

STATE OF NEW YORK

COUNTY OF WARREN

TOWN OF BOLTON

Special Town Board Meeting
October 10, 2006

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

Supervisor Gabriels called the meeting to order at 7:00 pm. The purpose of the meeting to discuss Alternative Remedy issues.

John Gaddy asked what are the issues. CEO Nittmann said there are four different issues. Evans Herman for timber harvesting without site plan review in a RL3 zone. Claire Kingsley for building a fence without a permit. Kevin Kershaw no demolition permit and Don Russell and Bruce Mowery for clearing without having a permit.

Supervisor Gabriels said there are five issue being presented by the Code Enforcement Officer, Mitzi Nittmann. The first issue is:

Federal Hill Trust, Tax Map #140.00-1-8

Mr. Herman is represented by John Caffry. Mr. Caffrey stated that he is a trustee for the Federal Hill Trust. This is the property where the Herman's live. Mr. Herman is in the hospital at the present time. The Herman's' have owned the property since the 50's. They are now in their 80's. In 1975 they put the property into a trust. In 1990 they placed a conservation easement on the property. The Herman's donated this easement to the Lake George Land Conservancy. The property has been in the Fisher Act since the 50's. It was logged periodically and they paid the 6% stumpage that is required. They belong to the Forester Member's Association and the American Tree Farm Association and only did selective harvesting, no clear-cutting. The foresters supervised the tree harvesting. It was their assumption that there was no real harm done and this is not a precursor to development. The Herman's did not understand how the process works these days and the rules have changed since the last time they did any logging. If the board finds that the Herman's' are in violation, they are requesting that any fines be waived, now that the Herman's' understand what needs to be done.

Supervisor Gabriels asked if as a trustee, prior to this you were not responsible for any of the activities of forest timbering on this land. This is an action the Herman's could have done under the terms of the trust that you are now the trustee of. Mr. Caffry said so far as he knows all the previous trustees have been very "hands off" and let the Herman's live there and do as they wish. Mr. Caffry only became a trustee within the last year and was not aware there was any timber-harvesting going on. He found out after the fact.

Supervisor Gabriels asked if Mr. Caffry knew anything about historical harvesting that might have occurred. Mr. Caffry said they have done selective cutting over the years, but couldn't say

exactly when it did occur. Possibly in '99 was the last time. He has not been there personally to inspect, so he couldn't say what was done. He asked Mitzi Nittmann, CEO, how much was harvested. She answered by saying that from what the forester told her, about 6 acres in the RL3 zone. In the LC25 zone he was allowed to harvest without any permits and she allowed him to finish that section off. The RL3 zone was logged first. In 96 and 99 when two other plans were presented Mitzi was unsure what was logged. There is no site plan review application on file, which has been a requirement since 1988.

Supervisor Gabriels asked if the issue of the clearing in the RL3 zone is the one in violation. The CEO answered that that was correct. It is the land on both sides of the road, 6 acres on the west side and possibly an acre on the east, but she doesn't know the exact measurement.

Councilman MacEwan asked how does someone know where the zones are. Is there confusion as to what zone they are in?

Mitzi (CEO) sent a letter to the Herman's first and told the forester where the dividing line was. It's exact on the zoning map, 1,058 feet back from Federal Hill Rd.

Councilman MacEwan asked if that was before or after the fact. The CEO said it was after the fact.

Councilman Andersen asked about the time line. In February, Mr. Herman talked to soil and water and DEC regarding a permit. Mr. Herman received a letter, not a permit, from DEC telling him that all of clearing seemed to be going well. The letter talked about slopes, and having to cross a stream and shortly after that he had a DEC permit for crossing the stream. Councilman Andersen asked if Mr. Herman was under the impression that that was a permit for him. Mitzi answered that both she and Pam tried to explain to him that it was only part of what he needed to go through for the site plan review process. She started conversing with the forester, the excavator and the logger because she wasn't getting very far with Mr. Herman on what he actually needed to do to become compliant. Councilman Andersen asked if they did anymore after you told him not to. Mitzi answered no. Councilman Andersen said it was just a matter of getting the paperwork in. Mitzi said they still didn't have a plan from the forester; they are still working on that.

Councilman Andersen asked how much logging was done after the letter was sent in January regarding procedure. Mitzi said they finished up in the LC25 zone. The RL3 zone was already done. They did some more in the LC25 zone that was allowed. Councilman Saris asked if that required a permit and Mitzi said no. The pictures that you have are from March 3rd and it wasn't long after that in the LC25 zone that they were done.

Councilman Andersen asked if basically they finished up in the LC25 zone and there was no new clearing, not anything since your conversation and letter took place technically in January through March, based on the correspondence, is that correct. Mitzi stated no more logging took place, I didn't say clearing. There was another issue of clearing in the RL3 zone, which is how I met Mr. Caffry and DEC. Councilman Andersen asked if that occurred after that conversation. Mitzi said that occurred after that letter and the logging was finished. Mr. Caffry asked if that was determined by you not to be a violation. Mitzi said that is correct. Supervisor Gabriels asked if the activity was basically all done. Mr. Caffry said that any activity that needed a permit was stopped once you told him to stop. Mitzi answered yes. Councilman Saris stated that this is a situation that is not that uncommon, especially when people have owned a piece of property

since the 50's and it certainly wasn't required until 1988 and they had done similar activities countless times between 1950 and 1988 and were not aware of the changes. I believe this is a case of an innocent mistake. Mitzi agreed that he was not aware of the policy changes since 1988, although he had been in the office and should have been aware that site plan review could have been required. Councilman Saris said he thinks citizens get confused with permits. There are DEC, APA and the LGPC permits and they think they have become complaint. What's disappointing is when professionals are involved doing the work. You would hope they would be familiar with these things that perhaps the average public may not be. We have to do a better job to educate the professionals and that would be a safeguard to help people from getting into these issues.

