

TB – Minutes –
STATE OF NEW YORK
COUNTY OF WARREN
TOWN OF BOLTON

January 2, 2007

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

Absent: None

Pledge of Allegiance –Supervisor Gabriels

Supervisor Gabriels introduced John Gilbride as the new member to the Bolton Police force.

PUBLIC HEARING: *None*

REGULAR MEETING:

Supervisor Gabriels called the regular meeting to order at 7:20 pm.

Announcements:

Supervisor Gabriels wished everyone a safe and happy 2007.

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.

Public in Attendance:

Barry Kincaid of KLC Property Enhancement said that on 11/08/06 he handed the TB a letter and asked for a response. He hasn't received a response to date, and is asking if the TB can give him a written response within 30 days concerning misconduct in the Zoning Office. Supervisor Gabriels said they would get to it.

John Gaddy handed out items to the TB members and said he just submitted a letter regarding issues on CR 11 and 200-20 of the ordinance. In looking at the county map you start to see the tremendous variation of the property that has been taken. He is suggesting as a proposal in order to save vegetative clearing, to set the center of the road as the setback so there is a buffer zone of 125 feet of natural vegetation. In the discussion of clearing, aesthetics and maintenance needs, this seems like a perfect balance. Before the Town of Bolton gets a decision from National Grid, he would like to hear about 200-20 D-4 which starts to talk about electric and communication wires being run underground whenever possible. Regarding Westwood Forest West, the PB was presented with an application for power coming from the north and there seems to be some deadlock on who makes the decision for the power route. The PB needs to know who makes that decision, and he needs to know if there is any way to encourage underground placement. Supervisor Gabriels asked what the PB's view is, and John Gaddy said that he can't speak for the whole PB, only himself. Supervisor Gabriels said that the County right-of-way is all over the place on CR11.

Barry Kincaid, representing the Property Owners Group, said that last month he asked if the TB agendas could be prepared and provided to the public prior to the meeting. He asked if anything has been done on that matter; and he also asked if any language on the 6 feet of fill and cut has been determined.

Supervisor Gabriels said that he thinks Mr. Stern and Counsel have to meet. Counsel said they have not met yet, but he has been soliciting opinions from whoever wishes to offer opinions and suggestions on the language of 6 feet cut and fill so he could comprehensively then present it back to the PB. He did invite Barry Kincaid to do that. Barry Kincaid agreed and asked whom they should submit those to. Counsel said submit them to him and he is going to offer the various structure of the language. He will certainly put everyone else's in there. He thinks the proper procedure is that the PB takes the first bite at looking at the new language that might go in as part of the code.

Barry Kincaid said his understanding is that the Zoning Administrator's secretary could be resigning and many contractors are upset. Supervisor Gabriels said that he has received no information to that affect.

Barry Kincaid said in the Curri-Maille matter, they called and are very concerned that the Town of Bolton Code Enforcement is biased. Supervisor Gabriels said that regarding Curri-Maille/Barboza matter, they (Curri-Maille) were denied permission to have 3 horses. They had to get rid of one of the horses and take down a barn and they paid a \$1000 civil penalty. Back in 1992 when Barboza came before the PB, at that time given the current code that was in existence, Barboza got permission to have eight horses without reference to the code itself. He does not know why there is a change from 1992 to 2006. These are two different standards being applied to two neighboring individuals with the same issue of agricultural use. It is an issue of town policy for the TB to figure out. There is a problem with horses regarding a PB decision 15 years ago and a PB decision made recently. He doesn't know how to resolve it yet. There are no answers on that particular issue at this time; and he apologizes to Theta and Gary Maille for what seems to be taking a long time, but it is not a simple issue, or at least he doesn't have a simple solution.

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

Correspondence:

Tax Rates: On a town level there is a 0% tax rate increase. County tax rates are \$3.796 per \$1000 assessed, Town tax rates \$.765 per \$1000 assessed, light is \$.086 per \$1000 assessed, and fire is \$.423 per \$1000 assessed.

Correspondence from Bolton Occupancy Tax with a list of proposed tourism promotion benefits in the amount of \$109,400 to be reviewed by the Town Board.

