

TB – Minutes
February 7, 2006

STATE OF NEW YORK
COUNTY OF WARREN
TOWN OF BOLTON

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

Absent: None
PUBLIC HEARING: None

REGULAR MEETING:
Supervisor Gabriels called the regular meeting to order at 7:02 pm.

Pledge of Allegiance – Michael Muller

Announcements:

- The FEMA Declaration and the State's first appeal were denied, but Warren County and the State are making another appeal to FEMA for towns affected by the June 13, 2005 storm event.
- Bolton Tops is closing February 13, 2006 at 9:00 pm and will re-open on Wednesday, February 13, 2006 at 12:00 noon under the new name Grand Union Family Markets.
- The Bolton Chamber is sponsoring a classic Fishing Derby scheduled for Saturday, February 18, 2006.
- The Bolton Chamber is sponsoring the Lumberjack Show scheduled for June 16-17, 2006 in Vet's Park in conjunction with the Fire Chiefs Convention. Funds from the Bolton Bed Tax have been committed to the Lumberjack show in the amount of \$8,000.
- The APA is holding the Local Government Days on March 23-24, 2006 at Hotel Saranac.
- The NYS Do Not Call registry number is 888-382-1222. Soon telemarketers will have access to cell numbers.
- The Meal Site Menu is available in the Town Hall.
- There are now 2 Town of Bolton website addresses: [.town.bolton.ny.us](http://town.bolton.ny.us) and [.townofboltonlanding.com](http://townofboltonlanding.com).

Public in Attendance: None

Correspondence:

- Correspondence from Stafford, Carr & McNally on the Pioneer Water District.
- Letter from the Cape Cod Village Club in Hague thanking the Town of Bolton for the loan of equipment for dredging in Jenkins Brook.
- Letter to the editor of The Post-Star from Sally Ross thanking Tim Coon and the Highway Department for their assistance to seniors.
- Letter from the Adirondack Runners seeking the Town's permission to conduct the 30th Annual Distance Run from Lake George Village to the Town of Bolton on Sunday, July 2, 2006.
- Letter from the Bolton Free Library in appreciation of the funds the Town has provided.
- Memo from Jarrett & Martin Engineers regarding Bell Point Shores pursuant to their stormwater management agreement.
- Letter from James Mackey seeking Town support and direction for the installation of a holding tank he'd like to have installed.

- Request from PB member Sue Wilson to be appointed to the Comprehensive Plan Zoning Implementation Committee.
- Notice of Violation for the sewer plant concerning nitrogen at Well #1.
- Correspondence from Mayor Blais regarding the Visitor's Center.
- Correspondence from Lake George Waterkeeper, Chris Navitsky, on stormwater issues and sedimentation at Cobblestone subdivision, directed to the Zoning Officer and Code Enforcement Officer.
- Correspondence from NYSDOH on the revised monitoring schedule for future years.
- Correspondence from Lake George Waterkeeper, Chris Navitsky, regarding the ability to make public comments at various board meetings.
- Minutes from the Bolton United/Bolton Cares January 11, 2006 meeting.
- Notice of tentative special franchise full value for the various utilities in this area.
- Correspondence from the Hudson Fulton Champlain Quadra centennial Commemoration for 2009.
- Correspondence from NYSDEC regarding MOU's municipal general permit program.
- Correspondence from the USDA Rural Development regarding the grant and loan programs available to the public.
- Correspondence from the Army Corps of Engineers regarding the permit for the State to dredge in North Bolton.
- Correspondence from Lake George Park Commission Chairman, Bruce Young, regarding the invasive species program report for the last year.
- Correspondence from the NYS Legislative Commission on Rural Resources.

Reports:

Councilman Maranville:

ASSESSOR:

- During January the office kept track of transfers and sales of property—the real estate values are still rising and the actual number of sales seems to have declined; time was spent in the field following up on building permits and properties that have undergone renovations; and suggested the Town Board may want to consider amending the exemption cap on the Veterans Exemption.

POLICE DEPT:

- Hours officers worked: White – 121.0, Howse – 93.5, Schroeder – 77.0. Miles patrolled: 1,930 miles. Fuel used: 159.4 gals. Officers investigated 4 security alarms, 3 uniform traffic tickets issued, 7 parking tickets issued, 2 auto accidents investigated, 4 court securities, 3 emergency medical assists, 2 fire department assists and 7 misc. complaints.

The Police Dept. also received a letter dated January 14, 2006 from women thanking them for their help when they were lost in a snowstorm.

JUSTICE COURT:

- A/R: Judge Harry Demarest - \$2,615.00. Judge Edward Stewart - \$3,649.00. Total: \$6,264.00. There is an itemized list located in the court breaking down the amounts.

Councilman Saris:

TOWN CLERK'S OFFICE:

- Total Local Shares Remitted: \$8,858.76. Non-local Revenues: \$86.39.
Total State, Local and County Revenues: \$8,945.15.

SEWER PLANT REPORT

- The Plant took in 6,861,210 gals of wastewater for a daily average of 221,332.6 gals.

On January 18, 2006 when there was heavy rain, the plant processed 770,000 in one day. They had no violations. All but one bed are dry. Luke Dague starts school in February.

Councilman Saris added that one of the reasons the Town has such a problem when huge rainstorms occur is because the Town has a problem with sump pumps and people discharging their sump pumps into the sewer system. This is not allowed. Councilman Saris added that an average sump pump pumps 25,000--32,000 gallons per hour. Councilman Saris concluded by saying that whatever is pumped into the sewer system has to be treated, which costs money, so everyone in the sewer district who has a sump pump adds to the Town's flows. The Town has to add the appropriate amount of chemicals for those flows and the bill goes to the people in the sewer district. We are not doing anyone any favors by pumping sump pumps into the sewer system. If people are looking for alternatives they can contact the Town Board, Sewer Dept. and Water Dept., who will try to help find alternatives.

- HIGHWAY DEPARTMENT:

- No report.

Councilman Andersen:

RECREATION DEPT:

- February Programming includes: Gore Mountain skiing on Sunday mornings, Bi-Weekly Fun Spot skating trips, swimming at The Sagamore for 4th Graders and up. Events held at the Rec. Center include trips to the mall and movie nights.

