

Town Board- Minutes November 17, 2006

State of New York

Warren County

Town of Bolton

Present: Supervisor Alexander G. Gabriels III, Councilmen Scott Anderson, Jason Saris, Owen Maranville, Robert MacEwan, Town Counsel Michael Muller and Town Clerk Kathleen Simmes.

Absent: None

SPECIAL MEETING

Supervisor Gabriels called the meeting to order at 5:00 p.m. Supervisor Gabriels noted that Councilman Andersen was running late due to a doctor's appointment, but stated that Councilman Andersen wants to be here for the meeting.

Supervisor Gabriels noted that there was no agenda and started by reading Counsel Muller's draft of a policy for Town Employees entering private property. He read as follows:

Town of Bolton

Code of Compliance, Code of Enforcement, Private Property Rights, Required Procedures and Policies

Private property rights are established and protected from unreasonable search and seizure including administrative search by both Federal and State Constitutions. Whenever a municipality may require a "site inspections" upon private lands, such intrusions must be limited in extent and duration reasonable under the circumstances and preferably upon consent of the land owners.

1. Site inspections within the application process. Within the application process for Variances before the ZBA and PB, Subdivision, Site Plan Review, Stormwater Review, there is an express grant of permission and consent given by the applicant for site inspections for the ZBA and PB membership, Zoning Administrator, Code Enforcement Officer and Town Agents. Upon Board approval and continuing through the project construction period, prior to completion, there is a continuing implied consent within the administrative process allowing reasonable site inspections to assure compliance with granted approvals.
2. Site inspections outside of the application process. Where the subject premises are not part of any pending ZBA or PB application process and even under circumstances where it is alleged by a code complaint to a municipality there is no presumed consent or automatic permission that the land owner's site may be inspected by representatives of the municipality. Permission should be sought and in the absence of permission, under appropriate circumstances, and by application to a Court, an administrative search warrant may be appropriate. The preferred method should always emphasize seeking permission from the land owner(s) to inspect, before entering upon private lands. The application to a Court for an administrative search warrant is the last resort.
3. Plain View and Inquiry. Any municipal representative (Code Enforcement Officer) can reasonably go upon private premises to the door of the premises to seek out the owners for permission and any

circumstances observed upon the premises and in plain view, apparent that is, do not constitute an illegal search. Moreover, any circumstances that constitute a code violation that may be observed from a public right-of-way clearly constitute observation in plain view.

Supervisor Gabriels stated that this policy was drafted by the code and is coming before the TB to clarify private property rights. Counsel recommended that the TB adopt it as a policy but more specifically to the point that it is the law. Supervisor Gabriels asked the TB if they had any questions. There were none. Supervisor Gabriels asked the public in attendance if there were any questions.

Rolf Ronning commented that he agreed with the policy in the terms stated. In his situation with the new subdivision of Westbrook Forest, he stated that he has no problem with these site visitations and inspections. However, due to recent vandalism, he has put up a gate and "No Trespassing" signs. He suggested that the inspections happen during normal business/working hours or that they are scheduled otherwise to keep the site and equipment protected. Supervisor Gabriels indicated that a locked gate and signs would indicate seeking the permission of the property owner or contractor before entering the property.

June Benerofe of 69 Island View Loop, asked that since this was her first meeting that all speakers, other than the TB members, state their names and addresses to identify themselves. Supervisor Gabriels asked that all speakers at least state their names.

Dennis Phillips, Attorney for the Lake George Property Owners Group, made two comments on the policy. First, with regard to "Site Inspections Within the Application Process", he thought it would be appropriate to have as part of that policy that whenever there is going to be an inspection of the property, as a matter of common courtesy, the property owner or agent of the property owner be given notice of the inspection, so that the owner or agent may be present. Second, with regard to "Plain View and Inquiry", from a private property rights point of view and from a land owner's point of view, he stated that people are paying big taxes and that the Town is now incorporating into the code a criminal law approach to the ownership of property rights in town. He stated that he was concerned that the ownership of property in Bolton is going to fall into this hazy area of criminality using concepts of plain view, which he considers "scary".

George Weinschenk asked that in the case of search warrants does the warrant specifically spell out the issue(s) or concern(s) that inspector is (are) looking for. He was concerned that the routine or scheduled inspection could turn into an inspection looking for any and all faults. Counsel responded that the search warrant would be specifically spelled out as to what they are looking for. Counsel also stated that a warrant would and should be a last resort.

Counsel also responded to Dennis Phillips comments regarding Plain View by stating that they are stuck in that an inspection is actually an administrative search and so Plain View is Search and Seizure language.

Michael Hagen: 52 Mohican Heights Rd. I am concerned that the warrant be specific as to what they are looking for.

Counsel stated that there are three reoccurring instances in which there are site visitations. First, searching inside an application basically means that the Town of Bolton is allowing its ZBA members, PB members, Zoning Administrator and Code Enforcement Officer and Engineer and those associated with the evaluation of an application to come upon premises to look at the site to understand what is being proposed in terms of measurement, densities, vegetation, etc. I know that is done by consent. Second, it is implied that those same people can be back there on site with respect to the application once it has been granted to see if the project was done correctly and according to the requirements or directives (ex. Town Engineer goes back to look to see if the stormwater control devices have been put in properly). Third, when the Town or Code Enforcement Officer receives a complaint. However, just because the Town of Bolton receives a complaint does not grant the official consent to enter private property. They must go to the owner, state the specific concern or complaint and request permission. If the property owner says leave, they must leave. While at the property, if the officer observes a violation, a citation can be issued

under the policy of Plain View. If the permission is not granted to enter the property, it is up to the municipality to obtain an administrative search warrant.

