

TB Minutes April 3, 2007

STATE OF NEW YORK
COUNTY OF WARREN
TOWN OF BOLTON

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

Absent: Councilman Scott Andersen

Pledge of Allegiance Kathleen Simmes

PUBLIC HEARING:

Supervisor Gabriels called the public hearing to order at 7:00 pm on the issue of Local Law #1 of 2007 - Non-conforming Structures/Lots - Warren County Planning Board Indicates No County Impact 3/16/07

Counsel said the sentence offered as an addition to the local law as proposed by Lisa Nagle of ELAN is for Section 200-58 regarding non-conforming lots and reads as follows: " A) No new principal building may be created on any non-conforming lot, except in accordance with 200-54 General Exceptions. (B) Buildings and structures located on non-conforming lots may be moved, expanded, enlarged or replaced as long as such change complies with all of the regulations of the district in which it is located."

Counsel said that what is very important about this topic is that it has nothing to do with uses, but with the non-conforming structure located on it. He added that Lisa Nagle indicated to him that the committee was of the mindset that if any building structure on a non-conforming lot would require ZBA or PB consideration in that there are issues that pertain to the non-conforming lot. Lisa Nagle's position is that it is not necessary and that it could be done as-of-right without board review if the matter complies with all of the zoning regulations of the district.

Meredith McComb asked if density requirements are excluded if you use the word "dimensional there. Counsel said that you are not dealing at all with densities here they are giving no relief and giving no grant on the issue of density here. He said that density has other places in the code. Meredith McComb said that if the word imensional is left out, then if density is an issue it can be raised by the Zoning Administrator and presumably the goal of this is that if somebody has a non-conforming lot then they should be able to move and build on the entire legal building envelope of that, but if you leave the word imensional in this, if doing so means there were the density requirements that would trigger oversight by the Zoning Administrator.

Counsel said that if they delete the word imensional then Section 200-58(B) would instead read, "Buildings and structures located on non-conforming lots may be moved, expanded, enlarged or replaced as long as such change complies with all of the regulations of the district in which it is located." He said that in doing that you have done no harm to the meaning of the sentence. Meredith McComb said that omitting imensional makes it simpler and if someone has a question they can raise it. Counsel said that he agrees but would like Pam Kenyon input on the matter since she and Lisa Nagle had discussed this matter. Zoning Administrator Pam Kenyon said that she is happy with the wording now and it is not ambiguous. She asked if Counsel said that Lisa Nagle said that the Zoning Committee Members were in favor of the old wording and Counsel said yes, but he does not have first hand knowledge of that. Pam Kenyon said that she doesn't believe that is the case.

Councilman Saris asked if it is correct that if someone subdivided a piece of property on a non-

conforming lot, then went to the ZBA to get a variance granted, it would then still be a non-conforming lot. Counsel said yes, it would still be non-conforming because it is undersized and the granting of a variance does not actually constitute a blessing or forgiveness of sin, in that it still has some sort of non-conforming going on.

Meredith McComb asked if (A) refers to what is currently in the code as 200-54 (B), which is a clause that is in the code that says if you have two contiguous substandard lots they are automatically merged and added that she doesn't know that that has ever been or should ever be the practice here. She also asked if this language replaces that. Pam Kenyon said no, this language does not replace it because it is saying except in accordance with Section 200-54 so 200-54 will still apply. Meredith McComb said that it is less ambiguous and gives the Zoning Administrator more leeway for clarity sake to delete the word imensional. Counsel said that he agrees with the logic in that deleting the term "dimensional" leaves you with a very general, expansive explanation, so it would not be limited to the discussion of dimension and it would not do any harm to it. It is a very good suggestion.

Counsel said that the general overview is that there is a proposal that the existing Article IX in the current code needs some immediate reform or some further explanation so there is a platform of some uniformity to start from in how the Town of Bolton deals with what are reoccurring non-conforming uses. He added that they also then go to the topic, which is quite different, of non-conforming buildings and structures and then they go to the non-conforming lots, which would be the trilogy of non-conformities. He said that they also attempt to give revised or more comprehensive definitions that are actually in the General Definitions Section of the Zoning Code. He added that the trilogy of non-conforming uses has been broken down in the proposal into parts (A-D) provisions with Part A indicating that if there is a non-conforming use, that is some activity that is in the zoning district that would not be permitted there, except for the fact that it is probably there because it pre-exists zoning, that that non-conforming use which existed lawfully at the time of adoption of this article may be continued subject to some provisions. He noted that part (B)(1) deals with expansion of a non-conforming use in that A non-conforming use shall not be enlarged or extended beyond the area of the existing structure in which the use is located, which structure existed prior to adoption of this Article, unless granted a use variance by the Zoning board of Appeals and, if required by the terms of the area variance granted, Site Plan Review by the Planning Board so the point being is that the PB may have a say in this thing due to an appropriate case if it has been referred to by the ZBA. Counsel said that this type of referral is not within the current code right now and in the first or second version of this legislation it was proposed that all non-conforming uses that were proposed to be expanded would have to go to the ZBA and the PB, which seemed to be overkill, so the proposal that seems to be the middle ground on this is let the ZBA do them all, which by law they must, and let the PB review them if the ZBA thinks it is appropriate. He said that it also says, In addition to dimensional criteria, expansion of a non-conforming use shall be considered as occurring whenever the magnitude or intensity of the pre-existing non-conforming use increases in volume or activity as evidenced by hours of operation, amounts of employees, deliveries, amounts of customers, additional parking requirements and similar material changes in circumstances which magnify the volume of the non-conforming use which he thinks is a very positive change in the proposed code in that the mere expansion of a non-conforming use is not just measured by a yard stick, it may be measured by other criteria and the other criteria are increases in volume, activity, such as hours of operation, amounts of employees, deliveries, material changes and circumstances that in a sense that magnify this non-conformity. Counsel then gave a hypothetical situation as an example to clarify. Counsel said that xtension is an interesting development in this Article and that is that a non-conforming use that is inside a structure can actually get larger inside that structure by site plan approval, which is a vast departure from what is in the present code. Counsel continued reading from the proposal and said that it says regarding modification, A non-conforming use shall not be changed to another non-conforming use as a matter of right and added that non-conforming uses may be modified in a way to increase non-conformity, but that non-conformity or modification in use has to be the same or of less non-conforming nature. He again gave an example to clarify.