The Rec. Dept. is getting ready for summer and plans to offer the Day Camp again this summer, which was extremely successful last year. The Town Board is happy to support this program again. They are planning swimming lessons, tennis lessons, arts & crafts for youth and adult. Most will be free of charge to the community. They are scheduling the Roger's Park concerts and will continue the movies, weekly activity events and trips like mountain climbing, rock climbing adventures, etc. The Rec. Dept. is also planning on bringing back the Adult Basketball League to Vets Park.

BUILDINGS & GROUNDS DEPT:

- They started work on both bathrooms at the parks including apoxying floors, putting in new ceilings and fixtures, new sink hardware, etc. in an effort to have them look refreshed and brand new.

Councilman MacEwan:

TRANSFER STATION:

- A/R: \$3,745.00. Lisa French will be on vacation February 6-13, 2006. She is having some trouble with the hot water tank and in the spring they are planning on addressing the metal disposal area, which tends to be quite messy.

WATER DEPT:

- Water made: 6,836,392 gals.
The pond level is over the spillway. Regular maintenance has been performed. They are getting ready to switch to a new chemical for erosion control. It should be more economical.

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- PLANNING/ZONING OFFICE:

- Permits applied for: 8 certificates of compliance / 3 wastewater disposal systems / 4 variances / 2 site plan reviews / 0 subdivisions / 4 stormwater permits applied for.
Total Miles Logged: 0. A/R: \$1,020.17.

Pam Kenyon, Zoning Administrator provided a commentary regarding Sue Tennant, saying that in reviewing the files, Code Enforcement Officer Mitzi Nittmann approved a 17' separation between the

leach field and the house. A variance is required as a 20' separation is required. She also enclosed a site plan which she is requesting be included in the variance request.

CODE ENFORCEMENT:

- 39 page report filed / 3 pages field notes/ 1 memo on a septic variance/ 1 notice of violation/ 1 retaining wall/ 1 inquiry letter/ memo on timber harvesting/ 1 memo concerning fills on parcels and the affect on erosion/ 1 Bell Point Shores Norwood Drive file report/ 1 research for alternative remedies/ 238 miles logged.

ANIMAL CONTROL:

- No calls

Supervisor Gabriels:

SUPERVISOR'S REPORT:

- Total receipts: \$1,858,516.63. Total disbursements: \$697,532.38.
- Warren County: No report.

Unfinished Business:

Town of Bolton/Sagamore Resort emergency water system.

Counsel spoke with Atty. Ben Pratt (the Atty. for GIA) and Ike Wolgin this morning and reminded him the Town is still waiting for the two items they wished to tweak. Atty. Pratt told Counsel that he'd get right on it and remind Ike Wolgin that they are waiting on him. Supervisor Gabriels asked if it is correct that although the contract is expired. The Town is still under good faith negotiations and Counsel said yes.

Pioneer Village Improvement Association Inc.

Atty. Bob McNally, representing Pioneer Village Improvement Association Inc., gave an overview of the project and said he is here tonight because the Town Law requires a public hearing be held. They filed a petition asking for an extension of the water district and Town Engineer Tom Nace reviewed the proposal and is okay with the project. They requested the resolution he submitted be examined by Town Counsel and if acceptable by the Town Board, that a public hearing be scheduled.

Counsel said the resolution is satisfactory as proposed. Supervisor Gabriels asked about subtle concerns with the resolution that Counsel had previously. Counsel said Atty. McNally solved most of those problems in a conversation they had. This is an extension of an existing district, not a new district. Counsel said he had also been asking about the legal status of Pioneer Village Improvement Association Inc., as he wanted to make sure the Town was dealing with a customer that could be responsible and be in contract. Atty. McNally's representation is that it is a bonafide existing corporation and he accepts Atty. McNally's representation this evening. In addition, Atty. McNally said their understanding is that as things now stand, NYSDOH will approve the connection of this system at the entrance of the subdivision and the use of the existing seasonal water supply system. If there are changes, they will meet and comply with whatever the State, Town and NYSDOH require.

Supervisor Gabriels asked if the connection is in the State right-of-way. Atty. McNally said yes. Supervisor Gabriels asked if Pioneer Village Improvement Association Inc. would be responsible for securing and doing the work within the State's right-of-way. Atty. McNally said yes. The NYSDOT permit for construction within the right-of-way will allow the placement of the water line for the municipal system. This will be at the expense of Pioneer Village Improvement Association Inc.

Supervisor Gabriels said he would like to review the pressure differential and if that will impact the southern half of the municipal system. Alex Rhodes, of C.T. Male Assoc., said the southern district should not be affected. They can do flow testing if that is an issue. Supervisor Gabriels said the problem is that at the southern end of the municipal system the Town gets periodic complaints of low flows and some of

those flows fall below the minimum for fire protection, so the Town needs to make sure the system is capable of handling those particular concerns.

Supervisor Gabriels said there was a question raised regarding individual meters and asked if the pieces of property owned are individual tax map numbers/parcels within the association. Atty. McNally said he believes they are and they are asking the connection be made to the master meter at the entrance of the subdivision. Supervisor Gabriels said the Town has a fixed charge in addition to the meter usage itself--\$100/year per residence.

Supervisor Gabriels asked who is responsible for maintenance should a break occur between where the municipal line ends now and the master meter at the top of the Association property. Atty. McNally said the NYSDOH is concerned that a responsible party take charge of the maintenance, repair and replacement of the municipal water lines. The Town would be in charge of and responsible for repairing and the cost would be passed along to members of the water district—just as it would be for any water line. Councilman Andersen asked if Atty. McNally means the entire Town water district or just the extended district and Atty. McNally said he feels they are joining the district—the extension is enlarging the existing district—so whatever costs there may be in other parts of the district would be part of the extended district, just as any costs associated by the water line would be part of the whole district. Councilman Saris said in this case, the Town main will not be on association property, which is a bit of a different situation than the one at Cobblestone, where the Town main is on Cobblestone property.

Counsel said maybe the plan needs to suggest what becomes of other riparian lot owners who are not members of Pioneer Village Improvement Association Inc., but now stand in relation to the main as a possible beneficiary of possible hook-up. The Town needs to figure out how that could equitably serve both to benefit the water district and be fair to Pioneer Village, as this question will be posed at some later date.