Councilman Andersen said he has looked through the file and it appears this man had done everything right.

RESOLUTION#216

Councilman Andersen moved seconded by Councilman Saris that for property owned by Federal Hill Trust, Federal Hill Rd. Tax Map #140.00-1-8 and 9 that no civil penalty be assessed for the tree clearing violation. They will be required to get site plan review and will need to have the forester file the paperwork with the Zoning Office. Notice will be sent to the trustees, Caffry and Flowers. All Favorable. Motion Carried.

Supervisor Gabriels asked about who should receive notification concerning this matter. Counsel stated that Mr. Caffry and Christine Flowers are in charge as the trustees and they should be notified first.

Mr. Caffry wanted to clarify that there is other excavation on the property that was determined not to be a violation and we want to go ahead and remediate that since it does not require site plan and we assume that this doesn't apply and we can take care of it.

Counsel stated that the position taken is that this is considered an agricultural exemption.

John Gaddy: Bolton is going through growing pains. All the boards are doing a lot of work to help the people. The Planning Board is asking for more enforcement.

Supervisor Gabriels: The next item is Donald & Claire Kingsley's fence issue.

Claire Kingsley explained events that brought her to wanting to install a fence on her property. She called Mitzi Nittmann and was told that it would be okay to put up a stockade fence. She was told to come in the office on Monday and get a building permit. When she went to the office to obtain a permit the Zoning Administrator, Pam Kenyon showed her a picture and said there was an issue with the stonewall and she may have a violation and therefore could not give her a permit for a fence. Mrs. Kingsley feels she should have been given a permit and wasn't. She wanted the fence up by the next weekend for a graduation party and no one would help her so she went ahead and put up the fence. Supervisor Gabriels asked for Mitzi's observation on the facts concerning the stonewall. Mitzi said she knew of the stonewall earlier and asked Pam for a determination and Pam said she would think about it. When the issue arose, we went to Counsel for a determination. Mrs. Kingsley stated it is always a run around with Pam Kenyon. The County has no issue with my stonewall. Counsel clarified that we are not here about the stonewall, only the fence. Mitzi stated they have over 100 square feet of fence that was installed without a permit. Councilman Saris said this is not an enforcement action on a stonewall. Mitzi

said that because we have no property maintenance ordinance, she couldn't help Claire with anything happening on the other side of her property line. Supervisor Gabriels said that situation seems to be coming up more frequently these days. Counsel thinks the reason the Kingsley's were denied a permit for a fence is that there is some sort of inference that you are not entitled to a fence permit because you didn't get a permit for a rock wall. Claire answered that is correct. Counsel said you are not required to get a permit for a rock wall, that is a certainty. Councilman Saris said I have a question for Counsel concerning our standard practice. If the rock wall had required a permit and no permit was gotten, but if they got a permit from Warren County that means they should have been complaint, but if it's the policy of our Zoning Office that if someone has one violation, clearly separate and different, yet on the same property for something that would normally be a permitted activity, do we hold up one thing because of the other. Counsel said that the code permits that procedure and would answer that he had not seen it uniformly enforced. Mrs. Kingsley asked Mitzi when she first knew about the rock wall. Mitzi said she took a picture of the rock wall on June 29th. Mrs. Kingsley said that from that date on no one ever said a word about the wall. Mitzi said she needed an interpretation from the Zoning Administrator as to whether she thought it was a fence or not. I never got that determination and so we went to Counsel. Counsel: The first time I saw this was August 9th. Mrs. Kingsley said that was when I wanted the fence. Councilman Saris said it would appear they did make a good faith effort to be compliant to get the permit for the fence. The rock wall is not an issue because it did not require a permit. I would think they would have every reason to believe that the rock wall was compliant, because Warren County didn't have an issue with it. Why Warren County didn't ask for a Certificate of Compliance from Bolton, but it would seem they didn't feel that it would require it, so that would certainly leave an applicant to believe that it would be compliant and not need a permit. As far as portions of the zoning being applied inconsistently, you would have to give the benefit to the applicant. There isn't any reason why things in our ordinance should be applied inconsistently. That burden falls on us and the people that are inconvenienced by those inconsistencies. I don't see how we can take that out on them until we straighten out our own act. Councilman Andersen asked Mitzi if she told the Kingsley's to come down and get a permit. Mitzi said she had been in the office, she had already measured and I helped her with the site plan. It was the determination if the rock wall was a violation that stopped proceeding with the fence. Claire Kingsley asked if whoever decides the rules look into what she went through. It is not fair to property owners. Supervisor Gabriels said that issue would clearly be brought before the Town Board as part of the revisions to the zoning code, among other issues. Councilman Saris said that part of the problem is not the code, it's the application thereof and rewriting the code doesn't change that.

RESOLUTION#217

Councilman Saris moved seconded by Councilman Andersen to allow Donald & Claire Kingsley, 217 North Bolton Rd. tax map #140.00-1-65 to apply for a building permit for a fence. No civil penalty will be assessed. The Zoning Office will not review civil issues. All Favorable. Motion Carried.

Frank Bergman said his son owns the property adjacent to the one being discussed and that part of their fence is on his property and asked that a permit not be issued until that section of the fence is removed.