Peter Hanley brought up two items that were not addressed in the proposed procedure. With regard to the inspection or observation from a public right-of-way, he stated that many of the homeowners live off of private roads. He asked what happens when the inspector sees something while on the private right-of-way, is it covered under Plain View and how. Second, he asked if a property is posted as "Private Property No Trespassing" does the inspector have the right to enter the property to knock on the door to seek permission. Counsel answered question one stating that yes if the private roadway is open and accessible to the public, and doesn't exclude municipal services such as emergency vehicles, police, etc... Counsel responded to question two, stating that "no" the inspector does not have the right to enter property where it is posted as "Private Property"

Dennis Phillips concerned that "In Plain View" is a broad concept that gives the Code Enforcement Officer a lot of leeway to justify things that may be intrusive under the concept of "In Plain View" which as he understands it as a criminal law concept that relates to inside spaces like cars and houses.

Counsel responded that you have to look at "In Plain View" from a positive perspective as being the least intrusive method. He gave the example of when he was a Judge for the Town of Queensbury. He stated that the Building Inspector requested an administrative warrant to search what he believed to be a multiple dwelling in a single family residential zone. He stated he denied the application and directed the inspector to go and look at the house and see if there are multiple electric meters, and there were, so plain view was less intrusive than a search warrant.

George Weinschenk asked if there are specific hours listed on a warrant in which they can go and search. Counsel responded that since this is more civil in nature rather than criminal that any Court ordering that there being a search warrant would issue it at a reasonable hour, usually daylight hours. He stated that the oddball hours and no-knock provisions are not in the civil aspects of the zoning code violations. Counsel stated that in his 31 years of practicing law he has not ever seen an administrative search warrant, and in the two cases that he has been asked to issue them he has not. Although Counsel is suggesting that the TB adopt the policy so that there is an understanding, the absence of a policy would not change the law of search warrants.

Daniel Kincaid, 781 Trout Lake Rd. questioned that if the roadway is a private driveway, are you able to drive that road legally. Counsel responded that he would want to know where we stand with the property owner (ex. Some individuals have told the Zoning Administrator's office that they do not want anyone on their property unless the property owner is present). He stated that if we don't know where we stand, he would ask things like, are there chains across the driveway, does it say "No Trespassing", and does the FedEx man go up the driveway. These are things that he would want to know about when making the decision on whether to enter the property or not. Kincaid stated he was still concerned with vagueness of the policy and asked if he put a sign specifically stating "Private Property No Trespassing" would the ZA or Code Enforcement Officer be allowed on the property. Counsel stated no.

Supervisor Gabriels explained to the TB that he brought this issue forward because he has received many letters indicating that some Town employees, unintentionally and he presumes without malice, have not abided by the provisions in this particular code. Supervisor Gabriels sincerely apologized to any and all property owners who feel as though a Town employee has improperly or illegally trespassed. He set this meeting so that we could clarify private property rights.

Supervisor Gabriels continued the meeting to formally discuss the topic of the meeting which was to address the question of disturbance. He stated Barry Kincaid has brought this issue forward in the Zoning Office. He stated that there seems to be a lot of ambiguity and uncertainty in our code. Supervisor Gabriels stated that he has been told by various regulatory personnel at different levels of government that Bolton's Zoning Ordinance is probably on the leading edge, but he feels we are also on the bleeding edge. He stated that we need clarification for the property owner and the Town employees so that we can enforce our Zoning Code and Stormwater Code clearly and equitably across the board. He stated that he is looking for thoughts and observations from anyone who can be of assistance. He stated that recently he has solicited opinions and views from Tom Nace, Town Engineer, Lake George Park

Commission and an Engineer from C.T. Male Associates and all have stated that the code needs to be clarified. Supervisor Gabriels stated that he wants to define disturbance: does it involve cutting of trees, brush, weeds, grass, etc. We have in our storm water ordinance a provision that says if you cut more than 5000 square feet, you need a minor storm water permit. He stated that when it comes to cutting and disturbance, we have provisions regarding Minor and Major Stormwater Permits as to the area of disturbance. However, the provision doesn't make it clear as to what you are cutting and when it is classified as a disturbance.

Barry Kincaid stated that he wanted to use an illustration to show how the word disturbance, if it is clarified as brush cutting, tree cutting or mowing your lawn, is going to affect everyone. He asked John Gaddy if most plans that come to the PB have disturbance lines on them. Mr. Gaddy answered yes. He asked if he always talks in cumulative terms. John Gaddy stated that this was correct. He illustrated an example of a home that initially had 14,500 sq ft of disturbance which required him to have a Minor Stormwater Plan. He stated that two years later, his clients realized that the house is not getting enough sunlight and mold is building on the side of the house and roof. His customer calls and wants to take an additional 10 ft by 60 ft of tree or brush out to allow for more sunlight on the house. He questioned what the additional 600 sq ft., is going to do to his project if trees are called disturbance.

Counsel stated that he asked the same question to the ZBA. Counsel responded that the additional 600 sq ft is over the 15,000 sq ft which would require a Major Stormwater Management Plan and require site plan review. Pam Kenyon stated that the word cumulative is not in our ordinance right now.

Counsel stated that up until now Barry's example is a perfect example where the code says make it a Major and we have not done that. He stated that the cases tell us on environmental issues that we cannot segment our projects into the first 5,000 feet, second 5,000 ft and the third 5,000 ft which would all require minor stormwater permits. He mentioned that Chris Navitsky would have valid criticism if the PB on a consistent basis did minor, minor, minor projects and they together cumulatively and honestly totaled major. He stated that we would not be in conformity with the case law that interprets the application of these laws. He stated that although cumulative it is not a word you will find in the code, it is a law that you will find in case construction and interpretation of these laws. Counsel stated that John Gaddy constantly questions should or shouldn't we be considering subdivisions or abutting projects cumulatively and that maybe we should be thinking this way.

