

TB – Minutes July 5, 2006

STATE OF NEW YORK  
COUNTY OF WARREN  
TOWN OF BOLTON

Present: Supervisor Alexander G. Gabriels III, Councilmen Scott Andersen, Robert MacEwan, Owen Maranville, Town Counsel Michael Muller (arrived at 7:45 pm), Town Clerk Kathleen Simmes

Absent: Councilman Jason Saris

REGULAR MEETING:

Supervisor Gabriels called the regular meeting to order at 7:04 pm.

Pledge of Allegiance – Councilman MacEwan

Announcements:

q Bolton Free Library is celebrating its 100th anniversary on Saturday, July 29, 2006—festivities are planned, the public is invited.

q The Lake George Loop Draft Corridor Management Plan is available for review and comment at <http://www.wcplanning.blogspot.com/>.

q Meal Site Menu is available in the Town Hall.

q There are now 2 Town of Bolton website addresses: [www.town.bolton.ny.us](http://www.town.bolton.ny.us) and [www.townofboltonlanding.com](http://www.townofboltonlanding.com).

Public in Attendance:

Bob Weisenfeld said regarding Bell Point Shores, the good news is that the Norwood Drive roadway surface is in good condition but the shoulders are still higher than they should be. The bad news is that the Spring Stormwater Report is a little over seven weeks late despite reminders sent by the Town of Bolton. He asked the Town to keep him posted and provide him with a copy of the Bell Point Shores Spring Stormwater Report when it is received. Supervisor Gabriels said the Town could provide a copy to Bob Weisenfeld once it is received.

Supervisor Gabriels spoke with Tom Jarrett, Engineer on that project, about 10 days ago and was told that the report was remiss and would be received by the Town of Bolton shortly.

Correspondence:

Article in Forbes Life magazine on sailing written by the Sagamore Hotel.

Article in Saratoga Living magazine on life on Lake George in Bolton Landing.

Request from Timothy Harrington to table his item to the August 2006 Town Board meeting. John Gaddy asked if all Town Board members have been to the site in question and Supervisor Gabriels and Councilman MacEwan replied yes they had.

E-mail from Frank Komoroske, Regional DOT Director: the 9N construction project will begin in 2008.

Letter from Bob Phillips requesting permission to depart and return from Rogers Park Dock for a picnic on Black Mountain Point for the counselors and staff of Double H Ranch.

Letter from Antonio Bustamante, resident of Homer Point HOA, regarding the condition of the road at Homer Point. Supervisor Gabriels said this has been scheduled on the list of the Bolton Highway Dept. projects over the last couple of years, but it has not been dry enough to get equipment in to do the work.

Letter from Bob and Sylvia Phillips regarding their bill to the Town of Bolton for replacement of shrubs destroyed by the Town Sewer Dept.

Letter from Kevin and Louisa Sherman requesting the Town of Bolton encourage Time Warner Cable to extend its service to their location on County Route 11.

Letter from Alonzo Fireworks regarding their scheduled dates for fireworks displays in Bolton.

Completed application dated June 12, 2006 from the APA regarding Sandy Lane Estates.

APA project permit from the APA regarding construction at The Sagamore for the expansion of the laundry room.

APA project permit from the APA dated June 22, 2006 authorizing the installation and maintenance u-shaped articulating telescoping docks at the Sagamore.

Letter from the Bolton Landing Business Association regarding vandalism and a request for additional police presence at night.

Inquiry regarding Lake George being referenced on the radio as being in "Flood Stage." Supervisor Gabriels said that while the lake water is high it is not in a "Flood Stage."

Referrals from Zoning Enforcement Officer / ZBA / BPB:

Timothy Harrington, 4 Forbidden Lane-regarding extensive tree clearing without a permit—notice sent 05/15/06

Supervisor Gabriels said the applicant and Councilman Saris have both requested this item be tabled until the August 2006 Town Board meeting when both will be in attendance. All Town Board members agreed to table this item until then.

John Gaddy asked why this item is being tabled and what discussions have taken place. Supervisor Gabriels responded by saying that Councilman Saris asked that the item be tabled because he wants to be present. Timothy Harrington asked the item be tabled because he would not be in town for tonight's meeting. Last month the applicant was present and there was discussion ending in the request by the Town Board for additional information from the Zoning Office.