Counsel said the permission granted in Councilman Saris's motion and Councilman Andersen's second is that a permit shall be issued for a fence simplistically within that it's constructed on Kingsley property. No grant is given that it can extend beyond that and the owner graciously accepts it and falls in line with making sure its on their own property or suffer civil consequences. Bolton is not involved in that issue.

Claire Kingsley asked if there could be a workshop to discuss debris, so people couldn't do this. Supervisor Gabriels said that will be an issue. Formal request accepted and understood. There have been many suggestions throughout Bolton for the same thing, and thus far the Town's authority lies only to the extent if there is a perceived public health problem. If so, Dr. Smead, the Health Officer would make an investigation and his decision as to clean up.

Supervisor Gabriels said the next item is Matthew and Kristine Cevasco and contractor Bruce Mowery.

Bruce Mowery said he is having a difficult time understanding why he is here. We will proceed with the violation that is in question, which he and the owners just received on Friday. The owners could not be present. I would like to get this cleared up so I can move on. The property is 3.6 acres in the Deer Creek subdivision. He went to the Zoning office in the beginning of June to talk to Pam to see if there were any problems with the lot as far as planning board review and told this property did not require planning board review. I proceeded with test holes with the Engineer, getting a septic design done. We dug some test holes in the vicinity where the house was to be located to see if they were going to hit any ledge so that the owners wouldn't have any surprises at the time of excavation. We submitted a complete set of plans with application on July 20th for review for certificate of compliance, septic plans, stormwater plans and house plans. About 7 days go by and he calls Pam to find out what's going on and Pam said she hadn't reviewed the plans yet. Bruce gave her another day or so and then went in and Pam had some questions, which were addressed and he got back to his engineer who also called Pam's office and then they drew up a second set of plans, revised stormwater plans as per all of the information Pam required. After another 3 or 4 days, plans were resubmitted and then another week and a half goes by. In the process of that sub- contractors had to be postponed several times thinking a certificate of compliance should have been forthcoming to continue the process. Barry Kincaid and I talked after the second set of plans were issued and submitted to the Zoning Administrator and Pam said it would take her a few days and they should be all set. I relayed that to Barry. A week goes by and Bruce called Pam who said she would review them tomorrow. Bruce went into the office to review the plans and there were additional information requirements she wanted over and above what she had originally given from the first set of plans. She wanted a change from a minor to a major storm water project on a three and a half acre piece of property with a modest house going up. Bruce argued the point several times and invited the ZA and CEO to come up to the property to take a look. In the meantime Barry had gone on the property, Bruce stating he took full responsibility for it, and started cutting some trees. The process had been prolonged for quite a long time with conflicting information every time we went back. When the trees were cut, Bruce went to the site. Barry said he had been

there and that Bruce mentioned to him that we would be all set in a few days and so he cut trees specific to the house site and the septic. Bruce tried to get in touch with Pam several days after he found out that the trees had been cut to sit down to determine what direction they should go. They met and Pam had questions about storm water again and we went through a third set of storm water plans. At that point Mitzi said they were not issuing any permits because there is a violation on the property. This was seven weeks after we first went to the office. We are now into October and nothing has been done, no excavating, absolutely no construction, nor would there be until they had a certificate of compliance. Bruce received a letter signed by Mitzi in regards to the violation that we supposedly have at the property, specifically stating that except the activities exempted in sub chapter 2, that no person shall operate a land clearing machine such as a backhoe, grader, plow similar device as to clear or remove vegetative cover or soil or totally natural vegetative cover with soil or other materials etc, within 5000 square feet without having received a permit. Bruce went on the internet to find out the meaning of vegetative cover and there seems to be a conflict within the zoning office and has been for quite awhile. All references he has come up with through DEC, the State and Federal government pertain to vegetative cover is more specific to brush, grass or low to the ground that is going to detract from soil. Trees should be a part of vegetative cover as a description. Mitzi says that on July 18th, while performing site visits that clearing had taken place, to him that was impossible, because no plans were submitted until July 20th and the cutting was done on August 3rd and 4th indicating an issue with timing. We were on our second set of stormwater plans prior to anything being done on the property. Pam didn't seem to have a problem at all. Bruce's big problem right now is why it took over two months if there was a violation, for him or the owner to be notified so that this could have been cleared up, so things could have progressed. There seems to be a common denominator of what is going on in the zoning office. There is a tremendous conflict of information. If you going to have a Zoning Administrator, that is the person that should be doing the administering and interpreting the zoning. The enforcer would be the person that goes out, the eyes and ears, of the person administering whatever permits are being issued. It doesn't seem to be working that way in this town. There is no continuity in the office. The contractors are only doing their job as they see it to be, but things seem to be changing on a regular basis, and it leaves the contractors between a rock and a hard place. There was nothing intentional being done here. I have given you the facts; yes tree cutting was done prior to the time a certificate of compliance was issued. There was nothing malicious done. There has been no equipment on that property and I still have a major issue with stormwater.