Barry Kincaid is concerned that he came to Pam who granted him permission, then was told he can't cut brush and then a no cutting period on a slope greater than 25%. He stated that under single family construction it states cutting on slopes greater than 25% shall be prohibited. He stated that this was for construction. He stated that clear cutting regulations says that cutting on 25% slopes is prohibited, none of which he was going to do, but was taken out of context when he had already had approval. He stated that two years ago there were questions on the disturbance lines when the project was under construction, and he was approved on the Site Plan Review. Now clients are coming to him to have some brush cut. He believes people feel violated for being told that they can't even maintain brush on their property. Mitzi stated that the specific code under single family construction states that there is no cutting on slopes greater than 25% shall be prohibited except for construction of building, it doesn't say what you can cut or not cut.

Councilman Saris stated that he admits after reading that section of the code that it is poorly written. He stated that it talks about tree cutting and clearing cutting, but never states what is being cut, trees, brush, etc. It never mentions trees again. He feels as though this confusion could be interpreted three or four different ways. Councilman Saris stated that during construction you cannot cut certain trees, but the code doesn't define that once the home is complete if it would be okay to cut it. He stated that at neither the time of construction nor after would be okay to cut the tree. He stated that we know the intent behind the code, but it is not specific.

Barry Kincaid asked that if it was his understanding that if the code is ambiguous it automatically goes to the homeowner until you clean up the ambiguous issues. Councilman Saris indicated that yes that it was a matter of law. He stated that they made a determination a few weeks ago regarding the issues that were brought before them. He stated that until we have a clear definition, which we didn't rule on that night nor will we tonight, we are going by past practice. He stated that they are trying to come up with something workable.

Barry Kincaid again questioned the word cumulative, stating that the disturbance limits were such when you build the house and that it is not right to go beyond those limits. Councilman Saris responded that with regard to cutting restrictions that if it says that you can't do it while building the house, that it doesn't mean that those restrictions are all of the sudden lifted just because you completed the house and it is no longer new home construction.

Pam Kenyon stated that a few years ago she was raked over the coals for land disturbance. She stated that a meeting was held with ZB members and PB members and it was all clear that cutting brush and even trees was not land disturbance at that time. She is not sure where everything changed. She is still the Zoning Administrator who administers the code, who makes the decisions, and that is what she had done, based on her own experience of making mistakes. She stated that she listened to the Board as to how she should proceed.

Barry Kincaid stated that in his project there were absolutely no restrictions on cutting and he was told he could not move forward with the cutting of brush. He indicated he had a reputable certified forester there to look at the whole scenario. He stated that it was not his intent to harm the hillside or environment. He stated he is very interested on how the Board will proceed with the scenario of brush cutting after the house is built.

Councilman Saris responded that he wanted to be very clear that he didn't make any determination as to whether or not those cutting restrictions included brush cutting. He said he thought that they were written rather poorly. He said that as the code is written now, he could argue either way as to brush cutting. He stated that he was looking for input from experts on this. Councilman Saris stated that when the Town engineer raises a point, we are obligated to listen. He stated that they are looking at the language because it may be vague or restrictive. His concern is that the language in the ordinance does not match our interpretation in what we are allowing people to do.

Counsel explained that a lot of the confusion stems from the fact that we have a Zoning Code, a Subdivision Code and also enforce Stormwater and Erosion Control Regulations. He explained that last body of law that is on the tail end is actually a law that was created and designed by the Lake George Basin Community in mid to late 90's and it was a first effort in an attempt to manage stormwater and erosion control. He feels as though perhaps it has some short comings, but it was not from a lack of hard work and feels as though we have come a long way since then in stormwater control and issues. Counsel stated that perhaps the ordinance was in its first offering, which was adopted by Bolton in 1999, not the best possible language. Counsel stated that he is constantly in contact with the Lake George Park Commission, the authors or sponsors of this stormwater and erosion control regulations, asking for their help in the interpretation of all that. These regulations were designed around the Lake George Basin Community which is based on many towns and in two counties. He stated that some of the towns, including Bolton, have opted to regulate their stormwater regulations and erosion control as written by the Lake George Park Commission. He stated that we are being asked to implement and enforce regulations which we too struggle to understand. About 4-5 years ago when he became the Town Attorney the first thing that he noticed with the stormwater regulations here is that they were in the book, but they were being informally enforced, and that the expectation that we would enforce them as required by the code. Now it has grown, as in the Town has gotten a Code Enforcement Officer and the PB becomes more sophisticated and specifically oriented with applicants. Counsel stated that the law in New York State indicates that if there is ambiguity in the law or code that it must be construed in favor of the land owner. He stated that he, Pam and Mitzi have endeavored to reach agreements that seem to comprehensively come up with the same expectation or answer on cases that appear to be consistent. When he asked Mr. White, Director of the LGPC, what are the other towns doing with respect to these sections. Mr. White indicated to him that the enforcement is different in each of the towns. Counsel feels that Bolton has taken a big step in securing special advice from engineers C.T. Male.

Barry Kincaid agreed with Supervisor Gabriels on Bolton being on the cutting edge with their codes. He stated that he has spoken to different groups and agencies and that Bolton ranks top in making sure storm water doesn't reach the lake. Barry asked Chris Navitsky if he agreed that was right. Chris Navitsky replied "No comment". Supervisor Gabriels said give Bolton a break. Chris replied they are doing a better job. Barry stated that we are doing well with our Stormwater Regulations. For example he suggested looking back at the heavy rains received in the past. He stated that the majority of the washouts came from non-developed areas (County Route 11, Northwest Bay Brook and State owned land). He feels the Town is pushing so hard to enforce the Stormwater Regs that they are forgetting the homeowner's rights. He stated that neither he nor anyone wants to harm the environment or the lake. He then proceeded to discuss a section of 125-8c which states that "no owner or real property owner shall maintain a

condition which due to human disturbance of land, the vegetative cover or soil, result in erosion of soil into any body of water". He stated that is Stormwater erosion, not tree cutting. He feels as though tree cutting is not a disturbance and that the town is taking it too far.

