

TB – Minutes
November 1, 2005

STATE OF NEW YORK
COUNTY OF WARREN
TOWN OF BOLTON

Present: Supervisor Alexander G. Gabriels III, Councilmen Scott Andersen, Jason Saris, Edward White, Town Counsel Michael Muller, Town Clerk Kathleen Simmes

Absent: Councilman Robert MacEwan

PUBLIC HEARING:

At 6:30 pm, Supervisor Gabriels opened the public hearing on the preliminary 2006 Town Budget and gave an overview. The Town Board worked hard on this, but sadly the Town Board does anticipate an increase in taxes estimated at an increase of \$.05 cents per \$1,000. of assessment. This equates to an approximate 7% increase over the preceding year.

Supervisor Gabriels added that the June storm event had a significant impact totaling just over \$900,000.00 in damages and the Town Board has bonded out \$450,000.00 of that for the New Vermont Road bridge and streambank stabilization. He added that the Town is still in good shape with regard to the unappropriated surplus and the State's appeal to FEMA is still underway.

Supervisor Gabriels stated there is an increase of \$38,815.00 in General Fund Appropriations from the 2005 budget. Total Revenues estimates show a decrease of \$31,650.00 from 2005; Highway Fund Appropriations show a decrease of \$71,106.00 from 2005; Highway revenues show a decrease of \$68,600.00 from last year. Fire Department budget is up \$15,050.00. the Light District budget is up \$3,000.00 from 2005. The Sewer District Appropriations show an increase of \$16,532.00 from the preceding year. The Water District Appropriations are down \$7,804.00 from 2005. He added that the Town Board is going to try to hold the water and sewer rates at a constant level over the next year.

From the public: Tony Hall asked if any other factors are driving the tax increase other than emergency expenditures and Supervisor Gabriels answered by saying the major factors are; the emergency expenditures, fuel and insurance costs are estimated to go up between 10%-14%.

Supervisor Gabriels is concerned that given the draw down of the Unappropriated Surplus, he doesn't think the Town is in a fiscal position right now to commit another \$100,000.00 to the Conservation Club Capital Reserve Fund, but should the Town's finances improve over the next year the Town may be able to continue in that endeavor.

Supervisor Gabriels said in terms of the revenues, the Town Board has increased the declaration of the sales tax by \$50,000.00 and increased the declaration of mortgage tax by \$50,000.00. He noted that regarding sales tax, Queensbury has just undergone a significant re-evaluation and the equalization rates between the towns throughout Warren County have changed drastically. This means Bolton's formulated share of the sales tax and the County's property tax will diminish, but those numbers are still up in the air at this point.

Supervisor Gabriels stated Town Board did not feel comfortable with any major increases or major capital or equipment purchases for the Highway Department for the coming year.

Supervisor Gabriels said the Town is in control of its destiny and the Town has a surplus and the ability to

alter—either increase or decrease—the property tax rate.

There were no additional public comments on the preliminary 2006 Town Budget. and the hearing was left open.

REGULAR MEETING:

Supervisor Gabriels called the regular meeting to order at 7:00 pm.

Pledge of Allegiance – Councilman White

Announcements:

q Election Day is Tuesday, November 8, 2005, polling locations are in the Town Hall from 6:00-9:00 pm.

q The Town Hall will be closed Friday, November 11, 2005 for Veterans Day and Friday November 25, 2005 the day after Thanksgiving.

q The FEMA Declaration for the June 13, 2005 disaster has been denied and the State is still appealing the decision.

q According to press reports, Bolton's Tops and 11 other Adirondack stores have been sold to C&S Wholesale Grocers of New Hampshire. The deal closes mid-February 2006 and C&S hopes to continue running the Bolton Tops as a grocery store, but there has been no news as to who might operate the grocery store.

q The Town of Bolton has not enacted a curfew on Halloween night or any other night for the Town or the Hamlet.

q Bolton Make a Difference Day was reported to be a huge success with over three truckloads of groceries being collected and shipped.

q Hudson Headwaters Health Network will make a presentation at the December 6, 2005 Town Board meeting. The organization's 20th Anniversary Celebration will take place on Monday, December 5, 2005 from 4:30-6:00pm.

q The Meal Site Menu is available in the Town Hall.

q There are 2 Town of Bolton website addresses: www.town.bolton.ny.us and www.townofboltonlanding.com

Public in Attendance: No comments

Correspondence:

q Two bids were received to put up a chain link fence around the basketball court in Veterans Park.

q Letter from Warren County Sheriff's Office on their appreciation, gratitude and thanks to the Bolton Highway Department for their conduct and professional cooperative manner on the recent New Vermont Road incident.

q Letter from Louise Marwill in thanks for toning down the loud amplified music at Blue Water Manor.

q Letter from Mayor Blais advising Richard Funk is no longer associated with the Student Employment Center in Lake George Village. The office will continue to function at the direction of Jerry Sullivan with a full line of services to foreign and American students.

q Letter from Laurie Gianquitto regarding her problem and solution to fallen trees on the west side of the culvert by her property and thanked K. Simmes for contacting NYSDOT to take care of the situation.

q Letter from Time Warner Cable regarding the requested survey by the Town of Bolton on July 29, 2005. The survey resulted in Time Warner Cable committing to build the cable service in many new areas. Copy of the areas is available at the Town Hall.

q Letter from Andrew Roden of the Trout Lake Club with concerns about mosquitoes and request for the Town and/or County to try to prevent this situation in 2006.