Barry Kincaid, from KLC Property Enhancement, said he cleared all the trees on that property and he knows all the definitions. He has gone to Pam and Mitzi for guidance and Pam has always said cutting trees is not a disturbance. I specifically asked that question years ago to Pam, "is cutting trees a disturbance". Now all of a sudden they are calling it a disturbance. Holding up a job, this is crazy. I work so hard to follow these regulations and I am really getting tired of this. I have been through it once and I have had enough. We are going to do something about it this time or next time we will do something about it. I have followed those codes to the dot and if I appealed them, they were to the proper location. He asked Mitzi if that was disturbance and she replied yes. Barry brought up another issue, which you told me was not disturbance. Mitzi said she brought up the question of whether it should go under stormwater or not. I showed you a picture of another issue and you told me that was not a disturbance, that was remediating Niagara Mohawk, correct. Whether or not the landowner was remediating Niagara

Mohawk or whatever the intentions were, there are no power lines throughout that property, other than one area in this picture that shows the power line and it shows all the soil pushed up, water and roots piled up and everything else. No silt fence within 300 feet of Lake George. Up here we are talking way back in the woods, no soil pushed around, no nothing. Tell me how this is not disturbance and cutting trees is disturbance. If that is not a disturbance then I don't know why Mowery's job has been held up for a disturbance by cutting trees. There are other issues; I went to the town six months ago because I realized I was in violation for a shed. I went to the Town for a building permit and Mitzi said I couldn't have a building permit because I am in violation.

I have asked repeatedly to have this addressed, so I could get my building permit.

Supervisor Gabriels asked Mitzi to explain the difference between minor or major stormwater. Mitzi said that any disturbance less than 5000 square feet does not require a permit unless you create an impervious surface of 1000 square feet. Anything between 5000 and 15,000 square feet is a minor stormwater permit, over 15,000 square feet is a major storm water permit. Some minors may be classified as majors if there are percentages of grade 15% or more. That is up to the Zoning Administrator.

Bruce Mowery said that if that is correct and it was up to the Zoning Administrator, I would have a Certificate of Compliance and a minor stormwater project.

Bruce Mowery said that there are difference of opinion between Mitzi and Pam. He asked if he could take his project in two phases so he could at least get started. A minor stormwater for the house and septic and then the garage at a later date having a two-stage project. Evidently Pam checked with the Planning Board and got an approval for that and that was the direction we were taking on the third time. In the process of formulating major stormwater on the entire project and minor on the first phase. It comes down to whose doing what job, what the job determination is and who has the final say on how a job is being handled. The conflicts seem to be within the office. We are suffering the brunt of that burden. We have jobs being delayed and misinterpreted.

Councilman Saris said he has a few comments on the issue and how things have changed considerably. Of the 18 years we have been doing this there was no enforcement for 17 years. That has changed considerably, it is a major change. We have had people in here that violated our ordinance knowing fully what they did, having done it purposely to try to get out of the terms of our ordinance. Make no mistake, it does happen and it has happened with contractors in this town. Bruce Mowery said there are always going to be people who try to cur any type of law. I have been a proponent in this town in a couple of areas of your ordinance for the past 18 years, like putting building envelopes in subdivisions, and then you wouldn't hear half the cases anymore because this is the area where they can build and when its bought they know where they can build. I have been a proponent of all "as built" drawings as the house is being built.

Supervisor Gabriels asked Mitzi for a presentation as to where we are with this case.

Mitzi said she believed that this map was one of the two Bruce submitted, but there is no date stamp so she is not sure if it was the first or second one. If you look at the house, the garage, the existing dirt drive going up to the proposed parking turn around and the septic, you will see that our code allows 20 feet of clearing around a house, 14 feet for a well, 20 feet around the garage, 10 feet around the septic and 16 feet for a driveway, if that is what you presented. If you look at what they presented the disturbance area is exactly 2 foot larger than what the house is. The garage is exact so it is saying there is no clearing beyond the edge of that garage, even though

he's clearly allowed to do 20 feet around it. The site plan doesn't show that or the 10 feet around the septic system. What it depicts is the disturbance area that they could have depicted more but they didn't, and what's there now is beyond what is depicted here as being cleared. He had the right to disturb more with the permit, but it's not presented on the plan. He was sited for clearing without a permit because what he has cleared is more than what he depicted. Bruce Mowery said absolutely not, the only tree clearing was around the perimeter of the house, not even the entire parking area. There were no trees taken down at all in the area of the garage in fact that's where the chippings are, and in the area of the septic. We didn't cut any trees within 3 or 4 feet of where the foundation of the house was going to be. The issue is that there were more trees cut than the 5000 feet allowed as far as what you people are deciphering in the Zoning Ordinance for disturbance.

Councilman Saris said it sounds like there are a couple different issues, one is whether or not what was done constitutes a disturbance or not. If it doesn't, then the area it constitutes is a moot point. If it is a disturbance, is that area over any limits that are put on it. Bruce Mowery said he is confused as to what the violation is.

Councilman MacEwan: There was no equipment up there, other than tire tracks from a car or truck.

Councilman Saris asked Counsel if this question had been put before the ZBA. Counsel said as a matter of interpretation, no. I would say to you that I would rely on what Mitzi had to say, but if I had to march through a court of law, I would want a licensed professional engineer to back up what Mitzi's position is. On this particular alternative remedy, Tom Nace did go to the site and his notes say that the site has been recently disturbed within a wide area, all tree had been removed, although the large stumps had not been removed or any real grading taken place, small stumps had been pulled up and no ground cover of any kind remains. In my opinion this land has been disturbed and runoff characteristics have been substantially altered. So what I read is that what Mitzi measured and reported is correct.

