatever equitable relief is available as a Court deems and that it would be to compel Mr. Paglia to remove the wall, shore up the ground and if necessary build another retaining wall.

Supervisor Simmes stated that she understands that Mr. Paglia has put the property up for sale. Counsel stated that putting the property up for sale doesn't solve the problem even if the new owner is a willing person, he would hope that they are a knowledgeable person, because the problem is subtle but very dangerous.

RESOLUTION # 23

Councilman Maranville moved, seconded by Councilmember Rehm to authorize Counsel to pursue this matter under Ordinance #27 to the extent that it applies and can be enforced and to seek whatever equitable relief is available as a court deems and that it would be to compel Mr. Paglia to remove the wall, shore up the ground and if necessary build another retaining wall. All in Favor. Motion Carried.

4. Zoning Code revisions public information meeting set for January 30th at 7:00 pm at Town Hall.

5. Informational only for this month- Board members have a letter from Richard Cipperly concerning the possible timber harvesting of Town owned properties assigned to the water department.

Councilmember Rehm stated that in light of the fact that they just spent several thousands of unbudgeted dollars on purchasing a pump, and tonight they are going to authorize some electrical work, again unbudgeted, that it would be in their best interest to have a further discussion with R. Cipperly regarding timing of this. She stated in the Spring it may not be timely enough to do the cutting right now, but by the end of summer if they could have it in place and get the revenue in the same year that they have spent the money. She stated that he may be able to give them an estimate of what kind of revenue they could expect which could be a nice offset to the unexpected expenditures. Councilman MacEwan stated that she should be prepared because he thinks the other pump should be replaced too.

Councilmember Rehm stated further that this could be an opportunity set an example to show timber management and a cutting project that was well done. Supervisor Simmes asked when she would like to have that meeting. Councilmember Rehm stated that they could just have a discussion with him as to his timing and potential projections for revenue so that she could report back to the Board next month and then authorize him to go ahead. Councilman Maranville asked if this project would need to be put out to bid. Councilmember Rehm stated that would be all part of the service of Mr. Cipperly.

6. NYS DOT- update on the mill and fill project: Supervisor Simmes spoke with DOT on Friday January 4, and they stated that they are willing to postpone this project until 2009 to give the Town the opportunity to get the sewer line in on 9N. She stated that DOT real estate department will be contacting people to see about moving the sidewalk area over to allow for more room for parking on the south end of the project. She stated that they are also willing to create a sidewalk from Sagamore Road to Veterans Park. She stated that DOT is going to be setting up a meeting with the Town to discuss all of the details and that she will make it public so that people may attend.

Councilmember Rehm stated that she applauded the previous Board and Supervisor Simmes for carrying this message to DOT. She stated that the Town had a lot of priorities, parking being one of them, and that area by the LG Land Conservancy and Church toward Bixby Beach would lend itself well to some good parking but it is very narrow there. She stated that if they can move the sidewalk over, expand the parking area and put in decent sidewalks all the way to Bixby Beach, they will have made a big step forward in their comprehensive plan in making the community more pedestrian friendly.

7. Need to adopt a resolution submitting the Smart Growth grant.

RESOLUTION #24

Councilmember Rehm moved, seconded by Councilman MacEwan that Kathleen Simmes, as Supervisor, of the Town of Bolton, is hereby authorized and directed to file an application for funds from the Adirondack Park Community Smart Growth Grants Program of the New York State Department of Environmental Conservation in an amount not to exceed \$50,000 and upon approval of said request to enter into and execute a project agreement with the Department of Environmental Conservation for such financial assistance to this Town of Bolton for Sustainability for the Hamlet of Bolton Landing. All in Favor. Motion Carried.

8. Last month the Board authorized a new turbine pump for the Water Plant in the amount of \$20, 909. This includes installation. The following resolution is for the electrical work needed. The proposal is from Harold Clune, Inc. in the amount of \$6,140 and an alternate price to replace the wiring on the existing pump in the amount of \$2180.

Councilman MacEwan asked if they should do this all in one resolution. Supervisor Simmes stated yes.

RESOLUTION #25

Councilman MacEwan moved, seconded by Councilman Maranville to authorize the proposal from Harold Clune, Inc. in the amount of \$6140 for wiring the new pump at the Water Treatment Plant. And add to the resolution authorizing replacement of wiring in the amount of \$2180 for the existing pump, to accommodate future replacement of existing pump. All in Favor. Motion Carried.