E-mail from June Maxam requesting information regarding the attorney zoning enforcement cases currently pending in the Town of Bolton Justice Court and the State Supreme Court of Warren County for 2006.

A clarification that Mr. Neumann that he will continue to work for the North Warren School district as it is his full-time job until the end of the school year. He has estimated that he can perform 925 hours of service to the Town of Bolton at a rate of \$18.90.

Correspondence from Bateau Below regarding their collection of litter from the bottom of Lake George.

E-mail from Laura Saffer in appreciation of the Highway Dept.'s raking of their pond.

Correspondence from NYSDEC that the Town of Bolton had a high phosphorus count on 12/05/06.

Letter from Stafford, Carr, & McNally regarding the Pioneer Village Water District extension, which is still pending.

Letter from Dan Behan and Frank Parillo requesting to meet to discuss the possibility of leasing the Norowal Marina from the BLDC—they (Behan and Parillo) believe they can do a better job.

Letter from Schroon River Animal Hospital that due to space limitations, the safety and the staff and family and emotion stress, they will no longer be able to take any stray animals from the Town of Bolton—the only exception will be animals requiring medical attention.

Two letters from Nixon & Peabody of Rochester, NY that they propose a 90-foot wireless telecommunications facility at 28 Bryant Avenue in the Town of Lake George and a 39.5-foot wireless telecommunications facility at 22 Gage Road in the Town of Lake George.

Verizon vs. the Assessor of the Town of Bolton

This item is still pending.

Information and designs from Schoder River Associates on putting in a dry hydrant at the Conservation Park property.

Cover letter from the firm Sanaborn, Spring & O'Sullivan regarding a decision rendered by State Supreme Justice David Demarest regarding the ability of towns to regulate floating docks.

Note from Theta Curri Sr. encouraging the Town of Bolton to reconsider the name change of the road Congers Point North to Seamans Lane.

Referrals from Zoning Enforcement Officer / ZBA / BPB:

Timothy Harrington, 4 Forbidden Lane-regarding extensive tree clearing without a permit—Bolton PB recommendations

Counsel said they are working on determining the line of demarcation of what can be cleared and what cannot be cleared and what is County and what is private property. He and Mr. Stafford are working on a planting schedule, and it will be at least a couple of months before he will be able to present something back to the TB. He said he thought M. Nittmann found a third party who would state that there was clearing done even before Mr. Harrington was the owner of the property.

Supervisor Gabriels said that alternative remedy matters are taking up a considerable amount of time at the regular TB meetings, so he is proposing the TB adopt another evening each month to address alternative remedy matters.

Councilman Andersen said he feels it is fair to say that the TB spends a considerable amount of time on them and that there should be another evening for these matters. Councilman Saris said that he feels it would be a good idea, in fairness to people waiting for regular meeting agenda items, although he doesn't really want to be committed to an additional night. Supervisor Gabriels said that these additional meetings would be open to the public.

Councilman MacEwan asked if the amount of alternative remedy issues could be reduced through Counsel's recommendations. Counsel said he would like to propose that there is

probably a quantity of these issues that may very well be resolvable or not capable of being resolved. He would like to request that perhaps there is a possibility that in the Zoning Office and through his representation, they can come up with what constitutes the solution for the problem and the town board can accept or reject. In other words, the Town Board wouldn't have to go through the whole process of a hearing if there is a satisfactory resolution. He can share information via e-mail with the Supervisor directly, which is all permitted in the code, if it is near closure, as a way to expedite the process.

Councilman Andersen asked if the person coming in front of the TB has that option if they didn't like the proposal or possible solution. Counsel said yes, what he is talking about is completely voluntarily and it is essentially what he is doing with Mike Stafford in the Harrington matter. He said that there is a part of this process that has an opportunity to fail, in that people wouldn't want to take the proposed solution. Councilman Andersen said he feels the second night should be available for people who want to present their case, possibly on an as needed basis. Councilman Saris said that his only thought is that the TB needs to give people a schedule of what they need to do. Councilman Andersen said there have been nights when there have been four or five of these items to discuss.