Meredith McComb asked if expansion or extension of a non-conforming use that doesn't involve a structure would require getting a use variance according to the new wording and Counsel said yes. Meredith McComb said that she thinks the number of times at the ZBA meetings where they say it is almost impossible to get a use variance according to the state guidelines because you have to prove you can get no reasonable economic return by doing something completely different and she wonders if that could be a big pitfall for the business community in Bolton. Counsel said that it is a pitfall in that the structure of the Zoning Code does not endear itself or engender itself to the expansion of non-conforming uses and the philosophy is that if that pre-existing non-conforming use is really not something that fits well within that district and in fact is prohibited within the district that the sense of a good zoning ordinance would be that we like to do nothing to engender or foster its expansion.

Meredith McComb said that the reason it would not be a problem for GB5000 residents is because business is a permitted use there, so this would come down to outlying residential areas with businesses that wish to expand and Counsel replied by saying that it would, so they are held to a very high level of standard regarding getting a use variance, and they probably won't.

Deanne Rehm said that in proposed Section 200-56 (B) (1) there would need to have someone monitoring everything that is non-conforming use 24/7 and asked how it would be known they are doing it. Counsel agreed and said that he thinks that if you have this language in the code, then it does become a matter of proof, that is that somebody will inevitably have taken what constitutes the pre-existing non-conforming use, one which seemingly was compatible for the adjacent neighbors, then one of the adjacent neighbors or several come to the TB and suggest that this is not the way it used to be, but beyond the realm of how it used to be operated giving specifics to the changes. He added that it is always a question of proof, so the neighbors and Town of Bolton are held to this standard of how it differs, how it has grown, or how it is greater and the answer comes through the testimony of a person such as Deanne Rehm to report that. Deanne Rehm said that seems awkward at best and asked if the Town of Bolton would be monitoring it. Counsel said that he is not sure the Town would be monitoring it, but someone will raise the issue and the Town can use this language and hold the proof to that test. Councilman Saris said that things are presented to the ZBA as being certain intensity and sometimes a business owner changes that--he thinks it is anticipated more that if changes were made the neighbors would bring it to the boards' attention.

Deanne Rehm asked if adding additional storage space is considered an extension. Counsel responded by saying that he thinks it could be and he gave an example of a hypothetical beauty shop that consisted of one chair and added another chair and another employee within the same space. Deanne Rehm said then there is every likelihood that it would be an expansion since there would be more customers and it would be very difficult to get an extension. Counsel agreed and said that if you have the sense that non-conforming uses are not favorably received or embraced by a code, you'd have the right feeling. Meredith McComb said that from a ZBA member's perspective, if somebody is adding a second chair, she would say that they cannot get another economic value with less impact on the neighbors than a second chair, so she may be able to come up with a use variance for that and if it is a 24-hour business that it is expanding, it would be difficult to draw the line between the two of them for ZBA members and administrators--she would request from the board the fewest modifiers.

Counsel said that Section 200-56 subpart (C) of the code presently has that if a non-conforming use is discontinued a period of time has to run, but the running of the period of time does not start until the Zoning Administrator sends a written notice to the owner of that non-conforming use that has been discontinued that unless you get back in there and continue your non-conforming use, your rights would expire 12 months after the Zoning Administrator's notice went out. He said that this new one does not put any affirmative act upon the Zoning Administrator or the Town of Bolton and indeed it would be a matter of proof in that if the non-conforming use is discontinued for a period of 12 consecutive months that non-conforming use shall expire and it is deemed abandoned. Meredith McComb asked if it just shifts the burden of proof to somebody who wants to start up a use that they don't have if they have it within

12 months and Counsel said yes and gave an example to clarify.

Counsel said that regarding destruction and restoration, proposed Section 200-56 (D) says that, if any building or structure in which a non-conforming use is conducted is hereafter removed, or destroyed by fire, wind, explosion, structural failure or other natural cause, to the extent of seventy-five percent (75%) or more of its fair market value at the time of such damage any reconstruction or restoration of such building or structure for such non-conforming use must be completed within one year of the issuance of a valid building permit. Counsel said that in a sense, this proposal by ELAN is compressing, not embracing or encouraging, non-conforming uses in buildings and structures to be revisited and rekindled, but trying to put it all in a situation where it is up and running and all done within a year. He again stressed that it is a section that is intended not to embrace or encourage pre-existing non-conformings of use.

Counsel said that Section 200-57 regarding non-conforming buildings and structures, you now have to stop thinking of uses, these structures have a permitted use within the zone which has nothing to do with use, so these are buildings and structures that might be in the wrong place as far as current zoning setbacks might be concerned. He said that the continuation of a non-conforming building or structure that exists lawfully at the time of the adoption of this article certainly may be maintained and it protects all property, wherever it may be--if it is in the wrong setbacks, it is a given that it is still protected and the building a structure for which a valid building permit has also been lawfully issued before the adoption of this article also comes under the same continuity--it is protected. He said that the big issue that is always controversial and has a lot of loose ends is the modification and replacement of a non-conforming building or structure shall be maintained in sub-condition so long as it doesn't constitute a danger to health, safety and general welfare and a non-conforming building or structure shall not be added to, enlarged, reconfigured, or altered in any manner that increases its overall size in any dimension or in any direction--all such modifications require an area variance from the ZBA and if required by the terms of the area variance granted, it could be referred to the site plan for PB review. Counsel said that not all of them show up at the PB--just the ones that the ZBA refers and this is perhaps the heart and soul of the whole effort in revised Article IX, that is that there is at least two schools of thought on non-conforming buildings and structures and that is that if that structure or building has one toe over the line--a foot too close to the shoreline--but in every other respect it is in conformity with the code, when that owner of that non-conforming building or structure seeks to in any way change it (up, down or in some direction that would otherwise be ok or satisfactory), that is not going to be permitted as a matter of right, that is that the enlargement of the non-conforming building or structure in any direction in any increase in overall size is going to require an area variance. He added that it is not just the logical exercise of trying to figure out what is the footprint and is the footprint being held, because if you accept that argument then a pre-existing non-conforming building in the proper footprint could go up an extra story and this particular proposed section in the code would prevent something like that.