Councilman Saris said that given that the Town Engineer feels that it is a disturbance and the Code Enforcement Officer feels it is a disturbance, the question is, when the Zoning Administrator doesn't agree with them where does that leave us. Counsel said that was not a position I prefer to be in. A lawyer doesn't make the determination there is a disturbance. I rely primarily on Mitzi. She did send me a photo in an email. I looked at it and as a layman's opinion it sure looked disturbed, but the answer simply lies with our expert. What does a New York State licensed professional engineer say about it and Mr. Nace has come back and said it was a disturbed area. I vote for that opinion 100%. Jason said that if the Zoning Administrator chooses to disagree with the Engineer where does that leave us. Counsel said he wouldn't recommend disagreeing. These gentlemen have prepared criticism of our process because we are not making a clear instruction and our enforcement is 360 degrees from center. Supervisor Gabriels asked what was the date of Nace's fact. Counsel answered September 29th. Supervisor Gabriels said that we all realized that the Town would be well served by not only relying on Mitzi's interpretation and calculations, but we also asked the Engineer to tell us what's going on. Councilman Saris said he would tend to take Mr. Nace's opinion absolutely. He was asked to look at it and didn't feel qualified to make a decision as to what a disturbance is and certainly wouldn't argue with an Engineer. My concern is that Mr. Kincaid specifically asked our Zoning Administrator if tree cutting constituted a disturbance and given an unambiguous answer that it did not. Bruce Mowery asked if we had a definition of a disturbance. Bruce Mowery said let's set the record straight, whatever Tom Nace saw up there, there was never a stump, not even a

sapling stump, nothing pulled. Whatever was in tack is still in tack and there was never a piece of equipment up there other than to do test holes for the septic. Counsel said he accepts that factually as being true. Counsel said what you need to know is that as a municipality that Bolton has chosen to enforce its stormwater erosion regulations and rightly so as a municipality.

The Lake George Park Commission created them and if Bolton didn't do it the Lake George Park Commission would be. Do we have interpretations that are in sync with their interpretations? I can't honestly say that I know that to be true 100%. When we get into an issue I do call the engineer from the LGPC and ask what are the other municipalities doing. Bruce Mowery said there are certain times one needs to exercise common sense and that the manuals give guidelines but not all the answers. The bottom line is the efficiency of the Zoning Administrator's office and who is going to be delegating the information. Supervisor Gabriels said we need to tighten our code up to reduce the number of problems that we seem to be having. The last time the code was looked at was 1988. It was a very far-reaching code at that time. The situation has overtaken us with so much development and additional difficulties that have been identified in our code that have to be redone for the interest of everyone.

Councilman Saris asked if the interpretation shouldn't be left to the ZBA. Counsel said no, the ZBA is best involved at interpreting sections of the zoning code and the stormwater erosion regulations. Counsel said that whether this constitutes disturbance I believe it is a factual matter before the board and the criteria to take into account is what Mitzi has presented. Take into account what the applicant has said, but weigh the professional opinion of the Town Engineer, who explains that it is not just ripping stumps out, because in this particular case there are no stumps.

Mitzi pointed out that almost everyone that's here tonight is all procedural and once you submit an application you are bound by that application as approved. If it is not approved you are not allowed to proceed until you have permits regarding that application. These people have started their projects without permits. Councilman Saris said that in this case it depends on whether or not this is a disturbance.

Don Russell: I sat on the board 6 or 8 years ago and help legislate that stormwater ordinance and tree was never meant to be part of vegetative cover. It doesn't make sense that a tree stump is going to cause erosion. It has never been prosecuted that way until Mitzi. It is just a matter of interpretation on Mitzi's part as I see it.

Councilman Saris thinks it's clear that there has been a change in the way the office is interpreting that. This is clearing exemplified by one zoning official saying one thing and another zoning official saying something else. One is doing it the old way and one is doing it the new way. It still doesn't change that we have to make a determination to what this is. It has a bearing on how these issues should be handled. It has a direct bearing as to whether anyone intentionally violated anything. If we have been doing things wrong for twenty years, which is possible, it's time to change that.

Bruce Mowery said it would be to our benefit if through more of an educational process, rather than having somebody go around town and indiscriminately issue violations to certain people and not to others. People who are doing business in this town on a regular basis, for instance this is my first violation, that it would serve everybody's benefit for them to voluntarily come into the office to discuss this tree cutting issue with them after it was done. To sit down and weigh out exactly what the necessary procedures are going to be from this point on, how the interpretation of things is going to be handled and educate us rather than sit here and pass out

violation after violation. Everybody's time is being wasted. Education is a wonderful thing. We should be made aware of that so we don't violate your procedures.

Councilman Saris said that as far as the determination aspect goes we need to do this right, because we don't want to find ourselves here again. They want clear direction of what they can or can't do. It was brought to involve the Park Commission and their Engineer. I think they also had something to do with the creation of these regulations. Supervisor Gabriels isn't sure this guy is a soil engineer. Counsel said I would rely upon him. I have asked them many times about their interpretation. They are a strong resource, but I don't know him to be an expert in the field, but he would recommend someone that is.

Supervisor Gabriels said we have to come to some conclusion tonight so that Bruce can do whatever he wants beginning with whatever his time schedule is.

Councilman Saris said he thinks we shouldn't hold any of these people up, stating that a lot of valid points have been brought up. There is a disagreement in the zoning office and it would be unfair to hold that against the applicants that are here for alternative remedies tonight. In baseball the tie goes to the runner and in zoning it goes to the property owner.

Clearly the two differences of opinion that came from that office led somebody to believe that the activities they were doing did not constitute a disturbance.