q Letter from Time Warner Cable with the quarterly franchise check in the amount of \$7,670.77.

q Letter from Burt Morehouse informing the Town of Bolton Highway that due to the high cost of diesel he will not plow the school bus turnaround on Wall Street.

q Letter from Bill Dow of Lake George Steamboat Company regarding the condition of the Rogers Park dock. Beginning in 2006 the Mohican will no longer be scheduled to stop at Bolton Landing and they will

no longer be responsible for the maintenance of the three piling clusters on the east base of the pier.
q Letter from Schoder River Associates that Carl Schoder with an indication that the Transfer Station modifications have begun and should have substantial completion on 12/02/05 and final completion on 12/09/05.

q Memo from Ray Oliver regarding the condition of Upper Brereton Road.

q Request from Michael Travers of Schroon Lake to borrow or rent the Town of Bolton's turbidity curtain for a dredging project they propose to do.

q Press release from LGPC regarding their agreement for tree clearing and stream corridor protection program. A meeting on this matter is scheduled for Wednesday, December 9, 2005 at the Queensbury Town Center.

q Letter from Mr. Tassely regarding his desire for a septic variance at Cotton Court.

q Correspondence from Thomas Jarrett regarding the Urtz ditch remediation. A letter from Town Counsel states that a portion of the ditch has been remediated to the satisfaction of the abutting property owners.

q Notification from the APA that the Gatehouse Homeowners Association and the LGA are dredging a particular area down by the Gatehouse.

q Correspondence from the Adirondack Association of Towns and Villages; one requesting a comment of support of the Town Board regarding the Draft Unit Management Plan that the DEC has released for the Silver Lakes Wilderness Area.

q Notification that there is a county bridge on lower Padanarum Road scheduled to be repaired in 2006 pending a grant for federal funding (95% federal and 5% county).

q Indication that an individual reported last month that his 911 address in National Grid's database was incorrect. Supervisor Gabriels said that his address is incorrect in that database also and he doesn't know how to ensure that National Grid has updated 911 numbers, but it is important.

q Indication from the LGPC that the draft Erosion Water Milfoil Management Plan is available and comments will be received by the LGPC until 12/23/05.

q Indication from Mike Fitzgerald, who is doing electrical work for the Town, that he had six hours of repairing electrical connections in Veterans Memorial Park due to the state contractor digging up that area.

q Correspondence from the APA on a "stop clock" letter regarding Herb Koster's development, because apparently a dock was put in illegally.

q Correspondence from the ZBA that the Town owns property close to a proposed variance application submitted by Rob and Deborah MacEwan.

q Correspondence on the Rainbow Beach Tax Certiorari matter.

q Correspondence from the NYSDOH on the lead and copper sampling with an indication that the Town of Bolton is not doing well enough as the Town's corrosion control treatment provided by the addition of sodium silicate to the water. The results of the past few years have been inconsistent and the use of sodium silicate will need to be re-evaluated.

Correspondence from NYSDOH that the Mayfair Resort has completed its application for their subdivision. Correspondence from the Cornell Cooperative Extension Program.

Correspondence that the APA will be holding a meeting November 4, 2005 on affordable housing at the Adirondack Visitors Interpretive Center.

Indication from the ZBA that the Town owns property near a variance application for Joseph Emanuele at 26 Honda Loop.

Letter hand delivered from Carl Schoder of Schoder River Associates stating that the New Vermont Road culvert replacement is complete to date (11/01/05) with only minor site restoration work to be completed by the contractor and his recommendation that the roadway be reopened to traffic.

Reports:

Councilman White:

ASSESSOR:

Daily maintenance of deeds and transfers has been kept up-to-date. Sales seem to have slowed down,

but real estate values continue to increase at a steady rate. Sales and sales ratios are continually monitored in this office in order to set a uniform level of assessment. On September 20th a needs interview was attended with County contractors to determine what GIS-based data was needed by both the assessment and planning offices. On September 22nd Parts 6 & 7 of the Annual Assessor's Report were completed and mailed to the State. On September 28th notice was received that previously exempt parcels were conveyed to the State by The Nature Conservancy were now determined to be taxable, which will add \$826,100 to the Assessment Roll. . The Assessor received notice from the State that the Town will be receiving \$740.71 for the Town's part in administering the STAR Program.

WATER DEPT:

Water made: 6,928,000 gals Daily average: 223,504 gals. Currently, the pond level is over the spillway due to heavy rains. All the meters have been read, all the fire hydrants have been flushed and the distribution system is in very good order and intact. The Water Department did a good job with the flushing, as the water looks very clean and clear.

POLICE DEPT:

Hours officers worked: White – 125.0, Howse – 100.0, Schroeder – 75.5. Miles patrolled: 1,700 miles. Fuel used: 145.0 gals. Officers investigated 1 criminal report, 1 assist to other agencies, 4 security alarms, 3 uniform traffic summonses, 4 parking tickets, 1 auto accidents investigated, 4 court securities, 1 arrest, 4 emergency medical assists, 1 fire department assist, 12 misc. complaints, 1 missing person and 1 found property.

JUSTICE COURT:

No report.

Councilman Saris

SEWER DEPT:

The Plant took in 7,695,860 gals of wastewater for a daily average of 248,253.5 gals. The wastewater is very high for this time of year, which is an indication of the tremendous; amount of record-setting rain the Town had this month (11.1 inches measured at the Sewer Plant for this month). The Sewer Department cleaned up the trees that had fallen onto the upper beds from the storms. They had 16,000 gallons of liquid sludge hauled. The Sewer Department has been working with Severn Trent in cleaning and filming the sewer lines.