Ron Conover said he is not against the provision, but it should be kept in check, as an awful lot of business is being sent to the ZBA and the ZBA already has meetings that go to 11 pm -12 am. He said that he is concerned with overlay districts that have very significant setbacks that usually affect building of front yards, so for a good percentage of buildings on Route 9 they are by adoption going to become non-conforming structures even though they may have rear yards that go all the way up the mountain for half a mile and if they wanted to add an additional bedroom to the back side of the house where they have the space, they would have to go to the ZBA because the front yard is considered non-conforming by this definition. He said that he understands the intent behind the proposed changes, but it should really be watched down the road, as his concern is that you'd be holding up people who would have only needed a building permit currently and the cumulative effect of non-conformity will spiral where a significant number of the structures of the community would be in a file called non-conformity. Supervisor Gabriels said that it is a good point in that this may add an administrative burden. Councilman Saris said that the Town of Bolton already has this and what this addresses is that buildings that sit on the line that are part compliant and part non-compliant are going to be considered non-compliant. Ron Conover said that the difference is that you could have a building that sits on a lot with a non-conforming

front yard but what this does is that it takes front, side and rear yards and makes them one. Counsel agreed. Ron Conover said that if you are in violation of one you are in violation of all, so it doesn't matter what the location of the lot is and gave an example. Councilman Saris said that his point is that there were a number of homes where the whole home violated the front yard setbacks, so this is putting it on equal footing now, so they both have to go to the ZBA and part of it is that people have an understanding on why some things could be done while others couldn't. Ron Conover gave the example of the scenic corridor and said that setbacks were set so as land was developed those setbacks were more extensive to maintain the vegetative landscape and it would be an additional step and expense involved--over time it will send a significant amount of business, perhaps unnecessary business, to the ZBA. Supervisor Gabriels said that he would suggest that if and when that time comes that the ZBA would suggest that to the TB, as the TB would be happy to adopt any solution that is equitably fair and clearly understood and he doesn't see having that problem at this time although he can see it coming and he doesn't have a solution to that problem at this time.

Meredith McComb said that speaking as a ZBA member, unlike the PB, the ZBA has not been overburdened whatsoever--two meetings were cancelled because nobody needed a variance. She added that she doesn't think the ZBA has rarely gone to 9:00 PM and furthermore, Pam Kenyon has brought things to the ZBA and has asked if the ZBA wants to maintain oversight to any change to a non-conforming structure and the ZBA said yes. She added that she agrees with Ron Conover on the problems for the people in the scenic corridor, but the problem lies with drawing that line and not having Pam Kenyon having to start out and take each case individually. Meredith McComb said that she believes that Supervisor Gabriels' take on that is if it becomes a problem the ZBA will let the TB know is a wise one and she thinks that this is excellent language from what has been a really contentious issue.

Supervisor Gabriels asked if there would be any diminimus in this provision and Counsel said the Town Board may include it, but it is not in this provision. He also added that as a guiding sample of that theory, if you look carefully within the APA regulations they also have a provision about a deviation of two feet or less does not constitute a deviation. Counsel added that they are doing a very narrowly calculated surgical approach to the non-conformity topic and this one needed addressing because of ambiguity. Pam Kenyon said that it was discussed in giving some number of feet and Counsel said it was discussed, but not included.

Counsel said that there was a situation where a person was denied by the ZBA to enlarge their house, so they decided to make the house bigger by making a larger house by increasing the depth of the basement and increasing the height of the house within the same footprint. Meredith McComb said she thought this had been duked out years ago and that it was considered that they deal in cubes not lines and Counsel replied by saying that the wording here says "...the reconfiguration or the alteration in any matter..." so they can abandon their misunderstanding of cubes or feet and they now know that it is all included. Councilman Saris said that at some point the ZBA thought it was all hashed out as well, but the language didn't support what they thought was hashed out, and this is certainly in keeping in the way it was historically resolved by the ZBA 20 years ago and resolved again two years ago and it is consistent with the interpretations of that board.

Meredith McComb said that in defense of Pam Kenyon as far as if she is finding ambiguity, that has been pressed on her and she thinks this is very unambiguous.

Pam Kenyon asked if there is a totally compliant structure that meets all setbacks possible and a variance is applied for, then would that make the structure non-compliant. Counsel asked if Pam Kenyon's question is that if once a variance is granted on a particular structure or building if that now constitutes a non-conformity for now and evermore that these people must come back and she said yes. Counsel said that the answer to the question is yes. Pam Kenyon gave an example and asked how it would be interpreted and Counsel said that he agrees with Pam Kenyon's position in terms of how she analyzes it, but once you grant a variance from the code requirements it doesn't mean that that particular house has

had its own special code written for it--it has been varied from the code and that by virtue of this variance has created the non-conformity.

Counsel said that regarding resort hotels, rental cottages and group camps, the APA was looking at densities and correctly they were calling each occupancy a principal building, where what you found was that you could take a principal building and convert it to some other use without a variance and he then gave an example. He added that this proposed Section 200-57 (B) (1) (c) says, "Resort hotels, rental cottages and group camps shall not be converted to single-family residences, condominiums, cooperatives or other non-seasonal occupancy except through site plan review..."