Councilman Saris asked if there would be any kind of time frame if someone decided to enter into the process with Counsel. Counsel said he would ask the TB for the ability to use his judgment regarding time frames. He thinks things are going more quickly now, and he would encourage the TB to try this system as opposed to having a full blown hearing time and time again. Councilman Saris asked if at some time the TB feels this process is not working he wants to know if the TB could give a deadline. Counsel said he makes some calls as to what he feels is appropriate then shares that information with the appropriate board for review. He doesn't want to decide what the final order is, because that is inappropriate for Town Counsel, but he would like to suggest that he could do a consent order. They have done it with litigation, which is an understanding, in writing, that would be enforceable in a court of law if it fails.

The TB consensus is to try to work toward the consent order.

Board of Health/Water Commissioners: None

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Reports:

Councilman Maranville

Office of the Assessor:

Assessor Dave Rosebrook visited each parcel sold and took pictures and checked out file inventory; sales comp sheets are prepared and catalogued regularly. The sales ratio spreadsheet is updated with information from sales. During December he visited a limited number of parcels for which there were Certificates of Occupancy issued. They received and checked the STAR renewal list. Per the Supervisor's request, he has been reviewing the tax maps for the Smith/Nolan property.

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Justice Department:

A/R for December 2006: Judge Harry Demarest - \$2,470.00. Judge Edward Stewart - \$3,770.00. Total: \$6,240.00. There is an itemized list located in the court breaking down the amounts.

Councilman Saris

Clerk's Office:

Total Local Shares Remitted: \$8,904.28, Total Non-Local Revenue: \$188.72,
Total State, County and Local Revenues: \$9,093.00

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Sewer Dept.:

The Plant took in 6,428,600 gals of wastewater for a daily average of 207,374 gals. They had no violations. All the beds are dry except for the one in use. They are working on getting some of the dry sludge from the upper beds hauled.

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Councilman Andersen

Recreation Dept:

Several activities are set for January and it is suggested anyone interested contact the Rec. Dept. since some of the activities require advance sign-up and registration.

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Councilman MacEwan

Water Dept:

Water made: 6,054,842 gals.

The pond level is over the spillway. They took bacteria samples for testing and the samples were satisfactory. They have been working on winter shut-offs along with general maintenance.

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Zoning Dept

Permits applied for: 12 certificates of compliance / 2 septic / 7 variances / 3 site plan reviews / 3 stormwaters / 2 subdivisions and zoning book and copy fees.

A/R: \$2,929.00.

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Code Enforcement Officer Report:

7 page report filed / 206 miles logged / 29 site visits / 2 TB resolution letters.

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Supervisor Gabriels

Supervisor's Report:

He doesn't have an end of the month statement revenues expenses due to the holiday and early meeting date. There is nothing to report on stormwater. Warren County's organization meeting will be held on January 3, 2007.

Unfinished Business:

Decision on Consent Order Verizon vs. Town of Bolton Regarding Assessment is still pending

Continuation of Public Hearing from October 3, 2006 on Zoning Code 200-46(10) - Cut & Fill Language Alternative Amendments is still pending.

Pioneer Village Improvement Association - Water District Extension - Discussions Ongoing - Not Finalized – Postponed. Counsel will contact their attorney for an update

Rolf Ronning's Proposal to Swap Acreage for New Bolton Cemetery - 6 Acres 4 Usable Acres for Assumption of Road to Town Inventory - Saddlebrook Subdivision is still pending.

Open Bids for Surplus Truck

Supervisor Gabriels said there was one bid received for the Parks Dept.'s surplus truck from Terry Morrison of Warrensburg, NY in the amount of \$127.50.

RESOLUTION #18

Councilman Saris moved seconded by Councilman Andersen to accept the bid from Terry Morrison of Warrensburg, NY in the amount of \$127.50 for the Parks Dept's surplus truck. All favorable. Motion carried.

Determination of "Disturbance" as in Zoning and Stormwater Regulations

Supervisor Gabriels said they submitted this issue to the Zoning Office and ZBA and asked for their determination. Zoning Administrator P. Kenyon said that it was her understanding that there would be a meeting of the PB and ZBA on this matter. Supervisor Gabriels said this has to be resolved by April 2007, because that is when the snow goes away and the construction season starts. Counsel said he agrees and if April is the target date then he has to alert the APA and the WCPB 30 days prior to when the Town of Bolton has its public hearing on the issue, so he would need something by the end of February or first week of March.