Counsel read a section of Tom Nace's fax: Yesterday I visited three sites with Mitzi and discussed these issues with her and I agreed with her methods of determining if disturbance has occurred and for measuring the amount of disturbance, and in fairness to all the controversies that were presented to the engineer, he seems to indicate that in one a disturbance had not occurred. Mitzi said she took him to three specific sites. The Planning Board asked if there was violation of any clearing regs where a subdivision was done because trees were cut. After that site I took him to Don Russell and Bruce Mowery's sites. She explained that she found trees cut and rolled down the bank, but couldn't tell whether there had been a backhoe there, other than two test holes that were present at the site. The sites were measured but we couldn't come to an agreement whether it was a stormwater violation because the trees rolled down the hill and saved any stormwater erosion on that site. What was the grade? Mitzi said close to 25%. That didn't fit the determination for clearing. Mr. Nace's statement from the fax said that trees on this site had been previously cut and left on the ground, cutting had been selective and groups of trees had been left undisturbed. No stumps had been removed nor had any disturbance of the natural ground cover occurred. Based on a visual observation, I believe that the existing site grade is less than 15%. In this instance I would have a hard time justifying that clearing would be subject to the town stormwater ordinance, since the intent of the ordinance is the regulation of activities, which alter the runoff characteristics of the land.

Councilman Saris is not comfortable making a determination without our Engineer being here. There is too much conjecture here and would like to table making a decision on the disturbance issue until our next meeting and we ask Mr. Nace to be here and also we get the input from the Engineer at the Park Commission.

RESOLUTION#218

Councilman Saris moved seconded by Councilman MacEwan that for the property owned by Matthew & Kristine Cevasco, Deer Creek Rd. Tax map #199.08-1-10.5 the owner/contractor is allowed to proceed "without prejudice" due to a determination made by the Zoning Administrator concerning the definition of "disturbance". No clear definition of "disturbance"

was decided upon. The owner/contractor may continue with the project under a minor storm water permit application for a house and septic system. No civil penalty will be assessed. Councilman Saris yes, Councilman MacEwan yes, Councilman Andersen yes, Supervisor Gabriels yes, Councilman Maranville no. Motion Carried.

Councilman Andersen would like to invite the Park Commission Engineer or some other representative as well as Mr. Nace to come to the meeting. Someone from the audience suggested the ZA be there also. Supervisor Gabriels said that Pam was asked to come to this meeting but had vacation plans already.

Councilman Saris suggests that until there is a determination on the disturbance issue that nothing has changed and tree cutting isn't a disturbance because that was the previous posture of the office. Supervisor Gabriels agreed, but just wants to make sure that at the next meeting we will all be discussing apples and apples and oranges and oranges.

Mitzi needs to know which stormwater plan he is using in order to issue a certificate of compliance. Mr. Mowery said that the third set of plans that have been submitted to the ZA, delete the garage, which is the area that brought us over the 15,000 square feet of land to be disturbed. If the plans were reviewed you would see that. We are under the 15,000 square feet of land to be disturbed for the house and septic system only. There will be no construction or clearing in the area of that garage, so that is why we were proceeding under a minor stormwater permit. Supervisor Gabriels said the issue before the board that Mitzi has raised, is whether or not that segmentation was offered as an interim step. Mr. Mowery said the board made that determination and he got a determination from Herb Koster that they would allow that. Counsel clarified by saying that the applicant asked if he is permitted to proceed with his minor stormwater application because he is under the 15,000 and Mitzi's point is that not really, because you disturbed an area that is now outside your minor stormwater plan, and the applicant replies no, I have not disturbed it and of course that is the ultimate decision.

Councilman Saris said I think what we are saying here is that for the time being, because clearly people were led to believe by our Zoning Department that tree cutting was not a disturbance, that until we hear from the Engineers, we may change that, but it will not go back and affect this. Counsel said, so that I understand this and know what to tell the Engineers, this is going to be tabled without prejudice, we are going to have further inquiry from the Engineers, and "without prejudice" certainly means Mr. Mowery and his customer can proceed with their application if it otherwise regular. Councilman Saris added with "no violation".

Supervisor Gabriels clarified it was a minor storm water plan. Mr. Mowery said at this point they are dealing with just a house and a septic system.

The board set Friday, November 17th at 5:00 p.m. for another board meeting to discuss the disturbance topic.

Supervisor Gabriels said the next item is Shane/Russell issue. Supervisor Gabriels asked Mitzi if we are looking at the same questions here. Mitzi said yes, exactly just a smaller land disturbance. Mitzi suggested that Tom Nace's report be read and see if you have any questions. Mitzi read the notice of violation letter as follows: On September 18th, your contractor, Don Russell, submitted applications to construct a single family dwelling with an attached garage and a septic system on your land. The Zoning Administrator provided a list of items needed to complete that application before a certificate of compliance could be issued. On Sept. 21st the

ZA requested that I inspect the parcel to observe if clearing of the parcel had already taken place. On Sept. 22nd while performing site visits it was discovered that an area greater than 5000 square feet had taken place without any permit or prior approvals. This activity is a violation of the Bolton land use legislation Chapter 125 storm water Control, Section 125-8 Prohibitions. Except for the activities accepted in subsection H: “No person shall operate a land clearing machine, backhoe, grader or plow or similar device to clear or grade land unless otherwise remove vegetative cover or soil or to overlay natural vegetative cover with soil or other materials when such activities involve an area greater than 5000 square feet without first having received a permit under this chapter. Article 12 Administrative Positions. Section 200-78 Building Permits: Preexisting Violations: In the case of any existing or remaining violations relative to zoning, construction, sanitation or subdivisions regulations, no permits or additional reviews will be granted to any applicant until all violations by the applicant are granted or purged. ARTICLE XIII, Enforcement § 200-82. Alternative or additional remedy.