Meredith McComb said that the Town of Bolton is also allowed to have more restrictive zoning than the APA's zoning. Counsel agreed. Meredith McComb said that it may be less or more and because the Town of Bolton has setbacks for cabin colonies and the distance between structures it should all be considered before taking the APA's interpretation of a cabin as a dwelling and swap them out one for one for density. Deanne Rehm said that she believes the Town of Bolton in the late 1970's actually revoked the APA's provisions where you can convert resorts and cabins into dwellings, which she thought was part of the Town's ordinance for the last 25 years, so there could be no conversions. Counsel said that in that particular case, the individual who had these cottages made one of them twice the size it used to be by taking down an interior wall, so now he had 10 and his 11th principal building became his single-family residence--he built a brand new structure to fulfill 11. Deanne Rehm said that when you have 11 rental units, you do not have the right to convert them into single-family residences. Counsel said that is being reinforced in this section in saying that if it is at all possible under any construction it is not as-of-right and his recollection is that Lisa Nagle did not want to see any as-of-right conversion of anything that was seasonal, sort of a cabin or a cottage, into a single-family residence. Deanne Rehm said that she thinks it is in the code right now and Pam Kenyon said it is.

Meredith McComb said that in 200-8 (H) in looking at the definition of a cabin colony it does say in the current code that cabins can be lived in or rented year-round. Counsel said that the current code says that "...a non-conforming building or structure can be replaced or rebuilt in its identical footprint as-of-right within 24 months..." meaning that you can't add to something, enlarge something, reconfigure it or alter it in any manner and still claim you are hugging the original footprint. Counsel asked if the same recommendation is coming from Meredith McComb to take "dimensional" out of there. Meredith McComb said yes and asked how someone would know what was there 24 months ago. Counsel said that if he were challenged with that task, he would go to the assessor to see if there is any data that this municipality has and if it was a house built in say 1860 he would probably fail on data.

Counsel said that the non-conforming lot and non-conforming use are not substantially changed in that it just creates a trigger date and when a whole new Zoning Code is enacted it will create another trigger date comprehensively for the whole code including Article IX. He added that the change that is meaningful in the definitions is for non-conforming structure, which again utilizes the same trigger date of enacting Article IX of this chapter and it does also address the issue Pam Kenyon brought up in this public hearing by saying "...any non-conforming structure built, expanded or constructed with a prior grant of an area variance shall presumptively therein constitute a non-conforming structure..."

Meredith McComb said she thinks it might be clearer if it were just "...any structure built, expanded..." because any structure built with a variance is by definition non-conforming, so there is no need to say "non-conforming structure" the use of "any structure" would suffice and she is also asking to have "...a prior grant of..." omitted in an effort to make it less ambiguous. Meredith McComb also asked that a definition of "conforming structure" be added to the code.

Ron Conover asked why someone would be sent to the ZBA to put a bedroom on the side of a house where they meet side setbacks if a variance is not required. Counsel said that there have been instances where adjacent neighbors come in asking how projects would affect them in regard to views. Ron

Conover said that people would be sent to the ZBA for something that doesn't require a judgment and asked what criteria the ZBA would judge on and said that the type of test should be administrative--not for the ZBA to decide unless a variance were needed. Counsel said he would urge the ZBA to judge by the five criteria they have for area variance because it is established by Town Law and it is also specified within the code in Section 200-65 and the people in the public at that public hearing would consider and also be heard on if it would constitute an undesirable change, if the benefit sought by the applicant could be achieved by some other method, if the requested variance is substantial, if the proposed variance has any impact or adverse effect on the physical or environmental conditions of the district. Ron Conover said that would be a variance test and it wouldn't need a variance. Counsel said that this language would require it to get a variance. Ron Conover gave another example and asked for Counsel to clarify it with the new proposed language.

Councilman Saris said what happened is that the ZBA wrestled with any expansion of a non-conforming structure and came up with the decision that going up is an expansion even though it is not increasing the footprint and an expansion may not increase a violation, but it can still have a visual impact to a neighbor, so in trying to find a way it would be in all situations and not end up with something they'd be sorry for, they decided to review all non-conforming structures. Councilman MacEwan said that it also gives everyone a fair chance to be heard.

Supervisor Gabriels said that there was one sentence appended to the document and asked if it is a minor or major amendment and if the public hearing needs to be held open for another month. Counsel said no, it is not a matter that the TB has to hold the public hearing open on, but it is one he would want every TB member to feel comfortable as to why Lisa Nagle had proposed that. The sentence Lisa Nagle urged him to make sure was included in the public hearing version was "...buildings and structures that are located on a non-conforming lot may be moved, expanded, enlarged or replaced, so long as such change complies with all of the dimensional regulations of the district in which it was located..." which means that an odd ball or non-conforming lot that already has a building or structure on it, that building or structure can as long as it is a conforming building or structure go anywhere on that non-conforming lot be replaced, enlarged, expanded or moved and it will not need a variance for the lot, it may need a variance for some sort of area setback, but the lot will still be okay because it is a pre-existing non-conforming lot and will be continued to be recognized that way. He doesn't believe it is a big change, but does not believe the committee is fully behind it. He thought the committee wanted a variance to be required. Pam Kenyon said that originally the committee was behind that if you had a non-conforming structure and you want to move the building then you would need a variance even if it is conforming and Counsel agreed saying yes, for the lot. Pam Kenyon said that she asked Lisa Nagle about it, she was told this is what the committee wanted, but this was never discussed. She (Kenyon) polled different members and they don't remember, so she doesn't know where it came from, but she does like the wording. Counsel said that he is very happy with the wording and he would propose in the interest in the expediency in the administrative and ZBA processes, he sees no reason why non-conforming lots need to be addressed by the ZBA where the structure upon it would become, remain or as moved and relocated will always be conforming.