Supervisor Gabriels asked if tonight's plan is any different than the last and if Tom Nace has looked at either plan. Atty. McNally said Tom Nace said there is no problem with quantity or pressure.

Councilman Andersen asked how deep the pipe can go from Braley Hill to Pioneer Village and if in the future will that line have to be bled. Alex Rhodes said the pipe will be about 5 1/2 feet deep and no, it won't have to be bled.

Councilman Saris asked if there are any issues with the main, being that the use will be seasonal, and if there is any maintenance that will be required, such as flushing, when the Pioneer Village system is turned back on. Alex Rhodes said yes, the hydrant should be flushed. Councilman Saris asked whose responsibility that would be and Alex Rhodes said it should be the associations. Councilman Saris asked if that water will be metered and Alex Rhodes said yes. They have to flush it after the meter, which means they have to place a hydrant after the meter in order to pick up that flow.

Supervisor Gabriels said he has the referenced petition requesting the public hearing before him. Councilman Andersen said he thinks it is a good project that will benefit the Town by more water being sold and benefit the amount of people that need quality water. The installation is not at a cost to current taxpayers, so the Town Board should move forward to a public hearing.

RESOLUTION #37

Councilman Andersen moved, seconded by Councilman Saris to set a public hearing for the March 7, 2006 Town Board meeting at 7:00 pm on the matter of Pioneer Village Improvement Association Inc.'s request for Water District formation and an extension of municipal service. All favorable. Motion carried.

Noise permit request from Emily Bailey at The Moorings Property on Saturday, June 17, 2006 from the hours of 7:30 pm to 12:30 am.

Councilman Saris asked for the exact location and if any of the neighbors have issues with this. Supervisor Gabriels said it is south of the Lake George Club and according to Donna Boggs, all of the neighbors are Mooring family members.

Supervisor Gabriels asked if there is any concern with the times requested. Councilman Saris said that if it will have no effect on anyone else then he feels it is okay, but if it is out in the open then 12:30 am it may be a problem. Councilman Andersen feels historically the Town Board has approved noise variances to 10:00 or 11:00 pm and once in a while to midnight, but he feels everyone will hear the music and the Town Board still needs feedback from the neighbors.

Donna Boggs said she led Emily Bailey to believe it would be okay to 11:00 pm, since that is what the Town has done historically and she gave Emily Bailey a list of neighbors that she was responsible to notify.

RESOLUTION #38

Councilman Saris moved, seconded by Councilman Maranville to approve the noise permit request from 7:30 pm to 11:00 pm and to notify Emily Bailey of this decision so they can contact the Town Board if that doesn't work for them. All favorable. Motion carried.

Final payment to Lash Contracting for the new sewer pump station by NoRoWal.

Supervisor Gabriels said he is seeking authorization for final payment; the full amount of their retainer is \$9,983.40. The Town has secured the easement with the Brickners, and compensation was paid by Mr. Lash to Mrs. Brickner for her difficulties.

Counsel said he has the original easement that needs to be recorded by the Town, which he highly advises and he will record it. Supervisor Gabriels asked if it is acceptable for recording and Counsel said no, it is incomplete, but he will get it there in an acceptable manner, so it is a done deal.

RESOLUTION #39

Councilman Maranville moved, seconded by Councilman Andersen to make the final payment in the amount of \$9,983.40 to Lash Contracting for the new sewer pump station by NoRoWal and to authorize Town Counsel to take the appropriate steps to file the easement. All favorable. Motion carried.

Pending Items:

Thomas and Heidi Lemaire - failure to pay an imposed civil penalty of \$1,000 per resolution #176 of 2005.

Supervisor Gabriels asked if there had been any action on this item. Counsel said he sent them a demand letter, which said there was flexibility in terms of installment payments. He has received no response to date and the Town Clerk has received no payment to date. At this point he feels the Town Board needs to enforce it and authorize Counsel to do that, which he would do by bringing an action in Justice Court as a civil judgment.

RESOLUTION #42

Councilman Saris moved, seconded by Councilman Andersen for the Town Board to authorize Counsel to enforce the demand letter that was sent to Thomas and Heidi Lemaire, 32 Church Hill Rd. by bringing an action in the Justice Court to make the civil penalty into a civil judgment. All favorable. Motion carried.

Referrals from Code Enforcement Officer / ZBA /PB:

Determination request for Irving Metzger, Homer Point.

Supervisor Gabriels said Pam Kenyon, Zoning Administrator, is requesting the Town Board's determination on (A) whether a particular project is "new home construction" or remodeling of an existing structure, for purposes of determining whether holding tanks are acceptable under NYSDOH Appendix 75-A & B and (B) whether setback to slab of less than 10' requires a variance from the definition of 10' from the foundation wall. The LGA called today to request part of the Town Board deliberations include the LGA letter dated 10/14/05 on this issue.

Councilman Saris believes if the Town Board feels this is new home construction versus replacement home construction, that after looking at additional requested material, he is comfortable that this is a replacement home as opposed to a new home. It is essentially in the same location and is not a tremendous change in impact as far as living space goes. The size and scope of it is in keeping with the changes somebody might make naturally as far as improvements on something that pre-exists, but it doesn't substantially change the site. Councilman MacEwan said it would be a good thing, not a bad one, for this property.

Supervisor Gabriels said there are holding tanks there now and asked if there will be alarms built into the system. Curtis Dybas, representing Metzger, said yes. Supervisor Gabriels asked for the Town Board members thoughts on periodic pump-out qualifications for this property and on other locations where holding tanks are installed and used as the primary disposal mechanism. This would be in an effort to ensure the Town Board that pump-outs are taking place. Councilman MacEwan said that is not a bad idea. Councilman Andersen asked if the Town Board has that authority and Counsel said yes. Councilman Andersen asked if they are float systems and Curtis Dybas said yes and added that a pump-out history is available if the Town Board would like it.

Supervisor Gabriels asked if the Town Board has enough information in order to make the determination that for this applicant the Town Board believes this is remodeling of an existing home, and does not look at it as new construction. If he gathers the sense of the Town Board. Counsel said yes, the Town Board has sufficient basis and discretion to make such a decision.