HIGHWAY DEPARTMENT:

Presently finishing up paving projects and also doing the shoulders.

Councilman Andersen:

PLANNING OFFICE:

Permits applied for: 13 certificates of compliance / 4 wastewater systems / 3 variances / 5 site plan reviews / 3 subdivisions / 5 stormwater permits. A/R: \$1,412.45. The Greenmeir/Hubbell subdivision was approved by the PB on October 20, 2005 concluding a 9-10 year issue.

CODE ENFORCEMENT:

16 site visits with details / 23 page report filed with numerous letters regarding requirements, approvals, violations, stormwater investigations, etc. 104 miles logged. Councilman Andersen said this proves to still be a busy department.

RECREATION DEPT:

Attendance at the Rec. Center has been very high, sign-up sheets now exist and they have over 20 children on Thursdays and Fridays. The Rec. Department wanted to point out that Michelle Cushing is doing a wonderful job as the Rec. Center assistant, as she works well with the children and has lots of new ideas and new activities.

Councilman Andersen said for years the Rec. Department has reimbursed the school for transportation and fuel costs. One suggestion is that the Town provides the fuel for the busses to the school, but not in the form of a check, because the school cannot accept a check for fuel due to their budgeting process. The Rec. Department wanted to thank Elaine Brown for her help chaperoning the Fun Spot, swimming at the Sagamore and at the Rec. Center.

TRANSFER STATION

Supervisor Gabriels noted that research was done on the accumulated trash taken in on Saturdays and Sundays as part of the deliberation of whether or not to keep the Transfer Station open on Sunday during the winter and the results show that the Transfer Station takes in more garbage on Sundays than it does on Saturdays.

SUPERVISOR:

Total receipts: \$1,590,239.33. Total disbursements: \$1,157,913.53.

Nothing on stormwater.

Unfinished Business:

Public Hearing on the preliminary 2006 Town Budget, Supervisor Gabriels said he noted that after the budget preparation there was one mathematical error on a proposed payroll to the Assessor where the raise for the Assessor was incorrect, and the error will be corrected. No other Town Board Member or public had comments at this time.

RESOLUTION #232

Councilman White moved seconded by Councilman Andersen for the Town Board to close the Public Hearing on the 2006 Town budget. All favorable. Motion carried.

RESOLUTION #233

Councilman White moved, seconded by Councilman Andersen for the Town Board to adopt the 2006 Town Budget, which includes the Water and Sewer budgets. All favorable. Motion carried.

Review of the contract between the Town of Bolton and Green Island Associates (GIA) regarding the emergency water supply on Green Island. Town Counsel feels it would be better to draw up another contract and forward to GIA's Attorney for their approval.

K. Simmes opened the sealed bids for the. Parks Department's 1996 Ford One-Ton truck,

James Flansburg \$2725.00

Bernard Russell 921.11

Loren Johnson 509.00

Keith Gilligan 900.00

John Perry 1000.00

Leona French 702.00

Johnson Auto Crushers 1051.00

Tom Curtis 2271.00

RESOLUTION #234

Councilman Andersen moved, seconded by Councilman Saris to award the 1996 Ford One-Ton truck as advertised to the high bidder James Flansburg for \$2,725.00. All favorable. Motion carried.

Pending Items: There was no action on pending items.

Board of Health/Water Commissioners:

Regarding Ray Tassely of Cotton Court seeking a septic variance, Supervisor Gabriels gave an overview and Counsel said there must be public notice before any action is taken. This item is pending.

Referrals from Code Enforcement Officer / ZBA / BPB: None

ALTERNATIVE REMEDY

Linda Baker, 119 Alder Brook Road, (TMN – 123.00-2-34), put on an addition 14' x 24' including eaves on a residence without a building permit, Linda Baker said her brothers and nephews put the room up for a living space for her 91-year-old father.

Supervisor Gabriels asked when this was done and if there was knowledge a building permit was needed. Linda Baker said it was done in May or June 2005 and she knew a building permit was needed, but her family members put the room on when she was at work. Supervisor Gabriels asked if Linda Baker came forward after the work was done for a building permit and she said no. Supervisor Gabriels asked if Linda Baker would have needed a variance if she had applied for a building permit correctly and Linda Baker said no. Counsel said that is correct, in that there is no variance potential here—it would have been permitted entirely had there been a permit requested.

Supervisor Gabriels asked if Linda Baker is willing to apply for a permit and she said yes. Councilman White asked if the addition was with footings and Linda Baker said yes. Councilman White if the added room is presently occupied by Linda Baker's father and she answered by saying no, there is no one using that room now.

Councilman White asked if the structure is currently attached to where Linda Baker lives now and she said yes. Councilman Andersen asked if it is correct that this addition was built by family and not a contractor and Linda Baker answered by saying yes, but there were contractors present.

Councilman White said this is an uncomfortable situation for the Town Board because they have set a precedent in the past for similar situations where they used a \$1,000.00 civil penalty for these issues and he doesn't feel it is fair to deviate from that, even though he is sympathetic to the situation. Several Town Board members agreed.

Linda Baker said she knew it was wrong and if she had the time she would have gotten the permit, but her family just went ahead and did it. Supervisor Gabriels said that presumably, as Linda Baker indicated, there were contractors involved in doing this and presumably the contractors work locally enough to know that a building permit would be required.