John Gaddy is hoping for creative reaction in regards to clearing. He had an issue with the Straney property on Trout Lake Road that is of a similar nature. There has been clearing without the actual appropriate permits. He knows this is a big issue with the Town of Bolton and is wondering if there will be some sort of public discussion outside of the Town Board meetings. Last year, the Town of Bolton had a situation with the Straney property where there was never a clear understanding of who cleared the property. He thinks there are a number of common occurrences in the Town of Bolton where clearing has been defined by the PB then exceeded. There is a need to figure out how this is going to be addressed, because the number of times this is happening makes him feel as though people are not taking it seriously. Supervisor Gabriels said that next month the issue before the Town Board will specifically be the Timothy Harrington item.

John Gaddy said he came before the Town Board previously asking for a moratorium on ridge top development and he knows the Master Plan has been asking for the Town to look at vegetative clearing in terms of trying to keep the rural nature of the area. He thinks that while he didn't get successful support from the PB for the moratorium, he does believe that it needs a lot more discussion. He is not sure if everyone is prepared to participate with their ideas on how they might impress upon those people building in town, that the town would like to keep those sites wooded. Supervisor Gabriels said that he is not sure how to get to that point. The issue before the Town Board currently is the Harrington issue. The rest of the issues John Gaddy is referencing are Code Enforcement issues. He doesn't know if the Town Board has paperwork on any other issues. John Gaddy said he was hoping to have discussions regarding alternative remedies that might be able to send a clear signal to the citizens of Bolton Landing.

Reports:

Councilman Maranville:

ASSESSOR:

The Assessor's Office received two new sets of tax maps in June. The Assessor is suggesting the old tax maps be declared surplus and offered to Bolton realtors for a fee. The office updated and improved the listing for the Assessor's Office on the Town of Bolton websites. They have received and reviewed the orders for stipulation for the Town of Bolton's two pending grievance cases.

POLICE DEPT:

Miles patrolled: 2,254 miles. Fuel used: 196.0 gals. Officers investigated 2 criminal reports, 1 assisted

other agencies, 6 security alarms, 8 uniform traffic tickets issued, 2 auto accidents investigated, 4 court securities, 5 arrests made, 13 emergency medical assists, 3 fire department assists, 19 miscellaneous complaints, 1 missing or lost person and 1 found property.

JUSTICE COURT:

No report.

Supervisor Gabriels

TOWN CLERK'S OFFICE:

Total Local Shares Remitted: \$12,755.86. Non-local Revenues: \$407.13.

Total State, Local and County Revenues: \$13,162.99.

SEWER PLANT:

10,331,000 gals. wastewater for an average of 344,000 gals. per day. Those totals are significant over the design capacity of the plant, but an oral indication from Chet Dagles was received saying that it didn't represent a violation. The Town of Bolton received 11.2 inches of rain this month, which is a considerable amount that is reflected in the continued I&I problem throughout the town system. 80% of the beds are dry. They hauled 53,000 gals. liquid sludge hauled. Luke Dague passed his lab test and will be taking the ABC test in August.

HIGHWAY DEPARTMENT:

Highway Department is about \$30K over budget due to storm damage that occurred in May and June 2006. Supervisor Gabriels has not received any formal indication but Senator Little is trying and is very confident that the Town of Bolton will be able to get a grant in the neighborhood of \$225K for the June 2005 storm event.

Councilman Andersen:

RECREATION DEPT:

The Rec. Program is in full swing. Arts & crafts, tennis instruction, swimming lessons, etc. The Day Camp Program looks like it will be a great success again this year. There is a new guard shack being moved to Vets Park.

BUILDINGS & GROUNDS DEPT:

The Buildings & Grounds Dept. is working on upgrades to both parks—more Rogers than Vets, They are working on aesthetics on Main Street, and addressing issues in older cemeteries with regards to replacing fencing and other upgrades.

Councilman MacEwan:

ANIMAL CONTROL:

114 miles logged. 16 hours. Several issues dealing with snakes, raccoons, dogs, etc.

WATER DEPT:

7,837,567 gals. of water made which equates to 261,250 gals. per day. Water Dept. is very busy fixing leaks and doing repairs.