Counsel said that he is suggesting enacting it in the most recent version submitted by Lisa Nagle. Meredith McComb asked if "compliant" should be added to the front of that sentence, so you are not in a case where something meets all setbacks yet needs a variance. Counsel said it would help. Pam Kenyon said that she doesn't feel the word "compliant" should be added, because someone may construe that as if you have a non-compliant building you want to tear down that you can't do that without a variance even if what you are going to put back is compliant, so she would like to leave that part alone. Counsel agreed and asked what she thought of the deletion of the word "dimensional" in two spots: 200-58 (B) and 200-57 (D) (2) (a) and Pam Kenyon said she agrees those deletions would be a good idea.

Councilman Saris said that he thinks the Town Board should move forward with this and it is a predecessor to the Town of Bolton adopting a new ordinance, at which time any inadequacies can be

addressed in the new ordinance.

Counsel said that Meredith McComb also suggested that within the definition of non-conforming structure, the last sentence should read "...any structure built, expanded or constructed with a prior grant of an area variance shall presumptively hereafter constitute a non-conforming structure..." so the word "conforming" is deleted, which he thinks is a good suggestion. Pam Kenyon said that would be fine.

The public hearing remained open.

REGULAR MEETING:

Supervisor Gabriels called the regular meeting to order at 8:30 pm.

Presentation by Bill Gates, representing The Bolton Historical Society in which he thanked the TB for their continued monetary support, said they adopted three cemetery sites this year that they had signs made for, and their open house will be on Saturday of Memorial Day weekend. He said they are also planning on expanding onto the back of the museum to be funded by museum fundraising and presented the proposal of the two-story 45 feet wide by 40 feet long addition.

Supervisor Gabriels said that there is a need to research boundary lines in order to assure the addition is feasible.

Announcements:

Memo from Carl Schoder of SRA Engineering re: Bid Rogers Park stone wall and/or Town Pier - Time Line - Need Decision on Timing of Construction This Year - Memo of 4/2/07

Supervisor Gabriels said that one thought is to tie the reconstruction of the stone wall with the pier itself and the other is to try to get the stone wall repaired before the July 1st season then work on the reconstruction of the pier after Labor Day and the TB has been told that doing the projects together may save money, but it would mean the Town pier would be unusable for the entire summer. Councilman MacEwan voiced concerns on safety and Councilman Saris said he'd suggest that with the amount of kids in that area during the season there is no possible way to adequately secure a construction site and it is going to pose a danger, so he would suggest that whatever they could do to secure and make safe as quickly as possible the area before the season comes, the sooner that is done the better. All TB members agreed.

RESOLUTION #51

Councilman Saris moved, seconded by Councilman MacEwan to go with Option #1 and have SRA Associates proceed with replacing the stone wall as quickly as possible then proceed with the town pier which will not begin before Labor Day. All favorable. Motion carried.

Workshop Meeting Between Town Board, School Board and Fire Commissioners on Tuesday, April 17 at the Fire House at 7:00 pm - open to the public

Senior Trash Pick Up Day: Monday, May 14 and Tuesday, May 15 -Confirmed by Highway and Transfer Station - Need Pick Up Schedule by May 11th

NYS DOT proposes to replace 9N culvert 1.6 miles north of County Route 11 intersection from May 1, 2007 to be completed before Memorial Day 2007

Time Warner Cable and Supervisor did field survey on Thursday, 3/29 - Report on potential build-out to come

Conservation Club - Citizens Group interviewed 3 architects

Town has Contract with General Code to Publish all Local Laws and Ordinances - \$8,210 allotted and the Supervisor signed that contract

Meal Site Menu is available in the Town Hall.

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

Supervisor Gabriels said that the Town has been notified regarding matters such as appointments to the NYSDEC, which the Town of Bolton did not take action on that regarding its displeasure with that particular appointment and asked for TB member consideration of future action to be taken regarding the state taking precipitous actions.

Public in Attendance:

1. Stephanie Mason, representing the Bolton Chamber of Commerce, gave an overview of a prototype of their proposed Town of Bolton walking maps and asked for permission to put five enlarged maps (42 X 14) up on town property.

Discussion on specifics ensued and the TB determined nothing proposed would be a banner or a structure and they are in favor of the concept with further discussion in the future when specifics are available.

2. Counsel noted that Meredith McComb asked him to point out that in the Town Board March 2007 minutes his statement on page 5, should read as follows, "...Meredith McComb's presentation was that she was speaking against Splonskowski's interpretation."

There were no additional public comments on this or any other matters at this time.

Correspondence:

Letter of resignation from Steve Preuss.

Correspondence from Congresswoman Gillibrand that she has submitted a project of \$30K for the Bolton Hydrology Study and System GIS.

Correspondence from Mayor Blais regarding not getting the shared grant program. The Lake George Watershed Conference will buy the TV camera for sewer and stormwater to be shared by Lake George, Hague and Bolton.

Correspondence from Dan Hayes regarding extension of sewer line to his house on Horicon Avenue.

Notification from census bureau regarding participating in update to census address program.

Letter of thanks from Henry Caldwell to Highway Dept. for their snow clean up of the hamlet area in the middle of last month.

Indication that the county is going to have a forester go look at the three lots at Up Yonda Farm and one on Schroon River Access.

Resolution for the record that Padanarum Bridge over Northwest Bay Brook to be redone in Fall 2007 in the amount of \$493K through federal funding.

Notifications from The Sagamore, The Algonquin, Frederick's, Bella Napoli and Pumpernickel's that they are all renewing their liquor licenses.

Notification that The Sagamore requested a waiver of the 30-day notice for the liquor license renewal at the cabana which Supervisor Gabriels gave to them some time at the end of last month.

Notification of effects of development of stream corridors meeting by Saratoga Associates in conjunction with LGPA is set April 18, 2007 at Ft. William Henry Center from 1-4 PM.