RESOLUTION #235

Councilman Andersen moved, seconded by Councilman Saris for the Town Board to impose a \$1,000.00 civil penalty to be paid within 90 days (with the option for Linda Baker to come back before the Town Board if more time is needed) and also that Linda Baker has to get a certificate of compliance from the Town of Bolton, then a building permit and certificate of occupancy from Warren County. All favorable. Motion carried.

Melanie Hall, Alder Brook Road, (TMN 123.00-2-37), Zones RR5 & RR10, a mobile home on property without site plan review by the Planning Board. Supervisor Gabriels asked if Melanie Hall is the owner of the property and the mobile home and Melanie Hall said yes.

Supervisor Gabriels asked when the mobile home was put on the property and Melanie Hall said about a year and a half ago. Supervisor Gabriels asked if she thought it might need to be checked out before putting the mobile home on the property and Melanie Hall answered by saying yes, she talked to P. Kenyon, then she got a letter in the mail regarding reassessment so she thought it was alright.

Councilman White asked if there was an existing structure or another mobile home on the site before the new one was put on and Melanie Hall said there was a house there a long time ago—over ten years ago, but there was never another mobile home. Councilman Andersen asked if there is a septic system for the mobile home and Melanie Hall answered by saying yes, there was an existing septic system.

Counsel said that if the Town Board were willing to adjourn this item, he would be willing to sit down with Melanie Hall and Code Enforcement Officer Mitzi Nittmann to make an attempt to get the matter into compliance.

Supervisor Gabriels noted that under the Zoning District RR5 the schedule of use and regulations, mobile homes are permitted under Type 2 with a special use permit.

RESOLUTION #236

Councilman White moved, seconded by Councilman Andersen to table Code Enforcement Officer Referral: Melanie Hall, Alder Brook Road, (TMN 123.00-2-37), Zones RR5 & RR10, a mobile home on property without site plan review by the Planning Board pending a meeting to be held with Town Counsel, Code Enforcement Officer Mitzi Nittmann and Melanie Hall. All favorable. Motion carried.

Theta J. Curri, 162 Valley Woods Road, (TMN 171.06-1-18), Zone RL3 construction of two barns for stabling three horses without site plan review by the Planning Board or building permits(s) from the Zoning Office or the Warren County Building Code Department. Supervisor Gabriels asked when the barns were put up and Theta Curri said they are run in sheds used as shelters—not contained barns—and one is not completed, but the first one was completed just over a year ago.

Supervisor Gabriels asked for more detail on the structures and Theta Curri said it is a three-sided run in shed used for shelter. Supervisor Gabriels asked if there was any indication that site plan review would be needed for these sheds and Theta Curri answered by saying that they put the sheds up themselves—without professional help—and she did not have knowledge that site plan review would be needed.

Councilman Saris asked if there is a home on the property and Theta Curri said yes there is a home there, which she purchased last year, and she is the homeowner. Supervisor Gabriels asked if there was any discussion during the closing that this is a zoned community and that these kinds of things might need to be reviewed to make sure all neighbors concur with that and Theta Curri said she was not aware that she needed to pursue any special course of action.

Councilman White asked for the dimensions of the sheds and Theta Curri said 12' x 12' with an attached storage making it 12' x 24' and the incomplete shed is 9' x 11'. Councilman Andersen said the Code Enforcement Officer's notes state that Theta Curri had horses on this property previously and Theta Curri said she just purchased this property last year. It did contain a barn at some point in time and the prior owners had horses there, but not at the time she purchased it.

Councilman Andersen asked if the agricultural use in that area would require site plan review only or a variance request as well. Counsel said that in speaking with the Code Enforcement Officer, he was led to believe that everything would have been satisfactory, it is logically possible, but you first have to make your presentation for site plan review. Councilman Saris said the Town Board is not here to offer relief from the code.

Supervisor Gabriels asked where the horses are now and Theta Curri said that they are in the backyard contained by an electric fence. Supervisor Gabriels said one of the problems the Town Board has taken in the past is removal of the structure, which would mean boarding the horses out. Councilman Andersen said besides the building, there is an issue for site plan for the type of use, so there are two separate issues—one is the buildings without a permit and the second is the type of use, so at the very least it needs site plan review and building permits for the buildings. Councilman Saris said in the past when the Town Board has dealt with these issues it has instructed the applicant that they need to make it compliant and the Town Board is not the one to make the judgment of what is required to achieve compliance.

Counsel agreed that it is two separate issues; the construction of two structures without a permit is one issue and stabling of three horses without site plan review is another issue and on the hypothetical possibility that a variance would be in order is not an issue for here, but an issue ahead in bringing the property in compliance. If no variance is involved there would still be a need for permits for barns and site plan review for horses.

Councilman White asked what the purpose of the previous barn was and Theta Curri answered by saying that there were horses and a barn on this particular piece of property. Supervisor Gabriels asked how long ago and Theta Curri said she is unsure. Councilman Saris said that goes back to the Zoning Department and they would make that determination if there is any grandfather status because of a previous use.

Councilman Andersen asked if the Town board is to look at this matter as two separate infractions and Counsel replied by saying that the Town Board can look at it as two separate transactions, but the Town Board visited the notion of two or three transgressions and the Town Board cumulatively came up with one solution and one penalty, the Town Board doesn't have to do it that way, but it does have ample precedent to solve a series of problems with one solution.