Counsel asked if the Town Board also wishes to have a process or procedure to have follow-up on holding tanks and he suggests it be done by deed covenants so it is a matter of record. He is not comfortable getting into the engineering part of it. Supervisor Gabriels said it is not engineering, but a reporting requirement as to how many times the system has been pumped-out in an effort to ensure due diligence has been done in each of the next 10 and 20 years.

Further discussion ensued and several Town Board members agreed on making the pump-out reporting requirement and alarm testing as deed covenants.

George Goodwin is a neighbor and he is concerned because the Town Board granted a variance to another property within 500' from him where the new septic system is substandard and he drinks the water directly without much purification. He is concerned with the quality of his water.

Supervisor Gabriels asked which septic system Mr. Goodwin is referring to and Mr. Goodwin said he prefers not to mention that, but it is within 500' of him. Supervisor Gabriels said he is not aware of any reports of high coliform and Mr. Goodwin said it might not be high coliform, but he thinks where a septic system is upgraded and then building permits and variances are requested, it should have been addressed and it seems like the ZBA wasn't too responsible and should have been in terms of protecting the quality of his drinking water. Councilman Saris said the ZBA has no jurisdiction over septic—it is completely out of their scope of authority.

Mr. Goodwin said the whole process wasn't responsible from the beginning—he doesn't know if it was the ZBA or the PB or the Planning Department, but he feels as if there is now an existing septic system that

is substandard and he drinks the water from the lake. Councilman Saris said he is not arguing that Mr. Goodwin shouldn't feel that way, but just so he understands, the PB and the ZBA have no jurisdiction over septic systems. It goes through the Zoning Department, and if there are any septic variances required, they go through the Town Board.

Supervisor Gabriels said he misunderstood, he thought Mr. Goodwin meant a septic variance was issued in his area. Mr. Goodwin believes when you go for a variance on house construction one of the things that they have to look at is the septic system. If it was upgraded or replaced it needs to go through New York State approval and if it was put in without state approval there is no statute of limitations and that should be addressed when a residence goes from seasonal to year-round. Councilman Saris said the septic system is either compliant or non-compliant, which is determined by the Zoning Administrator. Mr. Goodwin said he does not know enough about the Metzger property, but his concern is with the quality of his drinking water.

Supervisor Gabriels said the application before the Town Board is for the continuation of holding tanks which is known to be tested for integrity so there is no leakage from these particular tanks into the ground or into the lake.

RESOLUTION #41

Councilman Saris moved, seconded by Councilman MacEwan to determine that the Irving & Marcia Metzger property, Tax Map #186.15-1-34, 193 Homer Point Rd. is to be considered a renovation and not new home construction. They will be required to file pump out reports for their holding tank system with the Town and every five years will be required to file a report as to the integrity of the electrical system for the holding tanks. All favorable. Motion carried.

Marilyn Randall - Erection of a chain link fence without a building permit.

Supervisor Gabriels said the Town Board sent this matter to the ZBA for a determination and the ZBA determined that the Randall chain link fence is a structure with the recommendation that the Town Board not impose a civil penalty in this matter.

Counsel said at the last ZBA meeting, the ZBA told the Randalls their decision was to bring their property into compliance. Counsel is recommending that the Town Board could indicate that this was indeed a technical violation and innocently done. It was a close call that this was a fence, which the ZBA has a right to interpret, and did interpret as a fence. The Randalls will be in compliance as they have applied for a Certificate of Compliance and are getting a building permit for a fence. Counsel would like to urge the Town Board not to impose a civil penalty, since he has not seen any municipalities call this a structure, but the ZBA has and that is okay.

RESOLUTION #42

Randall Determination

Councilman MacEwan moved, seconded by Councilman Maranville that a determination was made by the Zoning Board of Appeals that the dog pen on her property is actually being considered a fence and therefore the board determined that this is to be considered a technical violation on the Marilyn Randall property, 168 Homer Point Road, Tax Map #186.15-1-41 and allow her to obtain a certificate of compliance and a building permit and not to access a civil penalty. All favorable. Motion carried.

Robert & Judith Ruge - failed septic system.

Judith Ruge: I got a certificate of occupancy in December 2002 and moved into the residence in May 2003. Shortly after moving in I smelled gasses from the septic area and called the builder, Kevin Kershaw to notify him that there was a problem with the septic system. Kevin Kershaw checked out the system and said there was no problem. I called him back again when I smelled gasses again. He

checked it again and denied a second time that there was a problem. I went to the end of the leach field area and saw gray water, so I called Zoning Administrator, Pam Kenyon, and told her there was water from the septic in the leach field area. Pam Kenyon came to the site and told me that she had never inspected the leach field. I asked Pam why it wasn't inspected and was told that Kevin Kershaw never called her, so it wasn't inspected. I asked if there were procedures or a checklist to follow-up on inspections for new homes and Pam told me no. She was too busy at the time to do any type of follow-up. Kevin Kershaw told me he wouldn't do anything to fix the problem until the Town Engineer told him there was a problem. Pam got Tom Nace to visit the site and Mr. Nace said there was a problem and remedied the situation by asking Kevin Kershaw to dig up the leach field area, re-install the laterals and bring in some extra trucks of loam soil, which was done in addition to Kevin Kershaw back-filling the area. The septic wasn't inspected a second time, then the leach field leaked again, so I e-mailed the Town telling them about the second failure and was told I needed to get an engineer because of the second failure. I secured an engineer to visit the site, got a set of plans done and gave them to P. Kenyon in August and told her the next step was to send out the plan to companies to get estimates to get the work done and take care of the septic failure. I was told not to do anything until Tom Nace approved the plan and to hold off on having any work done at that time. In September 2005, I received an e-mail from Code Enforcement Officer, Mitzi Nittmann saying that Tom Nace had some questions, all of which I answered in an e-mail. The next day I received another e-mail saying I needed to do a deep test pit and I asked if the Town had the test results from the initial application when the house was built since the septic system is not moving. It is in the same area so the results should not differ. I never heard from anybody from the Town after requesting to be notified when the plans were approved so I could have the work done. In January 2006, Code Enforcement Officer M. Nittmann said I would need to have it done even if it wouldn't change and I would have to write to Kevin Kershaw to have him provide the information she was looking for. I sent Kevin Kershaw a certified letter, which he didn't sign for and it was returned to her after a month. I faxed him the letter requesting he provide the information to the Town and he didn't reply to the Town or to me. M. Nittmann then told me it needs to be done regardless. Somehow the results are not in the Town records, which M. Nittmann said she doesn't know why they are not on file. On January 3, 2006, I had the deep test pit done and the recommendation is to have new soil placed there, so I am having the engineer re-do a plan for an Elgin system, which will be sent to the Town as soon as it is done.