Indication that the Lake George Watershed Conference is holding its third annual forum on Thursday, May 17, 2007 at Ft. William Henry Center.

Referrals from Zoning Enforcement Officer / ZBA / BPB:

Timothy Harrington, 4 Forbidden Forest Lane (156.00-2-28) - extensive tree clearing without a permit
olton PB recommendations Timothy Harrington

This item is pending.

Board of Health/Water Commissioners:

Lichtenstein (TMN 157.05-1-40) Septic Variance

This item is pending.

Reports:

Councilman Maranville

Office of the Assessor:

During March, recent subdivisions filed at the county have been included in the May assessment roll. An overall level of assessment of 64% will be utilized. The office reviewed taxable state's lands and realized the department never received an assessment for the conservation easement by the State for the Norowal property, but was assured one is coming.

Police Department:

Miles patrolled: 358 miles. Fuel used: 26 gals. Officers investigated 10 parking warnings, 1 civil complaint, and 2 miscellaneous complaints. Letter submitted by Sgt. James Neumann regarding recommendation for TB adoption of the manual for police of NYS as the official procedures manual of Town of Bolton Police Dept.

Justice Department:

A/R for March 2007: Judge Harry Demarest - \$3,595.00. Judge Edward Stewart - \$3,885.00. Total: \$7,480.00. There is an itemized list located in the court breaking down the amounts.

Councilman Saris

Clerk's Office:

Total Local Shares Remitted: \$7,191.81, Total Non-Local Revenue: \$137.47,
Total State, County and Local Revenues: \$7,329.28.

Sewer Dept.:

Report to be provided next month, as Chet Dagles is on vacation. Councilman Saris noted that some freezing damage was done to the sewer jet due to the furnace failing in that building last month and the furnace has been repaired, but Chet Dagles is investigating the situation with the possibility of putting a notification alarm on it for the future.

Councilman MacEwan

Water Dept:

Water made: 6,944,000 gals for a daily average of 224,000 gals. The pond is over the spillway.

Transfer Station:

a Total A/R: \$4,453.00. Lisa French has been telling him for a while that an unusual amount of trash is being dropped off and thrown over the fence after hours.

Supervisor Gabriels

Supervisor's Report:

Total receipts: \$402,516.03 and Total Disbursements: \$471,568.86.

Unfinished Business:

Local Law #1

RESOLUTION #52

Councilman Maranville moved, seconded by Councilman MacEwan to close the public hearing on Local Law #1. All Favorable. Motion carried.

Counsel read through SEQR and said that it seems that there would be no negative impact by the enactment of this code amendment and if that remains true then by resolution it would unanimously pass perhaps, and then signed by the Supervisor saying that is true.

RESOLUTION #53

Councilman Saris moved, seconded by Councilman Maranville that the enactment of Local Law #1 of 2007 a ocal Law new Replacement Article IX Town of Bolton Zoning Code With New Definitions. It is a modification of Article IX and will comply with our existing Zoning Ordinance. This motion contains an SEQR analysis and findings of negative environmental impacts. Supervisor Gabriels said that the enactment of Local Law #1 will not result in any significant adverse impacts, so he has signed and dated it tonight. Supervisor Gabriels read the following resolution into the record:
Now therefore be it resolved that Article IX of the Town of Bolton Zoning Ordinance as proposed by Local Law #1-2007 is hereby enacted and by this enactment thereof it hereby replaces in full the entire existing code Article IX and specified definitions effective immediately upon satisfaction and publication of the filing. All favorable. Motion carried.

RESOLUTION #54

Councilman MacEwan moved, seconded by Councilman Maranville to adopt the resolution and enact Local Law #1-2007 titled Non-Conforming Uses and Structures NEW ARTICLE IX as amended having the word "dimensional" taken out of Sections 200-57 (B) (2) (a) and 200-58 and the deletion of the word "conforming" in the revised Section 200-8 Definitions under on-conforming structures so that it now reads, "...any structure All favorable. Motion carried.

Pam Kenyon asked if this is effective immediately and Counsel said no, it would need to be filed so it should be effective in about 10 days.

Bid on One-Ton Truck

The Town Clerk said no bids were received.

RESOLUTION #55

Councilman Saris moved, seconded by Councilman Maranville to go out to bid for a one-ton truck for the Highway Dept. Bids to be opened up at the May 2007 Town Board meeting. All favorable. Motion carried.

Re-Affirm Approval of Mayfair Resort Sewerage Works Corporation - Technical Changes Made as Requested by DOS

Counsel said a minor change was made as required by the Secretary of State, but it is not in any way substantially different, so he is recommending the Town of Bolton sign it.

RESOLUTION #56

Councilman Maranville moved, seconded by Councilman Saris for the Town of Bolton to sign the approval of the Mayfair Resorts Sewer Works Corporation. All favorable. Motion carried.

Re-Confirm Adirondack Runners, Sunday, July 1, 2007 to Finish in Veterans Park - 600 Runners - Requests "No Parking Zone" from Library to Grand Union on Northbound Lane Only (East Side) - Copy to Local Police

RESOLUTION #57

Councilman Saris moved, seconded by Councilman Maranville, to reconfirm the Town of Bolton will allow

the Adirondack Runners to hold their race on Sunday, July 1, 2007 to end at Veterans Park and for there to be a "No Parking Zone" on the northbound lane only from the Library to Grand Union. All favorable. Motion carried.

Authorize Public Bid for 11 Antique Street Posts - Bid Opening Tuesday, May 1, 2007

RESOLUTION #58

Councilman MacEwan moved, seconded by Councilman Maranville, to authorize sealed bids for 11 antique street posts. Bids to be opened May 1, 2007. All favorable. Motion carried.

Decide on Consent Order Verizon v. Town Re: Assessment

This item is pending.

Continuation of Public Hearing from October 3, 2006 on Zoning Code 200-46(10) - "Cut & Fill" Language Alternative Amendments - Muller / Al Sterne

This item is pending.