Councilmember Rehm asked Counsel was this under Emergency Powers. Counsel stated yes it was immediate.

9. Association of Towns Meetings in NYC

RESOLUTION #26

Councilman. MacEwan moved, seconded by Councilman Maranville to authorize Pam Kenyon, Kate Persons and Mitzi Nittmann from the Zoning Department and Patricia Steele and Penny Cleavland from the Town Clerk's Office and Kathleen Simmes, Supervisor to attend the meetings to be held February 17-20th. Both offices will be closed for the 19th and 20th, the first day would be a holiday, and due notice will be given so residents are aware. Budgetary amounts for meals for each person is \$259. Councilmember Rehm opposed. All others in favor. Motion Carried.

10. Appointment of voting delegate for the Association of Towns

RESOLUTION # 27

Councilmember Rehm moved, seconded by Councilman MacEwan to appoint Kathleen Simmes the voting Delegate for the Association of Towns and Patricia Steele as an alternate. All in Favor. Motion Carried.

11. Water Meters- Due to winter conditions water meters will not be read for January billing. A quarterly bill for the base amount will be sent. If you request a reading, we will accommodate as long as conditions to reach the meter are readily accessible. Please respond by January 25th. We will post this notice on the web and put a notice in the Journal.

Committee Reports:

Maranville-

Justice- December 2007- H. Demarest \$5,235. E. Stewart \$6,420. Total monies forwarded to the Town \$11,655.00. An itemized list is located in the Court.

Police- Miles patrolled 2,702 miles. Used 220 gallons of fuel. Responded to 1 burglary, 2 larcenies, 3 aggravated harassment, 2 trespass, 1 disorderly conduct, 3 suspicious persons, 5 alarms, 2 lost and found property, 2 animal complaints, 2 traffic complaints, 2 miscellaneous complaints, 3 recovered stolen property, 6 property damage or auto accidents, 3 assists for motorists, 1 assist for WC Sheriff, 2 assists to the NYS Police, 8 assists for the Bolton Rescue Squad, 2 Court Security, 1 criminal arrest and 2 traffic tickets.

MacEwan-

Water Dept.- He stated that the only report he had was what they already discussed earlier with regard to the condition of the pumps earlier in the meeting. He stated that they have one pump down and the other one that is identical to it, given its age, should be looked at needing replacement down the road. O. Maranville asked if they had spare. R. MacEwan stated that they had a spare and put that one in, which was sitting for 8 or 9 years which

was identical to the one that failed and as soon as they put it in it almost didn't work. D. Rehm stated that the other pump was a rebuilt pump and it had no guarantees. She stated that the new pumps are 25 horsepower, where the old ones were only 20, and they have a 5 year guarantee with them. She stated that she spoke with Mr. Perry yesterday and he didn't indicate that the second one was making him nervous. R. MacEwan stated that when he went up to see John, his concern was that one was like this now, and they put the spare in, which sat around for quite a while, and the other one is identical to that, they that both have been in there quite a while. D. Rehm stated for the public's information, they have two pumps in tandem, one runs for 24 hours then the other for 24 hours, alternating. She stated that one was totally down and that is the one that they are going to replace and one has been running 24/7 and that R. MacEwan is concerned about that pump going as well.

Supervisor Simmes stated that she received a call from Lisa at the Transfer Station letting her know that she took 7 containers of batteries over to Warrensburg. J. Gaddy stated that he was happy to hear that. He stated that the school is working on a project regarding battery disposal, because when batteries are thrown in the trash, they get burned at the incinerator plant and goes into the air we breathe.

Simmes-

Monthly Statement- Receipts- \$896,919.04, Disbursements- \$1,003,822.29.

Supervisor Simmes stated that she did not having anything to report on the County level and that the next meeting is January 18, 2008.

Upcoming Issues:

Set up a meeting with Keith Scott to discuss the Algonquin sewer charges.

Discuss location for new Buildings and Ground Department.

Need to complete the Highway Road Agreement.

Letter from PB and ZBA motions against using the NYS Uniform Building Code. Supervisor Simmes stated that she does not know what the next step is. She stated that they have already ordered the books. Supervisor Simmes asked former Supervisor Alexander Gabriels if he could elaborate on this issue.