Supervisor Gabriels said he was not aware of the latest January actions. He thinks Ms. Ruge has given a fairly accurate rendition and he would certainly agree with the facts as he recalls them. In quickly scanning the information available to him, he thinks the issue that there was the lack of the deep test pit information that Tom Nace required. Ms. Ruge asked where the initial results are and Supervisor Gabriels said he has no idea. He knows staff has looked for that documentation, but does not know if it was provided to the Town or not or whether it got misfiled.

Ms. Ruge said she also asked back in July 2005 for a copy of the codes for installing a new septic system or repairs to a failing septic system and nobody has provided her with that information. Supervisor Gabriels said the Town has a Septic Ordinance that is available.

Supervisor Gabriels said the Town has the deep test pit information that is being provided and an engineer in the process of developing a septic system. Councilman MacEwan asked if this is new construction and Ms. Ruge said yes. Supervisor Gabriels said the Town Board was going to look at this in January but due to a snowstorm it was delayed. Councilman Saris said it sounds like things are in motion and moving toward a solution and asked what would seem like a reasonable time frame for Ms. Ruge to rectify the situation. Ms. Ruge said she should have a plan from the engineer within a couple of weeks to submit to the Town for approval.

RESOLUTION #43

Councilman Saris moved, seconded by Councilman MacEwan to table the septic matter concerning Robert & Judith Ruge, 24 S. Trout Lake Rd. Tax Map #185.00-1-5, and if their septic plans are submitted to the Zoning Office and approved, no further action will be required by this board. All favorable. Motion carried.

Tom Bethon violations

Supervisor Gabriels received a letter from Code Enforcement, Officer M. Nittmann dated January 23, 2006 listing a number of area variances that needed to be obtained and were not over a considerable period of time. Mr. Bethon was not the owner when some of the violations were presumably created.

Tom Bethon gave an overview and said he is here tonight to find out what he needs to do. Supervisor Gabriels thinks the whole issue was discovered when the Town underwent the videotaping of the sewer system. The Town Sewer Dept. found that their deck was constructed over the manhole making access problematic.

Mr. Bethon said he discussed this matter with the Town and the Sewer Department back in November. His neighbor told him that in the past there was a hatch to access the manhole and when he talked to the Sewer Department, they said that would be suitable to put back which is what he plans to do. M. Nittmann told him there was never a permit for the deck, so Mr. Bethon would have to apply for a variance. His landscaper recently put in a retaining wall without knowing a permit was needed.

Councilman MacEwan asked if it is accurate that the deck was constructed over 20 years ago and Mr. Bethon said yes. He bought the house 2 ½ years ago and his neighbor gave him pictures of the house before he owned it, which shows the deck that was built over the hatch. Mr. Bethon wasn't even aware a manhole existed.

Councilman Saris asked if a building permit was applied for the work done and Mr. Bethon said no. They didn't get a permit for the retaining wall and they are repairing a lot of the decks as the house was in pretty bad shape. Councilman Saris asked if the applicant checked with the Zoning Department to see if a building permit was required prior to doing any work and Mr. Bethon said no, not for the retaining wall. He did call the Zoning Office and received information on deck repair.

Supervisor Gabriels said many of the problems were created years ago. Counsel said yes, the item number six being the most recent activity done there. This concerns the retaining wall. Items one and two are very old and are attributable to the former owner who did the work back in the 1980s. Supervisor Gabriels said he doesn't want to get into detail about item #2 (the covering of the sewer manhole), but the Sewer Department needs immediate forthright access by some mechanism and Mr. Bethon said the Sewer Department suggested putting the hatch back.

Supervisor Gabriels said he doesn't know what the Town Board can do with items 1, 3 and 4. Councilman Saris said the issue of variances being required are the issues for the ZBA to deal with and obviously these things need to be brought into compliance. Mr. Bethon said item #1 states that the house or the building doesn't meet the setbacks and Counsel said that is correct. Any sort of structure has to be a specified distance measured from the right-of-way and this one doesn't meet that minimum setback. Admittedly this is the oldest one. It dates back in the 1980s. Councilman Saris said bringing it into compliance doesn't necessarily mean the house needs to be moved, but the alternative is that the applicant has to ask for the amount of relief needed at a ZBA meeting. If the ZBA grants the relief then the applicant has achieved compliance by receiving a variance.

Councilman MacEwan asked if the house was compliant in 1980 and Counsel said he is taking the position that M. Nittmann is correct in saying no, it wasn't compliant. He is not entirely comfortable because so much time has gone by since the structure was built and lots of statutes of limitations have come and gone. M. Nittmann has correctly stated that if you measure it right now, the house is actually

22' from the edge of the HOA's right-of-way. That would be in conflict with the Town code now and then and had a variance been applied for it would be in the Town records and it is not. Councilman MacEwan asked if it would be fair to say that they are going to find a lot of these little problems in this Town and Counsel said yes.

Councilman Saris said there are a number of problems here and many of them clearly were inherited by the applicant. A couple of violations, like the retaining wall, do seem to be self-inflicted. The Town Board generally doesn't like to see things go to the ZBA after the fact, because it puts them in an awkward position. He is not saying the applicant purposefully did this as after-the-fact, but unfortunately sometimes people do, which is why the Town always suggest people check with the Zoning Office first to see if a permit is required and find out what else may be required. In past cases like this one, the Town Board has administered a \$1,000.00 civil penalty. This item meets the criteria the Town Board has used in the past for other situations.

RESOLUTION #44

Councilman Saris moved, seconded by Councilman Andersen to assess Thomas & Judith Bethon, 5 Congers Point North, Tax Map #171.15-3-83 a civil penalty of \$1000 for the violations on his property and to give him 30 days to pay the penalty and a deadline of 30 days to bring the property into compliance for the violations. All favorable. Motion carried.

Board of Health:

RESOLUTION #45

Councilman Andersen moved seconded by Councilman Saris to adjourn as Town Board and convene as Board of Health to discuss a leach field failure, and two septic variances. All favorable. Motion carried.