Counsel asked if the LGPC is also dealing with this issue and P. Kenyon said yes. Counsel said possibly that information should be provided to the PB and ZBA. Supervisor Gabriel said the Town of Bolton doesn't have the time to wait for the LGPC. He thinks the Town of Bolton's issue is right now more narrowly defined or definable; and he thinks the LGPC is looking to see where the Town of Bolton is on this issue to help them figure out where they are going.

Richard Kudlack asked what definition they are to use for the time being. Counsel said that if there is an ambiguity it is favorable to the applicant. The Town of Bolton will not take the more stringent or more restrictive position. Richard Kudlack asked if it is correct that the ZBA will be making a decision on this by April and Supervisor Gabriels replied by saying that is what the TB suggested be done and if they can come up with language or a strategy or approach then the board will consider that.

Richard Kudlack said that according to Counsel, in the interim period between now and April it is going to be interpreted to the benefit of the property owner. Counsel said yes, that is the law in New York State. Richard Kudlack asked if most homeowners can rest in that a violation will not be written if they are merely cutting vegetation like brush. Counsel said cautiously, he would say he thinks so, and if Mr. Kudlack's interpretation happens to be that as long as he doesn't disturb, rustle up the ground, and leave gashes in the soil and remove the top, that doesn't seem to be disturbance just by cutting. Counsel believes that is a fair analysis of where it used to be and where some towns abide by that and others do not. There is a big mix and the Town of Bolton is going to go with the most conservative, consistent, and favorable approach to the landowner; and

there are some people and properties in the Town of Bolton that have some cutting and disturbance issues that fall into a special category in that they were restricted or limited by a site plan review (some other restriction over and above stormwater).

Barry Kincaid said that as a reminder, two years ago they sat down with the ZBA and PB, M. Nittmann, P. Kenyon and Counsel, and reviewed the code and determined that cutting brush under 6 inches is non-jurisdictional as long as you were not timber harvesting and cutting a tree in someone's yard was not going against the code. Counsel said that Barry Kincaid shouldn't be uncomfortable about where the present state is right now, but he should remain vigilant in where it is going. Barry Kincaid said that they already had a workshop with the PB and ZBA and a determination had already been made two years ago and he doesn't know where all that work went. Counsel said there are very differing opinions on this matter. It is very volatile and the TB has a committee, which is required by law to revise and revamp and come back with some suggested language and the Town of Bolton will struggle with that.

Barry Kincaid, representing the Lake George Property Owners group, said that last month he also asked that two of their members be able to sit on that committee. Supervisor Gabriels apologized for not getting back to Barry Kincaid on the matter and said that the committee is set with members at this time, but the meetings are open to the public.

Barry Kincaid asked if there is any written information from that committee available to the public. Supervisor Gabriels said he hasn't seen anything yet. Barry Kincaid said he saw a comment in the Lake George Mirror stating that it would be ready in January and asked if that was accurate. Councilman Saris said he was told they plan on having a draft ready at the end of the month. Barry Kincaid asked if the draft would be available to the public. Councilman Saris replied by saying he does not know; it may be available to the public but not right away until it is organized. Certainly the public will get to read and review it prior to a public hearing.

Barry Kincaid asked when they would be legally allowed to obtain and view the draft. Councilman Saris said that he thinks the idea is to give people an opportunity to review something that is pretty much what they will be moving forward with rather than giving something to the public that could be changed. You have to be able to navigate through it to see what is or is not there. P. Kenyon said that at the very first Zoning Revisions meeting they had, it was a huge concern of hers that public input is given on changes to the ordinance. Supervisor Gabriels said that he understands Barry Kincaid's concern. He assures him he doesn't have a solution. He hasn't talked to Lisa Nagle or members of the board, but he will make sure something gets out there to the public as quickly as they can. It will not be a Bible; it will be open for review.

Pending Items:

There was no action taken on any pending items.

New Business:

Discuss Full TB Consultation with Carl Schoder Regarding Conservation Club and Septic System - Next Steps - Hiring Architect of Record for Design Work

Supervisor Gabriels said that they received a report from Carl Schoder last month that they can expand the septic system at the conservation club so the building could be enlarged to seat 125 people. Mr. Schoder is encouraging the Town of Bolton to consider an architect that he would recommend.