Councilman Saris said he would suggest the standard in the past the Town Board has used for that is that there was an obvious knowledge of the person of their violation and that it was done with intent, but he doesn't see that as the case in this particular case.

RESOLUTION #237

Councilman Saris moved, seconded by Councilman Andersen for the Town Board for property ID TMN 171.06-1-18 owned by Theta Curri to impose a \$1,000.00 civil penalty to be paid within 90 days and require Theta Curri to make her application to the Zoning Office within 30 days and to bring the property into compliance. All favorable. Motion carried.

New Business:

Regarding authorizing Bluebird Way as a new road name, Supervisor Gabriels said P. Kenyon made the request. The Town has no other confusing names associated or comparable to it, the location has been defined and it will be included in the GIS program.

RESOLUTION #238

Councilman Saris moved, seconded by Councilman White to authorize the use of Bluebird Way as a new private road name. All favorable. Motion carried.

K. Simmes said Mr. Moffitt is requesting a new Cotton Court sign since the original one didn't have the word "private" on the sign and asked how many signs the Town is obligated to buy, as it has purchased at least four for Cotton Court. Counsel said it is the Town's obligation to replace the signs.

Regarding establishing a Capital Project Account for the June 13th storm event, Supervisor Gabriels said they are estimating damages at a little over \$900K and said he feels \$1 million will cover that.

RESOLUTION #239

Councilman Andersen moved seconded by Councilman White for the Town to establish a Capital Project account for the June 13, 2005 storm damage in the amount of \$1 million. All favorable. Motion carried.

Regarding the tree that fell on the shed at the Sewer Plant, Supervisor Gabriels said that General Contractor Greg Bonath submitted the low bid of \$2,329.00 to reconstruct the shed within a month and the insurance payment has been received for this.

RESOLUTION #240

Councilman Saris moved, seconded by Councilman Andersen to authorize the contract with Greg Bonath, General Contractor. for \$2,329.00 to reconstruct the shed at the Sewer Plant. All favorable. Motion carried.

Regarding adopting the Sanitary Septic Variance application, Supervisor Gabriels said that Counsel provided a resolution and format to follow before granting such permits and discussed the second whereas clause regarding public hearings. Counsel said he suggests the Town Board complies with the statute. He has spoken to the NYDSOH representatives and went over regulations and he would like the Town of Bolton to use the format of: notice in the newspaper, public hearing, findings of fact, conclusion of law and a certificate so that the person who is granted the approval has a memorandum of what was done and it is also a matter of record in the clerk's office.

Councilman Saris asked if it would be asking for public comment on an application prior to deliberations and Counsel answered by saying yes, there would be no meeting format change, but it would enable the public to be heard. Supervisor Gabriels asked if the Town would provide notice to neighbors within 500 feet and Counsel said yes and it would need to be in the paper 10 days prior to the meeting. Further discussion ensued regarding notices to neighbors and in the paper.

Supervisor Gabriels asked if a resolution is needed and Counsel said no, but he would like that format used by the Town Board the next time it has a local Board of Health issue, septic variance or septic and well separation.

Regarding Frank McDonald, Supervisor Gabriels said that Frank McDonald submitted a written request with pictures for consideration and Frank McDonald was before the Town Board for the Checci property at 9 Rose Lane by Lagoon Manor about a year ago and the issue was the replacement of the shed dormers that were installed without a permit and Frank McDonald was required to bring them back to dog-house type dormers. He is in attendance to request a reconsideration of the decision by the Town Board and Planning Board.

Frank McDonald said that part of his request is because they have had a difficult time selling this house in the present condition. They have had no prospects other than someone who offered to buy the house "as is" last week. They changed the dormers inadvertently because the dormers were about 4' wide and couldn't be used for living space, they made the space usable even though it only included an addition of 55 additional square feet inside the building, the Town Board and Planning Board decisions were for him to remove the shed dormers and replace them with dog-house style dormers, they did give direction to the contractor to change them back and if he had done them right away he wouldn't be here. The contractor still says he is going to do it, but he hasn't to date and he is asking for a renegotiation of the remedial action or a penalty whether it be in a fine or an adjustment in the dormers.

Councilman Saris asked why it wouldn't require a variance because the house doesn't meet the lakefront setbacks and he added that when you have an approved house built as it was supposed to be built, expansion of a dormer would be an expansion of a pre-existing non-conforming structure and it would require a variance. Counsel said under that scenario it could require a variance. It was all presented with a certain package by site plan review that was approved. His recollection is that there were several Planning Board meetings and the Planning Board came up with a plan detailing window treatments and siding. They were very particular, they wanted it a certain way, so the technical circumstance that brings this applicant out of compliance is that what was built did not please the Board, but more importantly was not in conformity with the site plan review that was approved.

Councilman Saris said his concern is that the Town Board has certainly had other people get variances when they put dormers. Counsel said that the Town Board has also ruled to put it back into compliance; that the Town Board, when it comes to alternative remedies, has a great deal of flexibility in the ordinance that empowers it to do it and the Planning Board members are the designers, planners and site

plan reviewers and he doesn't want the Town Board to sit as an appellate review of the Planning Board, because that wouldn't be right.