Susan Tennent – emergency leach field failure and variance request.

Keith Manz, Engineer, representing applicant Susan Tennent, gave an overview and said the emergency septic system he designed has been completed and there are two variances they need to be in compliance.

Supervisor Gabriels asked if proper after-the-fact notice was sent and the Town Clerk said yes.

Supervisor Gabriels stated the variances requested: The leach field separation distance needs to be 100' from the pond and 40' is being requested. The separation distance from the house needs to be 20' and 17' is being requested.

Supervisor Gabriels said he would like to raise the topic of the septic tank being pumped-out on a periodic basis of 3-5 years, because in this instance there has been one failure that has necessitated the emergency. He feels it is very important the Town get a periodic pump-out of the new septic system. Keith Manz said the NYSDOH manual says 2-3 years is a standard for pump-out and he feels 3 years is a good average depending on the amount of use and type of soil. Councilman Saris asked if the Town Board can make that a condition of the variance and Counsel said yes, the Town Board can, but it has no teeth in it unless the Town Board also makes it a matter of public record. It can be done as a deed covenant.

There was no public comment on this matter.

Councilman Andersen said he feels the Town Board should move forward and grant the variances and it is important to note that the applicant had a problem and solved it in a pretty quick manner, which shows a willingness to comply and do the best they can with what they have to work with.

RESOLUTION #45

Councilman Andersen moved seconded by Councilman Saris to grant two to the Susan Tennent property, 9 North Bolton Road, Tax Map #156.00-2-43. The first variance is for a separation distance from the

pond. 100' is required. 40' granted. The second variance is for a separation distance from the house, 20' is required. 17' was granted. A covenant in the deed will be required to be filed that every three years the tank will need to be pumped out. All favorable. Motion carried.

Keith VanBuskirk, Wide Waters Subdivision – septic variances requested.

Atty. Stephanie Bitter, representing Keith VanBuskirk, gave an overview of the subdivision plan and said they will be removing the eight non-conforming existing septic systems as requested by Tom Nace and will introduce the three new septic systems which are the farthest away they can be from the lake and the houses.

Dennis Dickinson: Project Engineer/Surveyor, referenced the map and showed the areas where the variances are needed. Councilman MacEwan asked for clarification on the toe and Dennis Dickinson said they are going to bring in fill material in to raise the systems up and get them generally level. Supervisor Gabriels said Tom Nace made a recommendation in November to put drainage swales in and asked if Tom Nace has reviewed the current drainage swales being proposed. Dennis Dickinson said yes. Tom Nace faxed a letter to the Town on January 13, 2006 saying the applicants have complied with all nine of the issues he raised in his previous letter. Supervisor Gabriels said he does have that letter and he would suggest that Tom Nace is approving the drainage swales as he had no technical questions in the 01/13/06 letter.

Councilman Saris asked if the applicant can design compliant systems for these lots and Dennis Dickinson said no, they don't have quite enough room to do it. Councilman Saris asked if the requested variances are the minimum. Dennis Dickinson said yes, absolutely.

Councilman Saris said he is happy that Tom Nace looked at the systems, but he is not the one designing them. He is looking at it from an engineering view, whereas I am asking if the benefit to the applicant can be achieved by some other means and if the request is minimal. Dennis Dickinson said they have done their best not to be here and the more important issue is that even with the 0' setback variance, each individual has the ability to repair and maintain their own system without having to encroach on the neighboring lot.

Supervisor Gabriels said if there was some leakage between the two lots, who would dig first. Dennis Dickinson said if there was a leak, then one of systems has failed and if you have a failure in the drainage ditch area it would be an odd situation that would occur from extenuating situations like lack of maintenance, overuse or abuse and generally during a site inspection you can determine the factors and decide which of the two is giving you the problem.

Councilman Andersen asked when the three-lot subdivision was approved. Atty. Bitter said it was approved in November 2005. Councilman Andersen said generally variances are for something pre-existing and when the applicant asked for three lots and knew there were difficulties, the applicant is almost self-creating the need for a variance. If the applicant asked for two lots they wouldn't be here for a variance. Atty. Bitter said in November 2005 in their discussions with Tom Nace, they were under the opinion they didn't need a variance.

Councilman Maranville asked if there is one access road for all three lots and Dennis Dickinson said there are two access roads. They are utilizing the original drive. Councilman Maranville asked if there is a state right-of-way on this property and Dennis Dickinson said there is a state right-of-way. In order to keep the systems on their property, and not on the State right of way they had to bring their systems down farther.

Supervisor Gabriels said this has septic tanks, which he suggests have periodic pump-outs and the Town has identified all property owners within 500' and asked if there were any public comments.

No public comments.

Counsel said the Town Board has all the elements available for a decision and if the applicant's presentation has been satisfactory and the Town Board sees that there are no feasible alternatives and it is a hardship that can be alleviated by the granting of a variance, then it is before the board to decide.

Supervisor Gabriels read Tom Nace's 11/07/05 letter regarding his concerns and a follow up letter from Tom Nace dated 01/13/06 letter stating his concerns have been addressed.

Councilman Saris said two engineers have looked at this and he doesn't see the variances being requested as extremely substantial, as the systems are sized appropriately and the Town Board is not looking at a variance that would increase the potential that it might affect the water quality of Lake George, somebody's well or any of those type of health issues.

Supervisor Gabriels asked how this type of situation where the applicant is granted zoning variances then come back for septic variances should be handled procedurally in the future. Counsel said the applicant had the absolute right to first go for subdivision approval which required the variance and if the Town Board wants for future applicants, it can impose policy that any septic variances that may be part of any project should be applied for simultaneously and then the Town Board is on a faster schedule and will get first bite. Councilman Saris asked how a variance would be granted if there is no subdivision or property line yet and Counsel said it would be difficult, but the other approvals could be conditioned on what the Town Board's final say is. The Town Board would have to have a really solid backbone to be able to say to an applicant that got conditional variances for a conditional subdivision that the Town Board is holding fort and will not grant the septic variance. It would put a lot of pressure on the Town Board.