In the case of any violation or threatened violation of any provisions hereof, or the terms and conditions imposed by any permit, approval, variance or order issued pursuant to the provisions hereof, in addition to other penalties and remedies herein provided, the Town may institute any appropriate action or proceedings against the owner of the premises and/or any other responsible person to prevent such unlawful erection, structural alteration, reconstruction, occupancy, moving and/or use, to restrain, correct or abate such violation, to prevent or restrain the occupancy of such building, structure or land, to compel compliance with the provisions hereof and any permit, approval, variance, order or directive issued pursuant to it, and to prevent, restrain, correct or abate any illegal act, conduct, business or use in or about such premises. The alternative or additional remedy specified herein may be taken in addition to a proceeding for criminal sanctions or civil penalties. The Town Board may negotiate appropriate remediation and restoration measures by entering into an enforceable settlement agreement or consent order with any violator and/or owner, which may include payment by the violator and/or owner of a monetary penalty which may include exemplary or punitive damages, plus recovery of actual costs incurred by the Town in connection with the enforcement proceeding, including actual attorneys' fees, disbursements and, in appropriate cases, reimbursements for the actual costs to be incurred in rectifying any circumstance or condition necessary to restore the premises into compliance, all and any of which may, if not voluntarily paid by the violator and/or owner, constitute the basis of a lien charge attachable to the premises as a special assessment or charge assessable and collectable on the tax bill associated with the subject premises.

Supervisor Gabriels read Engineer Nace's comments: This site has been recently disturbed. All trees had been removed and some of the stumps removed. Within the rectangular area of trees removed for the proposed house site, no ground cover remained even though some stumps remained. It appears that the existing site grade is around 15%. It is my understanding that the contractor does not dispute that disturbance has occurred. However, he believes that the areas where stumps remain should not be included in the calculation of the disturbed area. Mitzi has included these stump areas in her calculations of the disturbed area, and I believe that she is correct because there is no real ground cover left in these areas and thus the runoff characteristics have changed.

Don Russell said he has been building for 27 years in this Town and to get a letter like this is upsetting. This is just a misunderstanding. He agreed with Mr. Nace that there was a disturbance, but not anywhere near 5000 square feet. I don't agree with that at all. Councilman

Saris said he thought this was very similar to the previous issue in that until one has determined what a disturbance is, and because people were told that tree cutting is not a disturbance, therefore Mr. Russell would have every right to think that the areas where stumps remained were undisturbed areas. Mitzi said the total disturbed area is approximately 8818 square feet and stands by that calculation. She agreed to go with Don to see how he was interpreting what a disturbance was.

Supervisor Gabriels said once we get to the issue of what's disturbed, we are going to have the question of what would be the acreage that we would consider disturbed. Discussion followed as to how much was disturbed; photos were looked at to see if it would clarify the issue. It was decided it would be hard to tell from the photos. Supervisor Gabriels asked what rule are we going to take when we go look at this. Mitzi said she would think both engineers should be there as soon as possible. Councilman Saris asked if it really matters, it has already been determined that due to the conflicting definitions given by our Zoning department that we are not going to consider this disturbance. What we need to get right at our next special meeting is how we apply the term disturbance in the future and hopefully the engineers will be able to explain that to us regardless whether they visit these sites or not.

RESOLUTION#219

Councilman Saris moved seconded by Councilman MacEwan that for the property owned by Steven & Nancy Shane, Coolidge Hill Rd., Tax map #199.12-1-13 the owner/contractor is allowed to proceed "without prejudice" due to a determination made by the Zoning Administrator concerning the definition of "disturbance". No clear definition of "disturbance" was decided upon. The owner/contractor may continue with the project under a minor storm water permit application for a house and septic system. No civil penalty will be assessed. All Favorable. Motion Carried.

Councilman Maranville said he went up to the site with Don and Mitzi and it didn't appear to be almost 9000 square feet. Councilman MacEwan and I went up and measured the property and came up with about 5100 square feet. It is important to get measurement of the disturbed area straight. Supervisor Gabriels said we need to make it so everybody can understand what the acreage is and how we are measuring it so we are all on the same page.

Supervisor Gabriels said the last item on the agenda is Kevin Kershaw, Adirondack Builders/Lake George Land Conservancy.

Mitzi explained that this is a little different. They had permits and were waiting for the approvals from DOT for a signoff for the parking area, which has always been a state easement. In the permitting process, while they were waiting, this structure is a non-conforming structure, which demolition has taken place on and you are not allowed to alter a non-conforming structure without a permit and that is what he did. He would also in having demolished it needed a permit from Warren County. Mitzi allowed him to proceed inside the structure for repairs of the non-conforming structure, which is allowed without permits. Warren County said because they were structural he would have had to have a permit from them to do that. He was sited for the demolition, altering a non-conforming structure without a demolition permit.

Kevin Kershaw said he took down the upper and lower decks and was unaware it was a non-conforming structure. Supervisor Gabriels asked if non-conforming is critical in this question.

Mitzi said yes, he still would have needed a permit, but the non-conforming compounds it. You cannot alter a non-conforming structure in any way without a permit. Repairs are allowed only, but you are not allowed to alter it, and if it has an addition on it you are not allowed to take it off without a ZBA determination if it needs a variance. Councilman Saris said you would need a variance to take it off. Mitzi said in some instances it is the determination of the ZBA whether you are allowed to take it off without a variance. Councilman Saris asked what variance would you need to remove something from a preexisting, non-conforming structure.