John Gaddy stated that due to his early interest in Bolton as a child and his current residency since 1978 he has been very interested in the development of the town. Having come from another area, he has seen what development can do with the negative affects of development. As being part of the PB, he has started to get a little concerned about people that are coming before the PB with after-the-fact applications, where the board is being asked for forgiveness rather than permission. Some are individuals that have second homes or have relocated from another area and are naïve about the laws the town may have and some are renegade contractors. John commended Barry Kincaid on how he conducts his business in compliance with the spirit of the town. He stated that the spirit and strength of the regulations that they had were debated and adopted by civically minded people that gave their time to the Town when our properties were worth only thousands of dollars. Now with the prices so high he was asking for greater protection. Our boards have been accustomed to helping neighbors establish homes, families and business over the years and we hope land owners and developers broaden our tax base. He doesn't think the PB or Town have done anything to deny development. He thinks they have done all they can to control development. He has grown more concerned about the implementation of the comprehensive plan, because it was not an acceptable document. He felt as though this meeting has to look at the purpose of the Town as a whole. He stated that it should promote the health and safety and general welfare of the community and to protect property values and aesthetics of the community by channeling and directing growth and by regulating and restricting the height, number of stories, size of buildings and other things to the maximum extent permissible within the proper exercise of power. He stated that it is furthermore the purpose and objective of this chapter to ensure the optimum overall conversion, protection, development and use of the unique scenic, aesthetic and wildlife in the area and to preserve the beauty and character of the Adirondack setting to the benefit of the community and to retain the natural vistas of the Adirondacks and Lake George to the benefit of residents and to the visitors to the community. He feels that we need to take this as a long term project and think about what is good for the town and business not just five or ten years from now but fifty or a hundred years from now.

John also commented on the previous flooding and run-off issues. He stated that he thought that Barry Kincaid is wrong, looking at the Thomas Mtn Tract, he has spoken to a forester that the cutting schedule on that tract was not on a twenty year schedule, but on a more aggressively cut and is not considered an undeveloped area.

John Gaddy continued with discussing land disturbance. He stated that if you go through the stormwater regs the lesson he has learned that you go by the facts of the book and this is the way we have to read these things. He stated that their method for determining stormwater disturbance is with what is called the rational method, a stormwater calculation accepted across the country, and in this formula one of the tables that is used as a factor is what type of cover is going to be on this property before this area is worked on and what kind cover will be there. He said removing trees or use of pavement would require the use different coefficients. He stated that if we are going with the strict interpretation, which we have to do, anything with the change of the cover of vegetation regardless of whether it is a tree, shrub or lawn, there is a change in the characteristics for the calculations of the stormwater.

Rolf Ronning stated that having lived in Bolton for most of his life and having had his real estate and land developing business and 37 years of experience in dealing with the PB, he has seen the PB ordinances grow and change. He has seen the stormwater regs come into existence and now having a Code Enforcement Officer. He feels as though the process is getting too rigid because we adopted ordinances that other people wrote outside of the Town. Used an example of when he plans a subdivision, he hires an engineer to perform the stormwater plan which is typically not in agreement with the Town engineer or the water keeper. All the people who eventually will be affected by these major storm water permits and the way the ordinance is written you are going to have to hire an engineer. He personally believes in less government when possible. He suggested that the Town hire a full-time engineer or group of professionals that contractors and developers could use to develop and design these stormwater plans. He felt as though this would help all parties involved move projects along more efficiently.

George Weinschenk stated that he was concerned that the standards vary from town to town. He asked that if he was to plant over a 25% grade slope with grass, that he would not be able to mow it. He is also concerned with safety issue of having trees too close to homes. He feels as though we can't use the one glove fits all. As an example

he used his house which is on 11 acres, if he wants to take a tree down for safety and it is within the 10 foot line and it doesn't bother anyone, why should he not be allowed to cut that tree. He used Barry Kincaid's drawing example, discussing that when you disturb trees other trees can come down. He stated that trees support trees, if one is taken down, and then that tree may have been protecting/shielding other trees from wind, weather, etc. His point was that having trees that close to the house poses a danger and it is something that the Board should consider.

George Weinschenk also commented about Stormwater Regs, stating that there are many good things in that ordinance and many things that don't make sense. He believes it was adopted quickly and questioned are we accomplishing anything with the stormwater runoff. He mentioned a study by the task force on the state of Lake George, most of the runoff to the lake was from undeveloped land which can't be controlled. He questioned where is the pollution coming from, the homeowner on the lake or the guy developing 3 miles up in the mountains. He feels as though a small group of new people coming in is being blamed and asked to correct all of the problems on the lake. He stated that it is not a fairly applied ordinance. He suggested that when we are working on this ordinance that they look at the other towns for comparison.

Supervisor Gabriels made a personal observation regarding trees supporting trees. He stated that in 1968, 25 pine trees on his property went down. There were 15 remaining, and they will eventually come down naturally on their own. He stated that microbursts on the other hand which is 25 plus trees, cannot be controlled and that you can just hope to be out of harms way.

Supervisor Gabriels made another observation with regard to the storm referenced of June 13, 2005. Stating that it was more than a 100 year storm and by some references it is up to a 200 hundred storm and wouldn't want to challenge any stormwater infrastructure, town road or even foundation to a 200 year storm. He stated that you can build and prepare for everyday storms but cannot and are not ready to build for unique storms. He stated that they are and should be looking at disturbances within the normal course of business.