Counsel said in fairness to Mr. VanBuskirk's plan, something not mentioned this evening is that everyone talked about the ugliest structure on Lake George and that was part of the compromise was the willingness of the developer to get all the odd ball little cabins, substandard septic systems and that nasty building on the most southerly lot out of there, which is how it came up to be a three-lot subdivision. There were a great many advantages in allowing the applicant to have some liberties and variances granted for other things that were happening that were positive developments. Councilman Saris said it is also very risky for the applicant because if the applicant doesn't get the variance, the potential is they could end up with three lots that could not be developed.

RESOLUTION #46

Councilman Saris moved seconded by Councilman MacEwan to approve the variances to Keith VanBuskirk for all three lots under tax map #213.05-1-6 and #213.05-1-7. 10' from toe of slope is required and 0' is being granted for all three lots. A covenant in the deed will be required to show that all three lots have to be maintained periodically. In Favor 4 Councilman Andersen voted no. Motion Carried.

Irving Metzger, Homer Point – two variances requested.

Curtis Dybas, representing Irving Metzger, said based on the Town Board's earlier determination of this project being a renovation, he is going to use the existing holding tanks and he will need variances and the Town Board should have a letter dated 12/13/05 from Tom Nace on this issue.

Supervisor Gabriels said according to the Zoning Administrator, in accordance with DOH and our Local Ordinance, 10' is required between the foundation and the existing holding tanks and 1' 8" minimum is proposed.

RESOLUTION #47

Councilman MacEwan moved, seconded by Councilman Saris to approve the septic variance for property owned by Irving & Marcia Metzger, 193 Homer Point Rd. Map #186.15-1-34. Ten feet distance is required from the foundation 1'8" was granted with the condition that the variance granted is subject to a requirement that the applicant/owner of the premises and all successors in title shall be required to undertake a periodic maintenance clean out of the septic system and certify integrity of the septic system to the Town Zoning Administrator's Office every five years (from the date of this grant) and further, this requirement shall be specified as a deed covenant associated with the premises that shall be recorded in the Warren County Clerk's Office and "run with the land". All favorable. Motion carried.

RESOLUTION #48

Councilman Saris moved, seconded by Councilman Maranville, to reconvene as the Town Board. All favorable. Motion carried.

New Business:

Twin Bay Village Inc.'s Article 78.

RESOLUTION #49

Councilman MacEwan moved, seconded by Councilman Saris to authorize Town Counsel at an hourly rate of \$150.00 per contractual understanding to defend the Planning Board in Twin Bay Village Inc.'s Article 78. All favorable. Motion carried.

John P. B. Miller – request for exemption from Water Regulations and Sewer Regulations due to hardship of distance and ledge rock.

Councilman Andersen asked is this is the piece of property the Town Board gave access to and Supervisor Gabriels said yes, the American Legion Road. Counsel said the Town Board did do that and Mr. Miller never fulfilled any of the other requirements. He never got it together and Counsel has mentioned it a couple of times to Mr. Miller's attorney Mark Rehm, Esq.

Councilman Saris asked if that means Mr. Miller doesn't have his right-of-way and Counsel said Mr. Miller does not have any grant from the Town of Bolton. Mr. Miller does not have what the Town Board was willing to grant him—that was not completed at all. Councilman Andersen said based on that, until that is settled, he is not sure he wants to entertain any kind of relief. Counsel said he thinks procedurally Mr. Miller is at the right place, but factually he is not.

RESOLUTION #50

Councilman Andersen moved, seconded by Councilman Maranville to table John Miller's request to have to hook to Town water and sewer until all legal paperwork has been taken care of for the previous request for a right of way. All favorable. Motion carried.

BLDC – request for \$75,000.00 from future Bolton Bed Tax Fund for first year's O&M.

Supervisor Gabriels said the Town has not obligated the money thus far to date and the Town doesn't know what the final Bed Tax tally from Warren County is going to be, but it will probably be in a similar magnitude as last year, which was \$113K.

Councilman Andersen noted that on behalf of the business community, they spoke in favor of the Bolton Bed Tax money being used for the BLDC and it was also endorsed that the money be used for that at last week's Chamber meeting.

RESOLUTION#51

Councilman Andersen moved seconded by Councilman MacEwan that the Town Board grant 2005 Bolton Bed Tax money in the amount of \$75,000.00 to the BLDC for first year's O&M. All favorable. Motion carried.

NYS Association of Town Annual Meeting – designation of authorized representative from Bolton.

RESOLUTION #52

Councilman Andersen moved, seconded by Councilman MacEwan to designate Councilman Saris to serve as Bolton's authorized representative at the NYS Association of Town annual meeting to be held on February 22, 2006 in New York City. All favorable. Motion carried.

Thermal Associates – renew two contracts for heating & A/C systems.

Councilman Andersen said historically the Town has spent an outrageous amount of money on the heating system in the Town Hall and he would like to get an estimate to change the heating system in the Town Hall in the long term.

RESOLUTION #53

Councilman Andersen moved, seconded by Councilman Maranville to renew the two contracts with Thermal Associates in the following amounts: \$965.00 for the heating systems at Veterans Park, Health Center and the State Police barracks and \$1,875.00 for the Town Hall. All favorable. Motion carried.

Adirondack Runners – request for permission to conduct 30th annual run on Sunday, July 2, 2006. Councilman Maranville said the Town Police Department has some concerns with this situation. Officer Jim White said the Town Police Department has historically had problems with traffic for this event. They've been notified that the New York State Troopers can't provide the extra coverage needed this year unless an insurance policy is issued naming them as an additional insured. The run causes a lot of congestion from Rogers Park to Vets Park and doesn't benefit anyone from a safety standpoint, and he suggested the run terminate at Rogers Park instead of Vets Park.

Councilman Maranville agreed it would be good to have the run end at Rogers Park considering the traffic in the summer. Supervisor Gabriels said the Town should find out what the New York State Troopers need in terms of insurance because the Adirondack Runners may already have the coverage needed. Officer White said he would follow-up on that, but that congestion will still be a factor.

Councilman Saris said he is sure the Adirondack Runners have insurance for the event. They usually list somebody as an additional insured and that doesn't cost anymore. If there is a reason the New York State Police want to be listed, then maybe the Town should also be listed and Supervisor Gabriels agreed. Counsel said the Town certainly wants to have a certificate of insurance coverage to know the Town is listed on a policy. It is not at all an unreasonable request as lots of events have that expectation.