CODE ENFORCEMENT:

32-page report filed. 261 miles logged.

1 memo of acute clearing/ 2 notices of violation / 1 letter of apology to Davis

PLANNING/ZONING OFFICE:

Permits applied for: 20 certificates of compliance / 2 wastewater disposal systems applied for / 4 variances / 6 site plan reviews / 3 subdivisions / 3 stormwater permits applied for.  
A/R: \$1,499.74.

Supervisor Gabriels:  
TRANSFER STATION:  
A/R: \$6,612.00.

There is an issue with the brush pile being too large to burn according to the local Forest Ranger. They are continuing to clean up around the metal pile. The propane tanks need to be taken to Agway by someone with a Hazmat license. The chains at the C&D Ramp are still being broken. Councilman MacEwan said there is also an on-going issue at the Transfer Station with people getting in after hours.

John Gaddy asked if there is feasibility in using chipped brush for fuel or other projects through new technologies in order to get away from open burning in the future. It seems to be a pollution issue. Councilman MacEwan said the brush pile used to be out of hand but he thinks they had it chipped in the past for \$3-\$4K. John Gaddy responded by saying that some places have done alternative fuel projects and it may be a possibility to implement that practice here.

#### SUPERVISOR:

Total receipts: \$268,341.70. Total disbursements: \$404,955.17.

Storm water: Letter received from Frank Komoroske regarding Bixby Beach. Tim Coon is going to look at stormwater controls at Indian Brook.

Warren County: The attempt to get approval of the proposed Public Authority Law by the Albany legislature did not go through and may be taken up again in the fall. Sen. Little and Skyward are both confident they may be able to get it passed. Once the legislation is secured, the County would put the discussion up for public comment and review.

#### Unfinished Business:

Assessor's Tax Map Surplus

#### RESOLUTION #139

Councilman MacEwan moved seconded by Councilman Maranville to declare the two sets of tax maps in the Assessor's Office as surplus and to offer them for purchase to the high bidder. All favorable. Motion passed.

#### Citizens Committee-Water District Land Swap

Ed White representing the Citizens Committee said there are currently three proposals—the original swap, and second and third proposals made directly to the School Board, where it was an individual contractor who would come in, buy property from this particular individual and then develop it into ball fields. The School Board is to consider the two new proposals at its meeting on 07/10/06. The School Board has expressed interest to the Citizens Committee that they would be interested in continuing conversations with the Town of Bolton and the Fire Dept. regarding the expansion and the use of the property and ball fields.

Supervisor Gabriels said that a request from a landlocked property owner for an easement right-of-way over water district property has been received. At the present time this parcel is being considered as a possibility for school ball fields.

#### Basketball Courts

Ed White said that there is a group of Bolton Central School alumni and current students who would like to use the basketball courts Monday and Thursday evenings between 6:30-8:30 pm. All Town Board members said this would be okay as long as there is no conflict with the Rec. Dept. activities.

Councilman MacEwan said it looks like people are driving vehicles on the basketball courts. Councilman Andersen replied by saying that the Buildings & Grounds Dept. will be putting up a fence and are awaiting receipt of estimates for that project. Ed White said that if the basketball goes off the court during play, there is a chance it would hit vehicles. Councilman MacEwan said the Town of Bolton put a lot of money into the basketball court project and it should be protected. Supervisor Gabriels asked how much of a surrounding buffer and what type is needed. Ed White said most new courts have a 6-8 foot minimum buffer and a chain link fence would be best.

#### Lagoon Manor Marina-Request for Pencil Buoys

Melanie Ostberg said that it is her understanding in talking with Mr. & Mrs. Anthony that the LGPC has given the Anthony's permission to put two pencil buoys in and that it does not require permission of the Bolton Town Board.

#### Refund of Permit Fee for 10 Square Foot Sign

Supervisor Gabriels said the Bolton Rescue Squad got approval from the Bolton PB on June 22, 2006 for the sign.

#### RESOLUTION #140

Councilman Maranville moved, seconded by Councilman MacEwan to refund the \$10.00 permit fee to the Bolton Rescue Squad. All favorable. Motion passed.