Dennis Phillips spoke on behalf of the Lake George Property Owners Group who are a group of 40 residents who believe in environmental protection and stormwater management. He stated that they also believe that it is dangerous for interpretations to go to the extreme. He stated that his presence was triggered when they made the leap from the word disturbance to no brush cutting in the normal course of maintenance and repair on a landowner's property, whether it is a new or old property. He stated that it is not necessarily the way the ordinance is written, but how it is interpreted and applied that appears to be extreme, and it is time to do something about it. Stated the Lake George Property Owner's Group would like to participate in the process of looking at the words: cutting, clearing, tree and developing a concept of brush cutting that is predictable, so that when a land owner is doing maintenance on their own property they can have peace of mind that someone will not come after them, or that they will be fined, etc. They want to be a part of the process. There should also be provisions on allowing town officials on property. With all of the changes that happen in Zoning, Planning and Stormwater that notice of a public hearing is posted in the paper 5-10 days before, however not all read the legal notices but it could have a dramatic effect on them, so he asks that there be better notification of the process.

Supervisor Gabriels mentioned that the Town has a website and the Town will continue to use the historical means of communication as well as the website. Supervisor Gabriels also pointed out that when the stormwater regs/ordinance were developed that all, elected officials as well as private individuals are responsible for missing the ambiguity of the ordinance.

Dennis Phillips stated that he knows that there are a number of pending violations involving this disturbance issue. Because of the ambiguity of the code matters will go in favor of the violator or applicant. He requested that these pending matters be withdrawn, dismissed or dropped so that we can go forward with a fresh start with real clarity regarding disturbance...

Supervisor Gabriels brought up a previous application that Rolf Ronning had brought before the PB regarding the subdivision of Federal Greens. He stated that the PB allowed Rolf to clear one lot to see what the land was, what the property was worth and where they wanted to place the house. He stated that he did a good job and had a forester on

hand, the PB was pleased and the project got approved. He stated that Site Plan Review for shrubbery under "x" number of sq ft, that could be a strategy we may want to look at.

Rolf Ronning stated that he fought that strategy tooth and nail; he had to go along with it because he had no choice. He feels that when it comes to flat level land that it will not cause a disturbance or erosion. He stated that if we own property, we pay taxes, get a deed, so he assumes we own the land, dirt, trees, etc. and we should decide whether we want to cut them down or not. However, he feels as though the Town has and should have authority to avoid abusive tree cutting if erosion occurs or sedimentation or run-off occurs.

John Gaddy takes exception to some of the statements made that the stormwater regs were adopted hastily. He stated that it is a small town with many individuals wearing several hats, meaning business owners and working individuals who also volunteer to sit on the boards. He stated that these regs were not just drawn from a hat, but rather that they take several years to develop. He stated that he wishes to see more people come to the meetings because having more participation more frequently could avoid some of the misconceptions.

Chris Navitsky, Lake George Waterkeeper, first commented that we should take in to consideration both long time residents and those that have moved to the area because they enjoy it so much. He understands the Town's stance on protecting the land and individuals property rights. He thinks that these meetings are great in providing that and feels as though they will work towards a solution. He stated that regarding disturbance, as an engineer, he believes that removal of trees does affect run-off and water absorption into the land. Removal of vegetation is the way that disturbance is defined right now. He brought up the letter he submitted to the Board regarding USDA reports on developing the technical reports that led to stormwater management. He answered the question about where did the 15,000 sq ft come from, stating that it came from what people assumed would be a typical single family home development. He stated that below threshold is a simple mathematical equation, above it gets into more of an engineering determination. He stated that the LGPC every five years takes a look at their regs. He stated that regarding LG water quality that with the data collected the water quality is not getting better. He doesn't think that it is all from the undeveloped areas. He stated that the Village, the Southern Basin and south of Tea Island is clearly the worst water quality. From South to North the quality increases, which indicates clearly a direct input to additional run-off. He thanked the board for the opportunity to talk.

Councilman Saris stated that he and his fellow board members want to involve as many people in the process as possible and hopes that having this meeting demonstrates that commitment. He asked for understanding their motivations in considering things, since they have to protect the town and its citizens from liability. He further stated that they need to protect property values, property rights, individual's livelihood and the environment. He stated that he knows what it is like to have regulations effect ones business. He is an owner of a marina on LG, which have the highest of regulations, but it doesn't mean that we should have none. He stated that with regulations, there has to be some sort of enforcement; otherwise there would be no need to have regulations. Stated that the input from individuals is so important so that we can come up with a solution.

John Wells, Trout Lake Rd., stated that he knows that we are discussing the disturbance for new construction, but wanted to make the point that the board not lose sight of those established individuals, such as himself that want to maintain what they have and love, for example a lake view. Supervisor Gabriels stated that was an interesting point.

Bob Pike brought up the point that when you cut brush or trees that it does not necessarily create erosion because the roots are there to still absorb. He stated that the absorption levels may be less, but they are still there and will grow back. He feels as though the concern should be with the logging companies which are unregulated. He also agreed with John Wells's concern that we should be able to maintain our own properties for safety and enjoyment.

Supervisor Gabriels asked theoretically, if a white pine is a 100ft tall, what is the separation distance between your house and that white pine, what do you want it to be? Barry Kincaid stated 120 feet; these people want to protect their investment.

Anton Cooper, private forester, logging contractor, etc. talked about tree maturity and that a tree is considered mature when it produces seeds and that trees all mature at different rates. He stated that he doesn't believe in

zoning, Planning Boards and feels as though less government and more power to the people. He suggested to everyone that if you want to know more about trees or plants, that they should go over to the Cooperative Extension in Warrensburg and sign up for a course to find out what you should be doing with the trees on your property.