John Gaddy, Planning Board member, said he had initiated at the Planning Board meeting to be on the Town Board agenda. The reason Mr. McDonald is here concerns the decision made by the Town Board to bring the house back into the plan that was approved. The second application when the Planning Board asked for architectural review was not built, the incentive from the Planning Board's viewpoint was to be able to have enforcement of the planning guidelines that the Planning Board had spent so much time looking at over the course of two months. In this situation his viewpoint as a Planning Board member is that this was the first issue where the Planning Board was sending back a message to developers for profit where they are looking at a spec house where someone got approval from the Planning Board after asking for it then has built it in a different fashion, he has been very happy with the courage of the Town Board in trying to make this conform to what it was before and lastly, he feels sorry for Frank McDonald but if this is the builder that's not making this happen he doesn't understand why it doesn't go back to the point beyond looking for variances as this is an intentional violation and he doesn't want to send a message that the Town is not going to enforce its own laws.

Supervisor Gabriels asked if John Gaddy thought the Planning Board asked to be on this Town Board agenda and John Gaddy said his recollection is that at the end of the last Planning Board meeting he asked that the Planning Board be able to bring this up and he believes two months ago Henry Caldwell requested the same. Counsel said that this is true. Supervisor Gabriels said there needs to be better communication between the Town Board and the Planning Board if there was a sincere desire or request for the Planning Board to appear on the agenda for this or any other purposes, because he didn't get that information.

Frank McDonald said it was untrue that it was blatant and intentional, he has witness to that and it was done purely as a selling feature without any forethought. John Gaddy responded by saying he is not trying to offend anybody, but the fact of the matter is that the Planning Board approved a plan and if the carpenters can't follow the plan he is pretty surprised. Frank McDonald said it was done quite some time after the construction was completed and he is looking for negotiation on the decision that would be acceptable to both sides, as there were other things discussed this evening that didn't require the people to take down the structure they built intentionally without a permit. They have a permit and are in compliance except for the two dormers, which is the only thing different about this house.

Councilman Saris said he isn't quite sure it wouldn't also require a variance to remain as is and Frank McDonald said if it is pre-existing and non-conforming then he agrees.

Jim Casaccio said that house is a disaster to begin with architecturally from the interior, when you look at plans you don't know exactly how things are going to be put together. What was built is exactly what was on the plans, when you walk into something and see that there could be a space that will make a house worth more money and bring in more tax dollars to the community you make a change to it which is the only thing that they did, because it is not a very well designed house at all and if you put the dormers back the selling price of the house will be a lot less.

Counsel said that if Frank McDonald would like to get to keep what has been built, procedurally the Planning Board can grant that relief or order them to bring it into compliance. If Frank McDonald makes his case and the Planning Board grants him the relief for the shed dormer then he is in compliance. It is entirely possible that the Planning Board could approve it or deny it; and he would never want to advise the Town Board that they could redesign it, as he'd be leading everybody down the wrong path. Frank McDonald said there are four big windows in the dormer, so maybe they could negotiate by taking two windows out, but they can't sell that house as is, which is a hardship.

Counsel said that if they were not confused by the alternative remedy issue, any site plan approval goes

back to the Planning Board, so Frank McDonald is free to go back to the Planning Board to convince them he has a better façade. Councilman Andersen said the Town Board made the determination a year ago to remedy the situation not by a fine, but to bring it into compliance. He suggests that he is not so willing to change the Town Board's position, however if Frank McDonald went back to the Planning Board with a different idea and they said they would be happy with it then he believes the Town Board has already shown the position it would take and he thinks it lies with Frank McDonald going back to the Planning Board and he'd personally be interested in hearing what they had to say. Counsel said in the Planning Board's decision, this matter would be over.

Councilman Saris said he is disappointed it hasn't been put back, the Town Board tried to show support to the Boards who put work into it, there are lots of people the Town Board has fined. and required them to take down their structures. Generally speaking, when that was the case the Town Board felt those people should have known better unlike people who had come before the Town Board today. Frank McDonald of all people should know better as he is in the business. He asked how it would look to other people if Frank McDonald gets a pass and they don't. Councilman White said he is concerned that it has been a year and there is still no completed project based upon the agreement. He thinks the Town Board should discuss a civil penalty, as this is a situation where it was a resolution that was based upon an agreement that didn't work, so there is still a violation. This is the perfect situation where contractors come in and do what they want.

Supervisor Gabriels asked if the Town Board is governed or limited in the amounts of civil penalties under various conditions. Counsel said if Councilman White feels strongly on that issue it would be proper, but it would also be proper procedurally in respect to Frank McDonald, who initiated this inquiry, for the Town Board to say a civil penalty is appropriate because of the delay in complying. Frank McDonald is entitled to an adjournment, to be represented by counsel and have sufficient notice, so the Town Board would have to table the matter, so Frank McDonald has an opportunity to prepare.

Councilman White said his problem with the whole matter is that the Town Board has made agreements with other residents to become compliant within a timeframe. Counsel said he does not take issue with the fact that a civil penalty might be appropriate, he just takes issue with procedurally that Frank McDonald is entitled to sufficient notice—sufficient being 10 days. Councilman White said he would like to give Frank McDonald the opportunity to have counsel, but he would also like to impose a civil penalty, as it is not fair to the other people.

Councilman Saris asked if they would be able to receive a Certificate of Occupancy if the house is not returned to its original status, since they would not be in compliance with the site plan review. Counsel answered by saying that it should mean they could not get a Certificate of Occupancy, but the problem is that the Certificate of Occupancy comes from a different agency. Councilman Saris asked if they would need a Certificate of Compliance from the Town and Counsel said that Certificates of Compliance are granted at the beginning of a project—not during and when there are errors along the way the Code Enforcement Officer is looking at different errors than the Building Inspector is looking at—it is a weakness in the system.