#### Contract with Sagamore Resort for Emergency Pump Station

Supervisor Gabriels said that Town Counsel has been working on this item. Supervisor Gabriels' understanding is that John Perry and Tom Torebka will meet later this week with John Connolly to go over the step-by-step procedures on how to activate that pumping station safely and securely. The legal language review will continue to be worked on by Town Counsel, himself and representatives of The Sagamore in the coming months.

Town Counsel Michael Muller arrived at this point in the meeting.

#### BLDC Norowal – Town of Bolton to Accept Conservation Easement from NoRoWal Marina

Supervisor Gabriels said the next item is the consideration of accepting the donation of the Conservation Easement from NoRoWal. Counsel said the Conservation Easement documents are offered for signature by Supervisor Gabriels as Town of Bolton Supervisor, if the Town Board votes favorably in that regard. It is basically the last document in a long line of documents that DEC requires to finish the rest of the process. Then there is a complete disconnect as the transfer has been completed and the Town of Bolton truly is the owner of the Conservation Easement, which has been recorded and it is a done deal. Supervisor Gabriels asked if those contractual arrangements and resolutions were undertaken last Thursday night and Counsel answered by saying yes. The documents themselves that need to be recorded have already been recorded. The Town Board accepted the resolution at its special Town Board meeting and now they have a prepared resolution that basically says the Town of Bolton will transfer the Conservation Easement to the State of New York and in exchange for the transfer will receive \$2 million and will use the \$2 million to buy the second mortgage position from Mr. & Mrs. Lamb and Mr. Phinney.

Supervisor Gabriels asked if the Town of Bolton would hold an outstanding debt of \$2 million from the BLDC. Counsel replied by saying yes, that is correct. Supervisor Gabriels asked if it is correct that not one taxpayer dollar has been expended in order to effectuate this process and Counsel said that is correct, except for the \$8.30 for the certified mailing that the Town will be billed for next month. .

RESOLUTION #141

Councilman Andersen moved seconded by Councilman MacEwan to adopt a resolution TO CONVEY CONSERVATION EASEMENT TO THE STATE OF NEW YORK as follows:

IT IS HEREBY RESOLVED that The Town of Bolton, a Municipal Corporation, having offices at 4949 Lakeshore Drive, Bolton Landing, New York, shall act in such manner so as to convey, grant and transfer a Conservation Easement constituting a perpetual encumbrance providing for public parking and public marina access upon those lands and premises now or formally owned and occupied by the NoRoWal Marina, Inc., which is a wholly owned subsidiary of The Town of Bolton Local Development Corporation. Town Supervisor Alexander G. Gabriels, III, by direction of the Town Board for The Town of Bolton, as authorized by virtue of the terms of this resolution and with all legal authority granted to him in the capacity of Town Supervisor for The Town of Bolton, shall act in such manner consistent with the requirements necessary to convey a Conservation Easement (copy annexed hereto) to the State of New York for the purpose of facilitating a public marina facility in perpetuity upon the lands and premises of NoRoWal Marina, Inc. at the waters of Lake George situate in the Town of Bolton. This conveyance of a Conservation Easement constitutes a transfer of an interest in public lands constituting a portion of real property owned by the Town of Bolton and made consistent with the provisions of New York State General Municipal Law Section 72-h (a) from the Town of Bolton and shall constitute a permanent limitation of future development and building rights upon the lands now and formerly occupied by the NoRoWal Marina, Inc. (as described by deed dated December 14, 2005 and recorded in the Warren County Clerk's Office in Book 1484 at Page 42) while ensuring a right of public access for boaters to the water and islands upon Lake George and such Conservation Easement shall be recorded in the Warren County Clerk's Office and deemed a permanent covenant intended to "run with the land". In exchange for the conveyance of the aforementioned Conservation Easement, the Town of Bolton shall receive the sum of Two Million Dollars (\$2,000,000.00) from the State of New York and pay said sum over to Walter F. Lamb, Jr., Cheryl J. Lamb and Roger Phinney for the purpose of acquiring and receiving by assignment from the mortgagees aforementioned a secondary mortgage and security agreement with associated indebtedness due in the sum of Two Million Dollars (\$2,000,000.00) and said stated liens constituting security for the repayment of a debt justly due and owing by NoRoWal Marina, Inc. which shall be renegotiated between the Town of Bolton and the NoRoWal Marina, Inc. upon such terms and conditions as may be mutually advantageous for the perpetuation of the public marina and public marina facilities in the Town of Bolton.