Supervisor Gabriels commented that if you look at some of the old photographs from 100 years ago the hillsides were very different, after major logging had occurred. He then provided an example as to something that has been presented to the TB for a decision. "Within a large rectangular area all trees had been removed. Although neither the large stumps had not been removed nor any real grading taken place, small stumps had been pulled up and no ground cover of any type remains." He asked if the area was over 5,000 sq ft, would it be considered a disturbance requiring a minor storm water permit. George Weinschenk commented that it depends on the land, if it is flat no, but on the hillside yes. Barry Kincaid wanted to read a study they found about whether to remove stumps or not and if it is disturbance. Supervisor Gabriels stated is it a disturbance or not, not stumpage?

Supervisor Gabriels brought up another example: "All trees have been removed and some of the stumps removed. Within the rectangular area of the tree is removed no ground cover remained even though some stumps remained. The area was over 5,000 sq ft and the grade is 15%, do we have a disturbance? He stated that the contractor believes that where the stumps remain, that area should not be in the calculation of the disturbed area, should we subtract that area out? Barry commented absolutely. He used these examples to show that this process is going to be harder than we think. The engineer thought on the first example that it was considered a disturbance and on the second example that you should not subtract out the stumps area. He asked if this was fair.

Rolf Ronning stated that these kinds of questions are inappropriate because everyone creates a disturbance every time we build a house. He stated that as a fact of life, human beings will make disturbances in the land. He stated that the real question should be whether the disturbance affects anyone and when the disturbance is created what protective measures are put in place to make sure erosion doesn't occur.

Supervisor Gabriels then suggested that if we take the two examples, if it is over 5,000 and we classify it as disturbance, all it requires is a minor stormwater permit. Rolf Ronning stated that there is a judgment call, there is 5,000 and 15,000 sq ft and that is why he recommended hiring an engineer for the Town. Councilman Saris stated that he may be right, but the ordinance still needs to be changed.

Mr. Hagen commented about the brook that runs through his property and that from year to year he has seen it change with run-off and land erosion from higher on the mountainside, he stated that this brook runs right into downtown and he feels as though it dispenses more water run-off than any property individually, new or old, could bring about. Feels as though many of the residents on the hillside bought their property or houses because of the view. Since he has lived there in 14 years the trees have grown and the view is becoming blocked. Doesn't believe in clear cutting, but feels as though he should be allowed to remove overgrowth or trees without disturbing the land.

Dick Swire, Three Brothers Island, feels as though it is not each individual's view it is everyone's. You're talking about disturbance, look at Huddle Brook, Indian Brook, Middle Brook, all are developing deltas and the reason for the delta is the disturbance on the mountainside. He stated that some people have said to him that if what they have come here for disappears; they will go elsewhere, which will make LG disposable. He said we are having issues because we are being selfish in what we want and we are not thinking of it as an overall community.

George Weinschenk stated that we can't solve every problem the same way. He stated that this ordinance has to take all different scenarios into account. He commented that the majority of contractors are concerned about the environment. This ordinance needs to be fair to all involved. He agrees with Rolf Ronning, that if you own the property you should have the right to do what you want. He thinks that these regulations should take into consideration what is the final result, what is the initial result. That if what the property owner is doing is not affecting the environment, the neighbors, or anything else; they should be allowed to do what they want. He stated that you can't have a small group telling everyone else that you are going to live by these standards.

Meredith McComb understands that some people bought the land to be able to do what they want however she, like many, bought the land to be protected by these ordinances. She is concerned that people are twisting the ordinance

beyond common sense. Whatever language is chosen common sense and reason has got to be part of the civic interaction or the whole thing will break down.

Bruce Mowery stated I live here and I am a contractor. One of the biggest problems that contractors face is the Zoning Administrator's office itself. He stated that they have no problem following rules and regs as long as we know what they are and their meaning is. He thinks we could adhere to the zoning regulations if we use common sense. He stated that he was well aware of the examples that Supervisor Gabriels used, one of them was one he was involved in. Supervisor Gabriels stated that he did not use these specific examples to degrade anyone. Bruce Mowery responded that you put people on the spot as to answer whether or not there was a disturbance. He continued that Supervisor Gabriels left out a third instance in which they had the same engineer look at cut piece of property on a 25% slope and classified that as not a disturbance because he left the logs laying on the ground. He asked that not only to use common sense with interpretation but to have individuals in the Zoning Office who are willing to work with us. He stated that he has worked with Pam for many years and feels as though they may not agree on every issue, but she exercises a lot of common sense. He was under the impression that Pam is the Zoning Administrator, that she is the one who is setting forth the guidelines or at least adhering to the guidelines that are written in the codes. That doesn't seem to be happening. There are two inputs from two different directions. For example one of his clients is being forced to obtain a major storm water plan. They have a site plan that is 25 years old and there is a road that goes right through this property. He stated that this road has been there, yet an individual in the Zoning office is classifying that as an area that is considered disturbance and needs to be included in the stormwater. He asked who the boss is.

Barry Kincaid asked who oversees the zoning regs. Supervisor Gabriels stated that they have co-equal authority. Barry Kincaid stated that it can't happen when there are two different interpretations. Councilman Saris stated that they brought in the Code Enforcement Officer because they had an office that had one individual in it who had become overwhelmed. The office was forced to prioritize what they did by the amount of time that they had and what was the greatest priority, which was trying to keep people's projects moving forward. He stated that they had very little enforcement because we didn't have time for it. We had two boards that worked very hard that were seeing a lot of stuff after the fact, conditions that they put on things that were ignored, because we had no enforcement. He stated that it wasn't fair to those individuals on those boards whose directives were ignored. He also said it also wasn't fair to those who have done it the right way. He stated it was a natural progression to expand the size of the office and get some kind of enforcement. He stated that the TB moved forward with that, but feels as though they made some unintentional mistakes in the way it was implemented and that these problems and mistakes have taken some time to surface. Councilman Saris stated that is why the TB has hired a professional planning company to come and look over our procedures.