Councilman Saris said the Town Board started putting timeframes into effect but they didn't in this case. He would like to know if there is some way that it could be rectified. Counsel said to bring it back at the next meeting so the Town Board can then impose and be specific about a civil penalty if a deadline is applicable. Frank McDonald does have the option of going to the Planning Board and if the Planning Board is satisfied with his new rendition as to what the façade of this building will look like, Counsel is going to urge the Town Board that Frank McDonald is now in compliance if he corrects that. The Town Board can still move ahead if it feels uncomfortable about all the delay and frustration, by imposing a civil penalty.

Councilman Saris said he feels the Town Board is somewhat responsible for not putting a timeframe on it. Councilman White replied by saying that is why he wanted Frank McDonald back before the Town Board

so the Town Board would have the opportunity to impose a civil penalty and timeframe to accomplish what it hadn't before.

Councilman White asked if the Town Board has to impose either a civil penalty or a deadline if it is on the agenda and Counsel answered by saying the Town Board doesn't have to impose either one even if it is on the agenda. The Town Board can also, at the request of the applicant, table it until next month if he has an application pending before the Planning Board for the following month.

Supervisor Gabriels asked what would have happened if Frank McDonald had sold the house "as is" with the shed dormers in the past year and Counsel said that is a weak aspect of the system where it would be non-compliant and the homeowner's responsibility.

Frank McDonald said that this developer is very interested in doing the right thing by adjusting the dormers, but not bringing them back to the original doghouse dormers, which is what he will present to the Planning Board. This developer wants to retire and continue to build homes here, so they don't want the Town Board members to have a bad taste in their mouths for this project because it is one of the few properties left that can develop a lot of homes. and bring some people to the Town to enjoy the lake—the developer has a lot at risk here and doesn't want to get anyone ticked-off at him. Councilman Saris said that is wonderful sentiment, but when you are expected to do something and it's not done a year later, it is kind of contradictory.

RESOLUTION #241

Councilman White moved, seconded by Councilman Andersen to table Lagoon Manor alternative remedy and to place the matter on the December 2005 Town Board agenda for two topics; the possible imposition of a civil penalty and compliance deadline, and other further consideration for any other matters that may come up. All favorable. Motion carried.

Approval is needed for the contract with Warren County for receipt of all Occupancy Tax monies for fiscal year 2005. Counsel said he reviewed the contract and he would like the Town Board to get a complete copy of the contract as Mr. Dusek makes reference to "Schedule A" which is the guidelines and it is not attached or included. Supervisor Gabriels said the guidelines were attached to the initial contract of 2004 and the Board of Supervisors did not make changes to those guidelines. He gave an overview of his recollection of those guidelines. Counsel said he approved last year's contract and if Supervisor Gabriels is comfortable that these are the same he is okay, but "Schedule A" is not included and he also highlighted three areas for consideration. Supervisor Gabriels said the Town loses nothing by tabling this item.

RESOLUTION #242

Supervisor Gabriels moved, seconded by Councilman Andersen to table the contract with Warren County for the Occupancy tax monies until the December 2005 Town Board meeting so the Town Board and Counsel can review the guidelines as noted in Schedule A. All favorable. Motion carried.

Request for the use of Dula Street parking lot from the Bolton Rescue Squad for their Arts & Crafts Shows. They are requesting to close the parking lot at 4:00 pm on the Fridays preceding the following dates; July 1 & 2, 2006, August 12 & 13, 2006 and September 2 & 3, 2006.

RESOLUTION #243

Councilman White moved, seconded by Councilman Saris to approve the request for the following dates and to close the Dula Street parking lot at 4:00 pm on Fridays preceding the following dates; July 1 & 2, 2006, August 12 & 13, 2006 and September 2 & 3, 2006 for the Arts & Crafts Shows. All favorable. Motion carried.

Supervisor Gabriels said that Matt Coon has requested to be paid for 80 hours of vacation time he will not be able to use and noted that Matt Coon has 239 hours accumulated.

RESOLUTION #244

Councilman Saris moved, seconded by Councilman White to approve Matt Coon's request to be paid for 80 hours of vacation time that he will not be able to use. All favorable. Motion carried.

Lisa French is requesting to carry over 16 hours of unused vacation time for 2005 and noted that she has the time. All Town Board members agreed that the Town Board should be thankful Lisa French made herself available as much as she did.

RESOLUTION #245

Councilman Saris moved, seconded by Councilman White to approve Lisa French's request to carry over 16 hours of unused 2005 vacation time that has accumulated. All favorable. Motion carried.

Councilman Andersen said the Town Board should have a relatively definitive policy regarding vacation time and should consider it further in a more concrete direction. Supervisor Gabriels said they Town Board also needs to consider non-union employees' ability to accumulate vacation time.

Supervisor Gabriels said that Counsel suggested the Town Board consider Local Law #1 of 2005 which authorizes contributions to and contracts with the BLDC. The Town Board hasn't done anything with this and asked if the Town Board would like to consider scheduling a Public Hearing.

Councilman Saris said he knows Counsel is very adamant that the Town Board has to do something, but he feels it needs further review by the Town Board Members. Supervisor Gabriels said if it is adopted as a local law, there are procedural steps involved and it would take some time to get it enacted. Counsel said the Town Board has been doing it by resolution and individual contract, but it would be nice to have some local law that would override so the Town Board doesn't have to constantly do it by resolution or individual contract. The Town Board would be doing it pursuant to the local law. Supervisor Gabriels said copies of proposed Local Law #1 of 2005 would be available to the public at the Town Hall.