Councilman Andersen said he remembers that when the TB went through this the first time, they were overwhelmed by some of the architect's fees. He thinks this is a good project and it should move forward. Perhaps the group that was initially involved should loosely write up what the project entails and then we should get hourly rates from a few architects. Councilman MacEwan said he thinks the TB needs to get pricing from more than just one individual.

Mitzi Nittmann said she was part of that process and there were several sets of plans of what they wanted to have done and she thought some of the ideas were well-placed and utilized all the needs the people had.

Councilman Andersen said the architect would need some guidelines of what the TB is asking for. Kathy Simmes said it seems the TB is referring to a brand new building, not changing the existing building. Councilman Saris said they went with the concept of a new building and got a design for a new building, then come to find out that the architect's fee was a percentage of the construction costs and the estimated construction cost was \$300,000. The Town of Bolton would be locked in at that; and he thinks that is what Councilman Andersen is trying to get around, not getting stuck into something that will cost \$300,000, which they felt was quite extravagant.

K. Simmes said she would need specifics as to what the TB is looking for so she can give them to the architects. The existing kitchen size is perfect; and she suggests the bathrooms be reduced to one regular and one handicapped.

Authorize SRA to Commence Design of Pier Without Finger Dock(s) (Time Delay Factor) to Make Operational by June 30, 2007 - Pre-Cast Concrete or Timber Framed?

Supervisor Gabriels said he talked to Carl Schoder about the town pier and the docks and he would like to see it ready by the end of June. Councilman Andersen said that it is important for Carl Schoder to know that the intention is to have the finger docks put in sometime in the future, so that he doesn't design something that may inhibit that.

John Gaddy said that he would like the TB to refer to the Darren Fresh Water Institute regarding the use of concrete in relation to zebra mussels. Supervisor Gabriels agreed and said that concrete may pose an environmental concern. Councilman Saris said that he thinks they should have it done in timber, unless Carl Schoder can show the TB that it cannot be done with a reasonable lifespan out of timber and Councilman Maranville said he would prefer timber.

RESOLUTION # 19

Councilman Saris moved, seconded by Councilman Andersen to authorize Carl Schoder of Schoder Rivers Associates to commence the design of the pier to be made of timber and to be made operational by June 30, 2007 at his normal professional rates. All favorable. Motion carried.

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Discuss Status of Town's Legal Representation - Independent Contractor Status or Employee Status. This item is pending further legal research.

Allocation of Bolton Bed Tax Money

Supervisor Gabriels said that the Bolton Bed Tax Committee proposal for use of 2006 bed tax monies. The only question was the funding for the fishing derby if there is no ice on Lake George.

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RESOLUTION #20

Councilman MacEwan moved, seconded by Councilman Andersen to approve the tentative proposals from the Bolton Bed Tax Committee for allocating the 2007 expenditures using the 2006 Bolton Bed Tax monies. All favorable. Motion carried.

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Authorize snow and ice and mowing contract with Warren County

RESOLUTION#21

Councilman Saris moved, seconded by Councilman Andersen to enter into a contract with Warren County for snow and ice removal and sweeping & mowing for 2007 in the amount of \$103,281.00. All favorable. Motion carried.

Curri-Maille Alleged Violations concerning the Barboza property

Counsel said the complaint under investigation is that Barboza has buildings on her property that are not of proper use according to the current zoning requirements. He asked M. Nittmann to inspect the construction of the buildings to see if the structures are in compliance. In 1992 it started with a permit process to build a shed and there is entirely nothing wrong with that. Somewhere in the course of events from 1992, what started out as a shed actually became larger and constitutes a barn. A barn is entirely different and has certain criteria it has to meet in the Town of Bolton. Harboring horses would require site plan review which the 1992 PB approval granted, but in 2006 you can see that there were a lot of shortcomings in that ruling. Subsequent to the shed being built into a barn, it is buildings or structures being built that do not require building permits if they are barns used for agricultural purposes, but do require the owners to come to the Town of Bolton for certificates of compliance for expanded uses or expanded boarding of horses—generally speaking, he thinks structurally speaking they have a hybrid issue—where when the applicant was entitled to build barns and there is no supervision or procedural path in terms of a building permit, they certainly are exempted out from a lot of what you ordinarily see, but they didn't do everything and the everything he thinks is that there was no certificate of compliance, so the Town of Bolton is just not on solid ground here in trying to ascertain what—if anything—is wrong.