A.. Gabriels stated that the TB was attempting to have an additional usage of what the State uses in various zoning and planning situations with reference to the new building code. He stated that he is unsure of where they are in the process, but they are required to have an actual copy of the Uniform Building Code on hand and the State does not provide this free of charge unless the Town will be undertaking the actual inspection itself. He stated that the County does the inspection and the Town does not. He stated that the cost of it is \$500-600. Supervisor Simmes stated that she understood that they sent this issue to the PB and ZBA for their recommendation and that both of those Boards chose not to use this Uniform Building Code. A. Gabriels suggested asking Counsel what the next step should be.

Counsel stated that procedurally the TB had a public hearing and in those discussions of whether or not they need to enact a Section of Code, to allow the ZA, Code Enforcement Officer, PB members, and ZBA members to look to the NYS Uniform Building Code and that it would be appropriate to say so in the Code. He stated that it is persuasive right now, but not binding. He stated that the previous TB directed that this matter be deliberated upon by the PB and ZBA, and that there were split votes in both, but in each the majority carried a decision by resolution that they do not recommend the usage and so now it is back to the TB without the PB and ZBA recommendations.

Counsel stated that his characterization is that P. Kenyon is against it, but Mitzi Nittmann is for it. He stated that it is just a tool, it would not be the law and that they would not be doing housing or building inspections. He stated for example, if they needed a definition and it is not clearly defined by the local Code, that they would need to look

somewhere. He stated that currently the Zoning office looks to a book that he has recommended by the American Institute of Architects, which provides additional definitions. He stated that both the current Code and new Code define most things well, but they cannot define everything and there may come a time when they will need to define something not in the Code. He stated that both in the current and new Code it says that plain meanings, definitions available in a dictionary, are acceptable. He stated that he has recommended use of the AIA book and felt as though it would be a good step to use the NYS Uniform Building Code for its definitions. He stated that he is not recommending that they use the NYS Uniform Building Code for building inspections, as some may think.

Counsel gave the example of the applicant that came before the ZBA with regard to a guest house. He stated that the Town Code defines that a guest cottage shall not exceed 1,500 sq. ft., but the question was how do they measure the square footage. Both the ZA and the ZBA came to the same conclusion that they would incorporate the basement and that it exceeded the 1,500 sq. ft. limit. He stated that if they used the NYS Uniform Building Code, it clearly defines basements as uninhabitable space, so they would not have had to struggle with an interpretation. He stated that through this struggle the Town has learned what a basement is and that they are on their own, because the other 2,599 Towns and Villages have something different because they do use the NYS Uniform Building Code. He stated that they do have an interpretation and that it was proper and procedurally handled and was appropriately decided by both the ZBA and ZA, but they came up with a different conclusion. He stated that he thought it would be an easy tool, a dictionary of building code definitions and that it was only his suggestion as an easier path to take rather than struggle with interpretation after interpretation. He admits that his proposal has failed because it has not gotten the approval of the ZBA or the PB.

Councilmember Rehm stated that the concept of the proposal was to just have further definitions available for interpretations when their Code is lacking. Counsel stated that she was correct. He stated what was disagreeable was that it would impinge upon the ZA's ability to create interpretations because if it was already in the NYS Uniform Building Code it would have already been interpreted, accepted and adopted as their own Code and that it narrows the amount of what needs to be interpreted locally.

Councilmember Rehm asked if there were minutes taken of the discussion so that this TB could understand the opposition to this. Counsel stated that both December's PB and ZBA minutes would have that.

Councilmember Rehm asked that if they have another document that provides them with some professionals opinions and it is regularly used throughout the State, why would they want to deviate from that. Counsel agreed with her, but stated that making H. Koster's argument, they know the local requirements, they have an appreciation for what they ought to be doing in home rule and not let NYS and the legislature dictate to them. S. Wilson (PB member, public in attendance) stated that she believed that was the primary concern of both Boards, because in the absence of something in the Town Code, they would be required to use the NYS Uniform Building Code. Counsel stated that recalling what K. Hoopes (both he and J. Anthony were the only proponents to this idea) said, why wouldn't we want to use this, because this helps us when we find a hole and that we can now fill it with a clear definition that they didn't invent or struggle with and it was found and created in NYS regulation.

Councilmember Rehm stated that she would read the minutes and speak to the individuals to get a better understanding of the issue. Councilmember Rehm asked if they had to take action. Counsel stated no, that they can keep the public hearing open and go for further inquiry and investigation on the issue.

Counsel stated that P. Kenyon is opposed to using this and Mitzi Nittmann is for using it. S. Wilson stated that the ZBA was 3 to 2 and the PB was 6 to 1.