ROLL CALL VOTE FAVORABLE AGAINST

Councilperson Scott Andersen yes  
Councilperson Owen Maranville yes  
Councilperson Robert MacEwan yes  
Supervisor Alexander G. Gabriels, III yes  
Councilman Saris absent. Motion Carried

Possible Future Use of Time Clocks by the Town of Bolton

This item is pending.

Pending Items:

There was no action taken on pending items.

Board of Health/Water Commissioners: None

New Business:

Reimbursement Request from Sam and Jackie Castro

Supervisor Gabriels said that the original escrow was set up to for a disbursement of \$909.00 per lot when a home was built and landscaping completed. The problem now is that some property owners received more than the \$909. There are five lots remaining, four of which are vacant. There is not enough money left to disburse the \$909 required, if and when they apply.

Counsel suggests that the Town Board could, as a matter of discretion, instruct him (Counsel) to maintain the escrow and make it divisible by the remaining five lots, which is equitable and fair. He doesn't want to be in the position of paying four lot owners and not having anything left for the last lot. He doesn't know why some got \$1,100.00 and some got \$909.00, but the deed is done and that is water over the dam and he recommends that what is left should be divisible by five. Councilman Andersen said he agrees with Counsel in disbursing the escrow equally among the remaining lots.

#### RESOLUTION #142

Councilman MacEwan moved, seconded by Councilman Maranville to authorize Town Counsel to maintain the escrow and disburse the remaining escrow monies equally between the five remaining lots when requested. Mr. & Mrs. Castro are one of the lot owners and they have completed their landscaping and the board agreed to send them their share. All favorable. Motion passed.

#### New Radios and Re-Programming of Existing Radios

Supervisor Gabriels: The County DPW Office and Sheriff's Communication Office recommend a complete upgrade of all systems within the County. Bolton Fire Chief and Warren County Sheriff Dept. Dispatch Officer Butch LaGoy did an inventory and analysis of all Town radios and provided a report to the Town Board. He sent out the bid to three companies. Some radios will be new to the Town, but the majority is for the replacement of old equipment. The bids that the Town received were from Adirondack Two-Way Radio for \$19,013.50, Pittsfield Communication Systems for \$18,966.75, and Wells Communication for \$19,020.34. The funds would come out of unappropriated surplus since it is an unbudgeted item.

Councilman MacEwan said he would like to keep it local. Supervisor Gabriels said that he thinks that in this situation the Town of Bolton is compelled to take the low bid of the three. It is always nice to keep it local but the law does not allow the Town Board to do that.

#### RESOLUTION #143

Councilman MacEwan moved, seconded by Councilman Maranville to accept the low bid from Pittsfield Communication in the amount of \$18,966.75 for the new radios. Funds to come from unappropriated surplus. All favorable. Motion passed.

#### Sound Amplification Permit Request from Ed Corcoran

Ed Corcoran said he is requesting a sound amplification permit for August 5, 2006 from 1:00 pm to 12:30 am for the "Great Magua."

Supervisor Gabriels said the issue is that the request is for hours past the regular 10:00 pm sound amplification curfew. Councilman Andersen asked what the permit granted last year was and Ed Corcoran said he believed it was until 11:00 pm and added that he would like to be able to accommodate locals who are getting out of work late, so they can enjoy the event as well.

Supervisor Gabriels said that Councilman Saris, who is a neighbor, told him that he has had no problem with this event in the past and has no problem with this request.

#### RESOLUTION #144

Councilman Maranville moved, seconded by Councilman Andersen to grant the sound amplification permit for August 5, 2006 from 1:00 pm to 12:30 am to Ed Corcoran for the "Great Magua." All favorable. Motion passed.