RESOLUTION #246

Councilman Saris moved, seconded by Councilman White to schedule a public hearing on Tuesday, December 6, 2005 at 6:30pm at the Town Hall on the proposed language of Local Law #1 of 2005 which authorizes the contributions to and contracts with the BLDC. All favorable. Motion carried.

Supervisor Gabriels said last month he questioned whether or not the Town should have fixed water charges assessed on tax map numbers or on principal structures of all the properties. A memo was distributed earlier this month showing that there are certain situations showing several principal structures on one tax map parcel paying one \$25.00 charge, and there is a sense of fairness and fiscal action involved in all this. K. Simmes said she just submitted the requested information to Counsel. Counsel said he would like to review the information but ultimately the Town should strive for a goal of equality. This item was tabled to the December 2005 Town Board meeting pending recommendation by Counsel.

Regarding increasing Zoning, Planning and stormwater application fees, Councilman Saris said he feels the fees should be increased, as they haven't been in a long time. The amount of involvement that the Boards are currently spending on these projects and the amount of work done by the Zoning and Planning Offices in preparation of these things is huge. Several Town Board members agreed the fees should be increased. Councilman Andersen suggested the Town Board have a workshop meeting to compare its rates to other towns and come up with new numbers. Town Board Members scheduled a workshop for Tuesday, November 15, 2005 at 7:30 am to discuss Zoning, Planning and stormwater application fees.

The board needs a resolution to specifically recognize the BLDC under the Town's policy of

indemnification for Public Officers Law Section 18 for lawsuits brought in their capacity as public servants of the BLDC. Supervisor Gabriels said Counsel suggested language and read it into the record.

Counsel said he recommended the coverage with respect to the ZBA, PB, Rec. Commission, etc. all of which the Town Board has already enacted under Public Officer's Law 18. It is there and available to protect and indemnify and defend the Town's volunteers. In this instance the Town has a local development corporation that has been created and he would highly recommend the Town Board proceed on this issue.

RESOLUTION #247

Councilman Andersen moved, seconded by Councilman White for the Town Board to resolve that the Town of Bolton acting in concert with the quasi-governmental activities of the Bolton Local Development Corporation pursuant to the provisions of New York State Public Officers Law section 18 and other statutes applicable thereto shall provide a defense, indemnify and save harmless from costs of suit and awarded damages those persons acting as volunteers for the BLDC in the capacity of director, officer, advisor or member arising out of any alleged act or omission of which occurred or allegedly occurred while such individual was acting within the scope of duties to the BLDC as officer, director, advisor or member. All favorable. Motion carried.

Regarding Town Health Insurance, Supervisor Gabriels said that Dave Stotler came up with two options; he suggested an open meeting with employees where Dave Stotler can present the non-union plans and he could make negotiations with the Union separately and noted that it must be done soon. The Town Board Members chose November 15, 2005 at 9:00 am at the Town Hall for a presentation on insurance plans for any Town employees interested.

RESOLUTION #248

Councilman Saris moved, seconded by Councilman Andersen, to authorize the following budget transfers:

General Fund

FROM TO AMOUNT

13551 Assessor, Personal 13554 Contractual \$300.00

19904 Contingency 35104 Dog Control 265.00

51322 Garage Equipment 51324 Garage Cont. 2500.00

19904 Contingency 71104 Parks Cont. 3400.00

Water District

From 97107 Debt Interest 83404 Transmission 600.00

Highway Fund and Storm Damage

Increase revenues 5730 Bond Anticipation Note \$450,000.00

Increase appropriations 14404 Engineers \$15,000.00

51204 Culverts 435,000.00

All favorable. Motion carried.

Supervisor Gabriels said he received a memo from Tim Coon requesting to declare a 1993 F350 1-ton diesel dump truck with a 9' fisher plow 4 x 4 as surplus. Councilman Andersen suggested the Town Board check with Tim Coon to see if that vehicle could make it through the winter, as it may be useful to clean up slush at the Transfer Station. All Town Board members were in agreement.

Regarding the Rec. Commission fuel costs reimbursement to Bolton Central School, Councilman Andersen said the Highway Department uses gas cards and said there was a suggestion made for the Rec. Commission to have a card, since for some reason Bolton Central School cannot accept a check from the Town of Bolton for fuel. Supervisor Gabriels said all Town Departments have a gas card and the County

handles the accounting.

The Board members agreed to look into getting the Rec. Committee a card for gas.

Regarding the 911 system, all Town Board Members agreed that Supervisor Gabriels should send a letter to National Grid regarding the 911 address discrepancies.

From the public, John Gaddy handed out nighttime photos of the lighting at the Town shed and is asking for support in improving an undervalued Town resource—the night sky. He is asking for a change in the lighting at the Town shed. He complimented the Town on the choice of down-facing low lights and suggested timers or motion sensors be implemented to reduce night lighting and energy costs, although he thinks there may be some insurance reasons for lighting in some areas. Councilman White said the insurance factor is a good question for Dave Stotler and would be asked at the insurance presentation.

RESOLUTION #249

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

Executive Session: None

Councilman Andersen moved seconded by Councilman Saris to adjourn the regular meeting at 9:48 pm. All favorable. Motion carried.

Minutes transcribed by: Respectfully submitted by:

Jennifer Torebka Kathleen Simmes

Recording Secretary Town Clerk

11/11/2005