Counsel said that structurally speaking nothing that required a building permit has been built without a building permit and M. Nittmann agreed. P. Kenyon said she does agree that buildings used for agricultural purposes don't need a building permit, but do need a certificate of compliance. Counsel said that his understanding is that one of the anomalies going on here is that the building of a barn that doesn't need a building permit, but does need a certificate of compliance. In one instance on this property it is not built with the appropriate setbacks and P. Kenyon said based on tonight's meeting that would be true. Counsel said there is a mixed bag of

violations that may or may not have occurred as far back as 1992. When the applicant was entitled to build barns and there is no supervision or procedural path in terms of a building permit, they are certainly exempted out from what you ordinarily see, but they didn't do everything and the everything, he thinks, is that they are now looking back at 2006 in terms of setbacks and certificate of compliance issuance. We are just not on solid ground in trying to ascertain what, if anything is wrong. This 1992 blessing given by the PB would not be the nature, substance and magnitude of what we presently do, but it is done and he doesn't think, as Counsel, he would suggest or encourage the TB to revisit that and bring folks back in who got permission in 1992. There were shortcomings in the process to revisit it now; and the nature of this circumstance in those that complain and say there is not fairness going on here you cringe in that it is probably true. It is an uncomfortable situation and it is not a clear path by any means to prosecute them with code violations. It is unclear.

Supervisor Gabriels said that given the alleged violations, a legal approach is one way to solve the problem and that in 15 years you have two completely different interpretations that are decidedly unfair to abutting neighbors. Counsel said he feels comfortable saying the owner that has 8 horses is permitted to have them pursuant to the permission granted in 1992. P. Kenyon and M. Nittmann both agreed that they are comfortable with that stand. Supervisor Gabriels asked if it is possible that the newer PB was unaware of the 1992 decision. Counsel replied by saying yes, that was a virtual guarantee. He feels the PB didn't know about the 1992 decision and he believes that the PB tries to be very fair to decide things on a case-by-case basis, but consistently reminded that they do in fact set precedence and that they must treat people equally. Councilman Saris asked if there is also a situation where an applicant can say that the 1992 decision is a mistake. Counsel said that he feels that mistakes were made in 1992, but they are very hard to correct or rectify with all that passage of time. Supervisor Gabriels said that only gets to the question of precedence, not the inequities between the two landowners. Counsel said that had he known everything he now knows, he would have guided the PB currently and will continue to guide the PB currently, as they do have issues of animal husbandry before them, follow the code as it is now, apply the code and all of the animal husbandry requirements and guidelines. Unfortunately they missed the boat completely 15 years ago, but that is not going to hamstring them now, follow the code now; and some may see it as an aggravating circumstance, but he sees it as that it is a requirement and it must be as the code is written now.

Supervisor Gabriels asked if the current property owners have the opportunity to go back to the PB to ask for reconsideration and to come back before the TB and ask for a reconsideration of the civil penalty. Counsel said yes, absolutely. He thinks they would be encouraged to know that they are entitled to do that and in an effort to try to do a fair thing the TB needs to be mindful to the fact that their property has its limits and it is not for the TB to give them permission to have a third horse. If it is permitted that would be the PB's decision. Councilman Saris said that they are dealing with a situation where if it is something over 10 years ago that the neighbors want to do now; it is seen as unfair and whether it was done maliciously, honestly or whatever, it is difficult to go back and determine those circumstances; and it is unfortunate, but really it makes common sense.

The TB consensus is to continue deliberating this issue.

Comments of Public in Attendance: None

Approve Payment of Town Bills

RESOLUTION #22

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

Executive Session: None

Councilman Andersen moved seconded by Councilman Saris, to adjourn the regular meeting at 9:00 pm. All favorable. Motion carried.

Minutes transcribed by:
Jennifer Torebka
Recording Secretary
01/12/2007

Respectfully submitted by:
Kathleen Simmes
Town Clerk