Barry Kincaid indicated that he was pleased that experts have been brought in and they are here to make it look good on paper, but the individuals and contractors put it to use and make it work from all perspectives. He is concerned that he has a project identical to one that he went through a year and half ago in which he cut brush and trees to provide more sunlight and protect the home. It took three months for it to be approved. Now he is doing the same project and he is being denied. He stated that there is no consistency. He read something from Lake George Property Owners Group. Engineers that they have spoken to state that soil disturbance means uncovering soil and leaving it open to erosion. The simple cutting of brush, trees or lawn does not cause erosion. If roots are left in tact, stormwater regs Chapters 125-8 has language that says "No person shall operate a land clearing machine such as a backhoe, grader or plow so as to clear or grade land or otherwise remove vegetative cover or soil. He personally feels as though the Code Enforcement has involved the Town in a legal precedent by trying to make the case that cutting vegetation is the same as removal, which he feels is a stretch of the imagination in the context of the regulation language. He stated that we don't cut vegetation with earth moving equipment, you remove it. He continued that the proceeding paragraph 125-8c makes it clear, "No owner of real property shall maintain a condition which due to a human disturbance of land, the vegetative cover or soil, results in the erosion of soil into any body of water." The simple act of cutting vegetation and leaving the roots in tact is not a result of erosion. The NYS DEC Reference Manual says reducing the impact of stormwater run-off from NY development does not anywhere refer to the cutting of vegetation as a cause of erosion. On the contrary it states that as land is cleared and graded and made ready for development, soils become exposed and subject to erosion. He read some information from an article which discusses West Virginia University study about clear cutting. He stated that common sense and ample research have shown that cutting trees causes no erosion whatsoever; removing logs by ways of roads is a

source of sediment from logging. Non-road areas of clear cuts are compressed of the root mass and humus of a forced soil, this root mass is the world's best sponge for rainfall and run-off regardless of the presence of stems.

Bob Weisenfeld stated that although he is pleased with the turnout for the meeting that more should turn out for these meetings including ZBA and PB. He also commented that there are many who are not present, such as summer residents, who would want to be part of this discussion and hopes that they are able to be. He stated that he hopes everyone takes a practical approach to this and to leave the focus of the regs in tact.

Don Russell He feels as though this ordinance needs to be practical and something that the contractors can work with. He stated that disturbance is really about erosion control and trying not to create run-off. He feels as though the type of vegetation is irrelevant to the purpose of the ordinance. He stated that the Zoning Office is a problem, having two equals with different opinions, will hold up the process. He suggested that if the TB is not going to change the situation, that you keep the permit process in effect if there is a disagreement. This might be a reasonable alternative until you can come to some other conclusion.

Jane Bozzone offered an opinion that the Zoning Office should have two clear cut sets of responsibilities or job descriptions for each of the individuals who work there. As she sees it the Administrator, administers the code and later down the line the Code Enforcement Officer oversees the project to make sure it is going the right way. She stated that currently there is too much overlap and in house fighting.

Supervisor Gabriels asked the question that what happens to the permit process when either of those individuals goes on vacation. Jane B answered that they back each other's decision. Supervisor Gabriels then posed the question differently What if both individuals were to die tomorrow, and he hired two individuals from Queensbury, there are going to interpret the code, no history, nothing else, just black and white, that is the bible. He stated that Bible has to be clear and comprehensive to two new people coming in, so the permit process, construction and development can go on. He stated that right now the issue is creating the proper language to be interpreted by all in the same way.

Pam Kenyon stated that it is a struggle in the office everyday, that she cannot continue with the way things are and that there needs to be a change. An audience member commented that we need to get rid of the source of the problem. Supervisor Gabriels stated that he doesn't have an answer as to whom or what the source of the problem is. George Weinschenk asked that he look back to when all the problems started to occur. Supervisor Gabriels indicated that it was when we started to enforce the code. George Weinschenk stated that we need to use common sense with interpretation and not just slap people with fines. Councilman Saris responded that we do not just slap people with fines, when we have done it, it has been civil penalties. Further he stated that they don't allow the Zoning Agents to make those determinations. These violations are brought to the Board for final determination. He continued by saying that all individuals that have come before the TB have been treated fairly. He stated that there were quite a few that deserved what they got because they were flagrantly in violation of the ordinance and what was required of them but there were the individuals who didn't deserve it and they were sent off with no penalty.

Rolf Ronning stated once again that you can't have two bosses with co-equal authority. He questioned the need for a Code Enforcement Officer in the first place. He feels that since there is one, that the position should be under the Zoning Administrator. He once again stated that he feels as though it would be best that the Town hire an engineer so that if the administrator wasn't around that someone could make the decisions.

Mr. Bozzone stated that he feels as though you can't have two people with equal authority. He stated that they clearly have different job titles and descriptions. He further stated that they need to communicate with one another. He also feels that a month off for vacation was ridiculous. He feels as though one could and should cover the others responsibility while out on vacation.

Counsel Muller wanted the Board and public to know that he has a unique point of comparison. This area of law, these practices, these board presentations are very contentious, not only in Bolton but in many towns and it is magnified and aggravated in a positive sense by the volume of what is presented to these boards. And as a municipality we are heavily impacted because of the exponential growth in Bolton. He said with this growth, there

is going to be a lot of contention, dissatisfaction and misunderstanding. He stated that in comparison to other municipalities in the LG Basin he feels Bolton deserves an A+... He stated that in his experience of presenting before other boards or as Counsel for other boards they are not up to our standards and sophistication, stating that some of these towns and municipalities are backed up 9 months. He commended Bolton for having good Boards and a good Zoning office and that these individuals are working towards a common goal.