Pioneer Village Improvement Association - Water District Extension - Discussions Ongoing Not Finalized - Acknowledge Receipt of Documents from Atty. Stafford 02/05/07 - TB Consideration of Any/All Provisions

This item is pending.

Adirondack Swim Marathon - Graham Bailey Letter Dated March 28, 2007 - Requesting Additional Funds for Project

Supervisor Gabriels said that the Adirondack Swim Marathon is requesting an additional \$4,000.00 from each of the towns to be involved and the Town of Bolton has already committed \$3,000 for general and \$2,000 for local. Councilman Saris asked if this has been before the Bed Tax Committee yet and Supervisor Gabriels said no. Councilman Saris said that he'd like to get the Bed Tax Committee's feedback before making a decision.

This item is pending.

Pending Items: No action taken.

New Business:

In the Matter of Barry Kincaid - Stipulation and Agreement dated 3/30/07 Memo Distributed - Barry Notified He Cannot Attend to Defend Position if Required. Indicated that TB would Either Accept or Table

Supervisor Gabriels said that Barry Kincaid submitted a memo regarding if any type of civil penalty could be assessed regarding taking alternative actions and said that he has a stipulation signed by Barry Kincaid, Pam Kenyon, Mitzi Nittmann on 03/30/07 with facts and agreements to it. He added that Town Counsel was also involved in the preparation of this document and that it is the opinion of Pam Kenyon, Mitzi Nittmann and Town Counsel that the Town Board accept this document and ratify it as signed. He said that there was a question of whether any or a modest civil penalty or some other civil penalty should be assessed other than taking corrective actions.

RESOLUTION #59

Councilman MacEwan moved seconded by Councilman Maranville to assess \$0 civil penalty since Barry Kincaid turned himself in and has been cooperative. Further discussion on the matter ensued. No vote was taken on this matter at this time.

Supervisor Gabriels asked if it is correct that the reason for \$0 civil penalty was because it was a self-reported violation. Counsel said that he made the recommendation of minimal or zero civil penalty for several reasons. One is that Barry Kincaid did turn himself in. The actual deed characterizes a misdeed is

minor in terms of what it is that would put him into compliance in that it wasn't something that needed variances, was in the wrong place or constitutes something that was wrong use, and given all those considerations he (Counsel) thought it was small, it was admittedly, a violation of the code. Supervisor Gabriels said that there is a need to be clear regarding setting precedent with this matter. Counsel said that he doesn't want people to think that if someone simply reports oneself that would constitute no civil penalty. There are other magnitudes taken into consideration, but all of these are collectively small. Councilman Saris said that his concern is not having a clear mental picture of what the TB has done in the past, but he has concerns in the TB doing something that may look inequitable, but maybe this is the appropriate way to handle it in the future. Counsel said that procedurally this is the first time the TB has done it in this way.

Councilman Saris said he'd feel more comfortable in reviewing past practices before making a decision on this matter in an effort to be fair and he also recalls where the TB had a scale system for offenses. Councilman MacEwan asked if the TB's decision on this matter would set future precedent and Counsel said yes. Supervisor Gabriels said that would be up to the TB.

Mitzi Nittmann said that going through this process where she, Pam Kenyon and Town Counsel come up with a possible agreement in a case has allowed her to do her job more efficiently and she thinks this process works better rather than each one coming up for review at the TB meeting.

Counsel said that in other cases, if this process, which is by consent, had been in place, then they (he, Pam Kenyon and Mitzi Nittmann) would have met with that particular individual and proposed a resolution and the applicant has the option of agreeing to the resolution or going through the variance processes. Councilman Saris said the meaning of this process was to try to prevent the ZBA from seeing purposely built after-the-fact stuff. Counsel said that applicants have the absolute statutory right to go for the variances and what he really wants to do by the Town of Bolton is that it is at the applicant/owner's consent that these matters are brought before the Town Board. Counsel added that he thinks administrative remedy is the way to go, but that is the applicant choice.

RESOLUTION #60

Councilman Saris moved, seconded by Supervisor Gabriels to table the matter to the May 2007 Town Board meeting pending further information, specifically a compiled list of civil penalty history and past Bolton Town Board practice to ensure consistency and to make sure all is equitable and fair. Two favorable (Gabriels and Saris). Two opposed (MacEwan and Maranville).

Further discussion ensued as to reasons behind tabling the item and seeking further information on past practices. Supervisor Gabriels asked if the TB always retains the ability to go back and make modifications to civil penalties assessed in the past. Counsel said yes, because it was a civil compromise that constitutes a contract and the TB can certainly undo what was the contractual obligation of the applicant/owner. The TB was a stalemate on this issue, so it is tabled pending further research.

Westwood Forest West Subdivision Rolf Ronning Requests Partial Return of \$150,000 Performance Bond Per Nace Memo Dated 03/21/07 of Completion of Required Conditions - Nace Recommends Retaining \$25,000 for Full Completion of Tasks After Frost is Out of Ground B Inspection of Road?

Supervisor Gabriels said he received a letter from Nace Engineering saying that he understands that Rolf Ronning has or may be requesting a reduction of the performance bond, which the Town of Bolton holds on that project, but he (Supervisor Gabriels) has not received a request from Mr. Ronning to release any portion of the performance bond. Counsel said that he is the escrow agent and in accordance with the escrow agreement that has been executed by Mr. Ronning and himself, he is not returning any money until Mr. Nace gives him a letter that there has been substantial completion and conformity, and once Mr. Nace makes that recommendation he is to follow it. Once he receives that letter Counsel will comply. Counsel also said that his recommendation is that the items listed in Nace letter would get done faster if

the entire amount of money is kept in escrow and he recommends the TB take no action and that Counsel continues to hold the money. TB members all agreed.

This item is pending.