J. Gaddy stated that when this came to the PB as to what this issue was about and as he listens to the argument of home rule, he understands that, but he was curious as to the logic behind the decisions. He stated that they have decisions and sometimes with new Boards and interpretations, it gets confusing of how they got to a certain position on a particular issue. He stated that he was informed that the Town has a form from the Elan Group so that they can document these decisions. He stated that he doesn't know how long ago the form was generated and didn't know if this process of documenting how a decision had been developed that is a working tool. Councilmember Rehm asked Counsel if this is what he was talking about what the Zoning office uses. Counsel stated that yes it was a part of it,

and that the package that the Elan Group presented to the TB, ZA, Code Enforcement Officer and Counsel was a system that included management and organizational tools. He stated that ideally the applicant, the ZA and Code Enforcement Officer would all be on the same intake document in the pre-application interview process so that they have all the details and everyone has a clear understanding of everything that is needed and all three would sign off on this. He stated that there was voiced reluctance that they all couldn't be there at the same time and he suggested that they did not have to, but they all would have to agree. He stated that both he and Lisa Nagle felt this would iron out where the disagreements were, so that the disagreements didn't occur down the line. He continued that coupled with the intake form, three signatures and an interview process would be that interpretations would be codified, which is what J. Gaddy is talking about. He stated that if something needs an interpretation it should be in writing, appropriate to the question asked by the applicant, and if not challenged that it is the interpretation and it is in a book and he hopes that this system is implemented. He stated that he sees some interpretations coming and he has urged them to be in writing and does not know if all are in writing and he does not believe that the intake process is going well.

Park Commission Stream corridor and timber harvesting regulations. Supervisor Simmes stated that the Park Commission had a meeting yesterday, but upon calling them was informed that it had nothing to do with this issue.

Furnace for Town Hall.

Councilman. MacEwan stated that he was baffled, because he called to have someone look at it and nothing was done. Supervisor Simmes stated that CT Male did a study of the system and according to George, the basement is not being heated by this system and that CT Male is wrong in that assumption. Councilman. MacEwan asked if the furnace down there does not heat the basement. Supervisor Simmes stated that when the building was designed the basement was not being used for anything and when they decided to use the basement for the rec. center they designed another system to heat that. Councilman MacEwan stated that someone from Rowland J. Downs stated that the system was in good shape but was surprised because it was old, not burning correctly and undersized. Supervisor Simmes stated that they have had another company come in and they are saying that it is cracked and she is not sure where they go with this. Councilmember Rehm stated that they need to pick a consultant they want to work with. Counsel stated that he has personally worked on a similar project with his church and could recommend the consultant that they used if he is still in business or ask this consultant for his recommendation. Supervisor Simmes asked Counsel if he could have this individual get in touch with them regarding this matter. Counsel stated yes.

Public in Attendance:

Barbara Weinschenk stated that the Post Star is the public record for the Town and they had the meeting listed for last week instead of this week which was incorrect and that a LGPC meeting location was listed incorrectly and asked if they could request that the Post Star be more accurate posting meeting dates, times and locations.

J. Gaddy regarding the application for the Smart Growth grant, asked if they had details available for the public and hoped that one of the things that the TB would look at in the next couple of years is an energy audit for the Town. Supervisor Simmes stated that the details were available for him to see and would take his suggestion into consideration.

Councilman Maranville stated that he wanted to congratulate the two new Board members. He stated that it was great election, probably the best one that Bolton has ever seen and he looks forward to working with them.

Councilmember Rehm congratulated the Town on the new sound system and hoped that it was better for everyone. She asked the TB to consider enforcing an original policy of having the Town Hall Campus be smoke free.

RESOLUTION #28

Councilmember Rehm moved, seconded by Councilman MacEwan that the original smoke-free campus policy be put into effect. All in Favor. Motion Carried.

RESOLUTION #29

Councilman Maranville moved, seconded by Councilman MacEwan to approve the payment of the bills. All in Favor. Motion Carried.

Executive Session: (9:07 pm)

Councilman Maranville moved, seconded by Councilman MacEwan to adjourn to Executive Session to discuss a personnel matter. All in Favor. Motion Carried.

Councilman MacEwan moved, seconded by Councilman Maranville to close Executive Session and adjourn at 9:45 pm. All in Favor. Motion Carried.

Respectfully submitted by:

Patricia Steele

Town Clerk

Respectfully submitted by:

Kristen MacEwan

Recording Secretary