Counsel said where Mitzi is going is correct, as long as we try not to dwell on the word demolition. I realize these came down as a result of demolition but she selected the correct sections. In Bolton you have continuation of non-conforming and the language specifically is subject to the provisions of this article and subject to the provisions of the code. A non-conforming structure or use of a structure containing a non-conforming use may be continued and maintained in reasonable repair, but not to be altered.

Councilman Saris said that part of the reason we have done this in the past is that people have done things that clearly needed a variance, and it had a bearing on how we handled the proceedings. Whether it was just done without a permit, or whether it required a permit and a variance. Mitzi said they already have all their approvals. Kevin Kershaw said they were not going to replace the decks because other parts of new construction will be in that spot. Counsel asked Kevin if he was going to expand the non-conforming building into the area where the demolished decks were. Kevin answered that is correct. They already had approval for that. Councilman Saris said that if they had approval to do what they were planning to do, it would seem obvious that it would require them to tear down the decks and doesn't understand why they didn't have approval to remove the decks. Mitzi said their application was in, but they did not have any permits to do anything yet. The permit has not been issued to proceed with everything that was approved. Councilman Saris said, but it was approved. Mitzi said their variance and plans had been approved, the application is in for the certificate of compliance to move forward but the actual certificate has not been issued.

Kevin said that we would have had the zoning certificate of compliance if it weren't for the DOT permit. Pam had everything in there, and she reviewed it and then found out she wanted a DOT permit. Kevin said fine and took the decks down.

Counsel said the purpose of the certificate of compliance is the assurance of the Town of Bolton that the application is in compliance with the Town of Bolton, so the Lake George Land Conservancy and Kevin Kershaw would be entitled to their certificate of compliance and should not be held up by the fact that DOT has not given their answer yet. Supervisor Gabriels asked what would happen if the DOT rendered a negative decision. Counsel said that on the issue of Bolton and the certificate of compliance it's none of our business. Kevin asked if it was not the Town's business concerning the DOT permit, why did she hold up the certificate of compliance. Counsel said because Pam is not here, he would try to answer the question for her. The purpose of a certificate of compliance is to guarantee Warren County that everything you seek to build, for which you seek a building permit, is good as far as the Town of Bolton is concerned.

Counsel said he sat through the meetings when the Lake George Land Conservancy applied for its variances. He questioned if they went for site plan review. Mitzi said no. Someone else said yes they did. Counsel said I don't believe there was a requirement within the site plan review or a contingency within the variances granted, that before you can consider these variances final, or the site plan review final you must get a DOT permit.

If the Planning Board had made some contingency, that said you can't get your certificate of compliance until you get your highway department lined up. I don't recall that.

Counsel read the zoning compliance certificate issued that specifically says this is to certify that the proposed construction described in Warren County application tax map complies with all town, village or local zoning laws and requirements and that any proposed sewage disposal system comply with all town and local sanitary codes. It does recite: see also V06-18 & V05-58 for approvals. Those were variance approvals. This is usually the contingency in the trigger mechanisms in a compliance certificate, not things that pertain to the Department of Health or liquor license or Department of Highways.

Supervisor Gabriels said he does recall that this particular property has undergone a considerable discussion historically with DOT and proper stormwater management and represented many years ago in its development with a plethora of problems.

Henry Caldwell said the Planning Board gave Pam constructive notice that they were going to be doing demolition. They had about ten pages of plans and the ZA should have said you are going to need a demolition permit. Henry said that the Planning Board's granting of approval would represent constructive notice to Pam that the demolition would be forthcoming. Henry stated that the LGLC had very elaborate plans because it went out to bid and they needed comprehensive plans so all the bids would be apples to apples. Counsel said Henry's point is well taken, but that is not what the violation is. In looking at the written version of notice of violation it says that there is an alteration of a non-conforming structure and it proceeded without a permit and of course the application could not get a permit until they got a certificate of compliance. The certificate of compliance is hung up for an issue that in his legal opinion is out of bounds for the criteria for a certificate of compliance. A certificate of compliance is "what does Bolton care about this project". Is it in compliance with stormwater, sanitary regulations or zoning codes and the answer is simply yes. I think the applicant was entitled to it.

Kevin Kershaw said that if she didn't hold us up for the DOT permit we wouldn't be here tonight, because I would have had the certificate of compliance already with a building permit.

Mitzi said if you are going to demolish, you need a demolition permit. You have to have both. Councilman Andersen said that based on the fact that there was clearly no intent in any shape or form, and on Counsel's opinion that the permit shouldn't have been held up in the first place I make the following motion.

RESOLUTION#220

Councilman Andersen moved seconded by Councilman MacEwan that for property owned by the Lake George Land Conservancy, Lake Shore Dr, Tax Map #171.19-1-53.12 that the matter be dismissed without prejudice and to allow the project to move forward. No civil penalty will be assessed. All Favorable. Motion Carried.

Don Kingsley asked if there could be some sort of time frame when something is submitted, that it should be back. Five or six weeks is an unreasonable time to wait. Supervisor Gabriels said it is date stamped coming in. I can't tell you if it is date stamped going out.

Supervisor Gabriels moved seconded by Councilman MacEwan to adjourn at 10:26 p.m. All Favorable. Motion Carried.

Respectfully submitted by:

Kathleen Simmes

Town Clerk