Authorize New Road Name Westwood Forest Lane Off Hendricks Road Located Approximately 1,300 Feet From County #11; Approximately 1,400 Feet Long Running in a Southwesterly Direction

RESOLUTION #61

Councilman Saris moved, seconded by Councilman MacEwan to authorize the new road name Westwood Forest Lane off Hendricks Road located approximately 1,300 feet from County #11; approximately 1,400 feet long running in a southwesterly direction. All favorable. Motion carried.

Discuss Specs for Vehicle for Zoning Office State Contract/Other

Supervisor Gabriels said that there is a set of state contract specs. on a sport utility vehicle being presented to the Town of Bolton in consideration for the town to purchase as a staff car, particularly for the Code Enforcement Office, but not exclusively, as it becomes a fleet vehicle. He added that money was budgeted for this matter.

RESOLUTION #62

Councilman Saris moved, seconded by Councilman Maranhille to put the 4 X 4 vehicle out to bid. Bids to be opened May 1, 2007. All favorable. Motion carried.

Accept Russ Ferris' and Steven Moffitt Letters of Resignation from the Bolton Recreation Commission

RESOLUTION #63

Councilman Saris moved, seconded by Councilman Maranhille to accept Russ Ferris letter of resignation from the Bolton Recreation Commission effective 11/22/06 and to accept Steven Moffitt letter of resignation from the Bolton Recreation Commission effective 03/08/07. All favorable. Motion carried.

Accept Recommendation of Bolton Recreation Commission to Appoint Michelle Cushing as Recreation Director Effective April 1, 2007

RESOLUTION #64

Councilman MacEwan moved, seconded by Councilman Saris to accept the Bolton Recreation Commission recommendation to hire Michele Cushing as Recreation Director effective retroactive to April 1, 2007 at a salary of \$16,000.

Accept Recommendation of Bolton Recreation Commission to Nominate Lori Lagoy to Fill Russ Ferris Position (Term Expires 12/31/08) and to Nominate Wendy Burkowski to Fill Steven Moffitt Position (Term Expires 12/31/10)

RESOLUTION #65

Councilman Maranhille moved, seconded by Councilman MacEwan to accept the Bolton Recreation Commission recommendations to appoint Lori Lagoy (term expiring 12/31/08) and Wendy Burkowski (term expiring 12/31/10) to the Bolton Recreation Commission. All favorable. Motion carried.

Conceptual Sale of Cat & Thomas Mts. to NYSEC by LGLC

Supervisor Gabriels said that Nancy Williams, LGLC Executive Director, would like to make a 20-minute presentation to the TB on this matter. He said some concerns are if the LGLC sells to the state it comes back on tax rolls at whatever the normal tax rate is. The state pays taxes or payments in lieu of taxes like

they do at Tongue Mt. Another interesting concept raised at APA local government days is the use of transferable development rights. Mitzi Nittmann asked if Cat Mt. is the watershed for Bolton and Supervisor Gabriels said yes. Further discussion ensued on the concept of transferred development. Councilman Saris said that he thinks transferred development rights are a great concept overall. Councilman Maranville asked who would determine where the development could happen and Counsel said that is the best question, in that if you look at 1,900 acres and divide it by the 42 acre zone you come up with 44 building or development rights and if that system works where they say they will be able to shift over to you for the benefit of Bolton, 44 of these things, then the question is what the Town of Bolton would do and would be permitted to do with them. Councilman Saris said that one major issue in the comprehensive plan is affordable housing and this might be a way to do that. Counsel said that is an interesting concept. Mitzi Nittmann said that she thinks it would be good to protect the watershed and Supervisor Gabriels said that they own that right now and will never develop that they bought it under that protection.

TB member consensus is to learn more about the matter with the workshop.

Review Proposed Parking Plan for the Bolton Library as Drafted by JMZ Architects

Supervisor Gabriels gave an overview and said that if the Town of Bolton can find the Highway or Parks Depts. with extra time, the town should be able to help the Library out with improving the aesthetics of that particular area.

2007 "Summer Hours" Transfer Station

Councilman MacEwan said that he thinks the Transfer Station should open earlier in the season and stay open later in the season and that the budget should be checked to see if money is there to accommodate the change.

RESOLUTION #66

Councilman Saris moved, seconded by Councilman Maranville to start summer hours at the Transfer Station on April 30, 2007. All favorable. Motion carried.

Supervisor asked Donna Farrar, Whitmore, Downen & Ricciardelli, for Proposal for Accounting for Sagamore Hotel Financial Records for Compliance with Contract of October 5, 1982 and Refinancing Contract of December 5, 1989

This item is pending.

Public in Attendance:

There were no additional public comments on this or any other matters at this time.

Other Business

Councilman Maranville said that he received a letter from John Gaddy with a letter from Town Highway Superintendent Tim Coon attached to it, both requesting the Town of Bolton not take over the maintenance and ownership of the proposed Saddlebrook subdivision road as proposed by Rolf Ronning.

Approve Payment of Lake George Watershed Conference Bills

RESOLUTION #67

Councilman Maranville moved, seconded by Councilman MacEwan to pay the Lake George Watershed Conference bills as per the voucher submitted by Dave Decker dated 03/05/07 in the amount of \$20,000.00 for March 30, 2007 as approved by K. Millington (DOS) and pending availability of funds payable from NYS for payment under LG Plan contract C006305. All favorable. Motion carried.

Approve Payment of Town Bills

RESOLUTION #68

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

Executive Session:

Councilman MacEwan moved, seconded by Councilman Maranville, to adjourn the regular meeting and enter executive session at 10:33 pm to discuss a personnel matter. All favorable. Motion carried.

Councilman MacEwan moved, seconded by Councilman Maranville, to adjourn executive session and reconvene the regular meeting and adjourn at 11:00 pm. All favorable. Motion carried.

Minutes transcribed by: Respectfully submitted by:

Jennifer Torebka Kathleen Simmes

Recording Secretary Town Clerk

04/11/2007