Donna Boggs said the Town might want to ask the New York State Police why they couldn't provide the Town of Bolton with a certificate of insurance when we asked them.

Supervisor Gabriels said he gets the sense the Town Board would like to check with the Adirondack Runners on the possibility of ending the run at Rogers Park and several Town Board members agreed. Supervisor Gabriels asked for the difference in distance between the finish line being in Rogers Park

versus Vets Park because if the finish line is moved, then the starting line may also have to be moved. Officer White said he would get the measurements and report back.

This item was tabled to next month pending additional information.

Municipal snow plowing policy for the Town – codification of prior practice.

Supervisor Gabriels said Counsel drafted a municipal snow plowing policy for the Town that Counsel suggested specifically including the Parks, Water and Sewer Departments working under the direction of the Superintendent of Highways to take care of some of these other matters. This has been incorporated into the policy.

Councilman Andersen asked if the reason it is under the direction of the Superintendent of Highways is for insurance reasons, so the same policy that covers snowplowing at the Highway Department will cover the other departments as well and Counsel said yes. Supervisor Gabriels said this really is a codification that the Highway Department does more than just sand and salt public roads. They also take care of a lot other roads that are not strictly public roads, which is done and has been done in the Town of Bolton. It is prior practice and now the Town is doing it as a matter of policy.

RESOLUTION #54

Councilman MacEwan moved, seconded by Councilman Saris to approve the Municipal Snow Plowing Policy for the Parks Dept. and Water & Sewer Departments under the direction of the Highway Superintendent. All favorable. Motion carried.

Warren County – prepared resolution on Town's Voting Machines and Polling Location Management.

Supervisor Gabriels said that with the HAVA requirement, also known as "the Florida Voting Rights Act" there are all kinds of changes coming down. We have a resolution that the Town is required by federal law to adopt, with regard to the voting machines and voting place. It is assumed with the adoption of this by law the County has centralized all those functions at the County center including the ownership and responsibility for the voting machines. The centralization and ownership will include the two machines in the Town Hall which will hopefully be replaced with some sort of acceptable electronic forms for the disabled within the community to vote on when they are approved by the state legislature and when they are manufactured and become available to the County.

Supervisor Gabriels added that the County Attorney said basically the Town doesn't have much choice in whether to sign the resolution and Town Counsel said he concurs.

RESOLUTION #55

Councilman Saris moved, seconded by Councilman Maranville to accept the agreement With Warren County on the Town's Voting Machines and Polling Location Management. All favorable. Motion carried.

Veterans Exemption – recommendation by Town Assessor

Supervisor Gabriels said he spoke with the Town Assessor this morning and was told changing the Veterans Exemption means approximately no more than \$1,800.00 and change difference to the total taxes paid to the Town, if the Town changes the exemption for all 114 veterans in the Town of Bolton. The Town is jumping the exemption for the home assessment from \$80K up to \$180K and the Town Assessor guesses that the median value of the homes on the west side of Route 9N is somewhere in the

neighborhood of \$175K-\$180K. The Town Assessor is recommending the Town Board adopt the Veterans Exemption increase.

Councilman Andersen asked if those are the same standards Warren County is using. Supervisor Gabriels said those are the same standards Warren County will use and he has just been informed that come Friday, February 17, 2006, Warren County will be adopting this just before March 1, 2006. Councilman Andersen asked if that is definitely what Warren County is going to do and Supervisor Gabriels said yes, that is his understanding based on his discussion with the Town Assessor.

RESOLUTION #56

Councilman Andersen moved, seconded by Councilman MacEwan to raise the Veteran's Exemption from an assessment of \$80,000 to \$180,000 based on the Town Assessor's recommendation and on what Warren County's position will be on this issue. All favorable. Motion carried.

Time Clocks – possible future use by the Town of Bolton.

Councilman Andersen said Jim Casaccio provided him with State contract information and he is continuing his research into four different companies and the options for time clock systems. This item is pending.

Public in Attendance:

George Goodwin said he's like to address the condition of the road that goes across the swamp at Homer Point. He believes three years ago the Town was allocated \$60K for improvements which he isn't sure included paving everything from Rainbow Beach Road to Homer Point Road. The Highway Superintendent said he would do it, but the water level didn't get low enough. The road condition is generally okay, but there is a need to address the considerable rise in the level of swamp. It would be nice to know what is on the agenda for getting that fixed for this summer, since there is a lot of water flows from the south across the road to the north in that area and it might be worth considering putting grading in there.

Supervisor Gabriels said two or three years ago when this came up it was the thought of Highway Superintendent Tim Coon to have the grinder come in, take the asphalt off then pave over it in addition to taking care of the drainage tiles, but it wasn't done because the grinder is a heavy piece of equipment and the ground is too soft—the machine would have sunk and it would have been a tremendous problem. The Highway Superintendent realizes the Town can't grind that up—the Town just has to raise it about a foot and place drainage tiles throughout. He doesn't know where the money will be coming from, as the Town Board hasn't looked at the Highway agreement for this coming year.

Other Business:

Susan Wilson, PB member – request to be appointed to the Comprehensive Plan Zoning Implementation Committee.

Councilman Saris said the committee already has two Planning Board members and Lisa Nagle, who is the one who determined the make-up of the committee, purposely wanted to keep the committee somewhat small to keep the process moving.

Supervisor Gabriels asked if the Comprehensive Plan Zoning Implementation Committee meetings are open to the public and Counsel said yes, the workshops are open to the public. It is not a public hearing but the topics of discussion are heard by the persons in attendance.

Supervisor Gabriels said there are two Planning Board members on the committee currently and asked what the size of the committee as it is presently constituted. Councilman Saris said there are 12

members and he would say the Planning Board is well represented by the Chairman's presence there on the committee.

RESOLUTION #57

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

Executive Session:

Councilman MacEwan moved, seconded by Councilman Andersen, to adjourn the regular meeting and enter executive session at 10:05 pm to discuss litigation. All favorable. Motion carried.

Councilman MacEwan moved seconded by Councilman Andersen to adjourn the executive session and return to regular session and adjourn at 10:30 pm. All Favorable. Motion Carried.

Minutes transcribed by:
Jennifer Torebka
Recording Secretary
02/17/2006

Respectfully submitted by:
Kathleen Simmes
Town Clerk