Dan Kincaid asked when Mitzi was hired did she know who her boss was or did she know she didn't have a boss. Supervisor Gabriels indicated that when they hired her, Pam was on vacation and that was a learning experience. He stated that since then it has been co-equal.

Bruce Mowery asked that there was a determination that he was looking for in the stormwater regs. Under prohibitions in subchapter H, sewage disposal systems. Counsel stated that they had had that discussion at a TB meeting and that the exception that applies to the installation of a septic system is specifically excluded if it stands on its own, but if it is part of the project, it cannot be segmented, it is not exempt. Bruce stated that it was ambiguous, because that was not how it was stated. He said it says specifically that it is an exclusive without exception. Now the TB is saying that it is supposed to be if it stands alone but not if it is part of a project. Counsel stated that his example lies within the issue of segmentation or of the cumulative impacts and that his argument would propose to build 3- 5,000 sq ft projects which would all be minor stormwater projects. Counsel stated that he feels Bruce's argument is that the area for the septic shouldn't be counted and start from the area disturbed for the septic as zero and go beyond that. Counsel stated that if you interpret the code like that you are not in a safe position when it is challenged in Court. The proper challenge in Court would be Bolton is allowing their projects to be segmented; they are starting at a threshold that does not take into account areas disturbed for a septic system installation. Counsel feels as though a Court of law would say that if a septic stands on its own, whether it was a new installation or replacement, is exempt, but with respect to a comprehensive project that septic, plus the driveway and the area to be disturbed is going to be comprehensively understood. He continued that this then brings up the other argument as to what about those roads and driveways to go in that were already in existence, they would have to be looked at on a case by case basis. Such as if it stands as an impermeable surface and it will be widened and added to. Counsel advises Mitzi and the Zoning office that whatever the answer or solution that it remains the same for everyone who asks the same question.

Bruce Mowery stated he is concerned with having two differing opinions, which will mean a loss of time on the job. Counsel stated you can challenge any interpretation of that office with the Zoning Board of Appeals and they will give you an interpretation. Mr. Mowery stated that he feels the Town is completely opposed to trying to segregate these two positions. Councilman Saris stated that they are not opposed to it, and reiterated that they hired a company in order to clarify the situation and that they are not totally opposed to any change that they might recommend. Bruce stated that he agrees with having the expert company evaluate the situation, but in the mean time he requested the TB to define the two positions.

Pam stated that she struggles more in the office trying to defend what she believes the code says with the Code Enforcement Officer than she does with dealing with the contractors and individuals coming into the office.

One of Mr. Kincaid's projects was discussed.

Barry stated that she did find a clause and she did send it to you, and you said with go with the motion of the PB. The motion was during construction when there was concern about the disturbance outside the disturbance limits. He stated that it never said that after the house was built that you couldn't cut brush or after the CO was given you couldn't maintain brush on your land. Counsel stated that he doesn't know where the two different interpretations come from, but what overrides the code is anything specific to the Site Plan Approval. Counsel stated that there can be conditions set in the site plan approval that are not specifically available in that code. Counsel stated that they should always go with the site plan approval. Barry Kincaid asked if that Site Plan approval states that the motion is that the client can't cut brush. Counsel stated that he doesn't remember what the approval said, but would always say that whatever the Site Plan has required, that is the rule. B. Kincaid then said that tonight Counsel said that once the house is built, they want to build a shed or small project, that it is not cumulative. Counsel stated that this is the basis of discussion that has gone before the TB and zoning, what is the policy or position that will be taken by Bolton in an example like that. He stated that the answer simply so far has been that no one has imposed that extra

requirement. B. Kincaid then asked if the answer that Pam gave him initially is the answer that he should be going with. Counsel commented on Councilman Saris question that when you have an interpretation and you challenge that interpretation, the ZBA will tell you exactly it means and what you are limited to doing, what you are permitted to do. B. Kincaid stated that he was not challenging the Zoning Administrator's interpretation, he agrees with it. He asked if has to go the ZBA again for approval. Counsel stated that if he didn't like the interpretation that he should go to the ZBA. Counsel feels as though the Town is taking a managerial approach in finding out what is wrong in this office and is taking the steps and proper procedures to clear it up. He stated that the ideal result would be for the contractor or individual to be able to walk in that office and know what is expected of them.

Counsel asked both Pam and Mitzi if they asked for Counsel's assistance on this particular matter. Both stated no. He stated that he would have been and is more than willing to assist when a difference in opinion or interpretation occurs. He stated that he wants to help expedite and make the office user friendly. He will use his experience and knowledge to steer clear of trouble and arrive at what he thinks is the persuasive best answer.

Barry Kincaid stated that his recent project is almost a mirror image of what he did a year and a half ago, except he has someone else telling him no. Pam stated that when she made her decision it was based on what happened in the past and based on the decisions that were made by the PB and ZBA and that Mitzi was there and knows what went on. Barry stated that he needs to know where they are going and who is going to make the decision so he can go forward with his project.

Rolf Ronning stated that he doesn't feel as though Counsel should be called every time there is a disagreement between the ZA and Code Enforcement Officer. Counsel responded that he is not a referee but acts as legal counsel to solve at that juncture. Rolf Ronning stated that he understands the involvement of Counsel if there is a legal issue at hand, but for the most part and in the main discussion of the meeting, this issue is a judgment call on interpretation and that we will have to decide who is in charge while the ordinance is being rewritten.

Supervisor Gabriels asked Counsel to look into Barry's situation to figure out where we are and the solution to prevent the Town from being sued in an Article 78 by anyone involved. He requested that he render an email to both Mitzi and Pam with copies to the TB members so that we all understand. He stated that this was the only way they were going to answer his question tonight, and if that if not soon enough he recommended he go to the ZBA.

Supervisor Gabriels adjourned the meeting at 9:05 p.m.