#### Bluebird Subdivision-Formation of Transportation Corporation for Wastewater System

Supervisor Gabriels stated that the Bluebird Subdivision has sought the Town's permission to establish a Transportation Corporation for their subdivision so they can form an entity capable of overseeing their community wastewater control system. The Town has done this before for other community wastewater

systems. Counsel recommends the Town Board give this request serious consideration by resolution to allow consent. The whole purpose of the statute, as it is written in Transportation Corporation Law, is that it is mandatory that the Town have notice and gives its consent. The purpose being that a municipality may wish to preempt the private developer in assuming responsibility that he trusts the Town does not. The Transportation Corporation Law says that if the Town Board consents then the subdivision can create a Transportation Corporation for the purpose of acting as if they were a public utility. It is an excellent way of being a responsible corporation to undertake the obligation. It is a solution to a problem that needs a permanent responsible party, and if it is not the Town, then it should be a Transportation Corporation.

#### RESOLUTION #145

Councilman Andersen moved seconded by Councilman MacEwan to approve Bluebird Subdivision's request to form a Transportation Corporation for the purpose of overseeing their wastewater system. All favorable. Motion passed.

Lee and Patricia Garrand-Request for Easement Right-of-Way across Water District Property.  
This item is pending.

#### Bob and Sylvia Phillips – Request for Reimbursement for Plant Replacement

Supervisor Gabriels: Mr. & Mrs. Phillips submitted a request for reimbursement for plants removed by the Sewer Dept. This was done to gain access to sewer manhole #26 in the fall of 2005. Having a shrub on top of a manhole for a considerable number of years only indicates how infrequently the Town of Bolton has needed access to that particular manhole. However, there is probably an outstanding easement, which the Town has not looked for regarding the Town maintaining access to that particular manhole. He doesn't know how a shrub got put on top of that particular manhole, but it was removed by the Town Sewer Dept. in order to video the sewer lines. Councilman Maranville asked if the plants were planted directly on the manhole cover or if they were planted nearby and grew over the manhole cover. Supervisor Gabriels replied he is not sure if the Phillips were aware of the manhole location, but it was landscaped around. Zoning Enforcement Officer Mitzi Nittmann said that there are two retaining walls there—one above and one below the manhole. Supervisor Gabriels said this is somewhat analogous to the porch built over another manhole that the Town of Bolton Sewer Dept. was required to gain access to by cutting a hole in the deck. He doesn't recall the Town incurred any cost for repair of the deck for the access hatch.

Councilman Andersen said he believes that laws exist somewhere that shows the Town of Bolton has a right-of-way. Counsel tends to agree. There are probably some circumstances where they are mysteriously not documented, but he will venture it certainly is an easement, preferably by document, but if not, certainly as an acquired right. This is a matter of the Town Board's sound discretion as to whether or not they deal with the obligation to reimburse for the plant that was removed. The Town of Bolton as a municipality has a primary right to maintain that manhole. A person should understand that if they wish to improve that manhole by putting a plant on it, it is really done at their own risk. A private owner does not acquire a right that is superior to the municipality.

Councilman Andersen said that while he may applaud somebody for decorating their own yard, which may reflect on the Town, he still thinks that the Town of Bolton has a right to maintain its infrastructure without incurring a cost and certainly those parties benefit from that infrastructure as well. Councilman MacEwan asked if there is a better way it could have been done. Supervisor Gabriels said that he thinks if you needed to get to that manhole, the shrub had to go and it is currently unknown if additional work will be needed at that location. Councilman Andersen said that if the Town of Bolton pays for this re-planting and then has to go back to do additional work there, it would be an awful precedent set and he thinks the Town Board ought to go on the premise that the Town of Bolton does just what it needs to do to gain access to keep the infrastructure operative without incurring any expense. Counsel said that he tries not to encourage the Town Board one way or another. He told the Town Board that he would feel legally

uncomfortable if it were to vote favorable to the claim. The Town of Bolton has the superior right here presumptively by documented use, and the Town of Bolton can't reimburse an owner for a shrub that was on top of the manhole. The Town Clerk said that there is an easement on that property and suggests the Town Board table the item so it can be further researched. Counsel agreed.

#### RESOLUTION #146

Councilman Andersen moved, seconded by Councilman MacEwan to table the Phillips' reimbursement request pending further information. All favorable. Motion passed.

#### Town Policy on Highway Department Sweeping Private Parking Lots

Supervisor Gabriels: We have to establish a sweeping policy for the Highway Dept. for the sweeping of private parking lots within the hamlet area as part of the Highway Dept.'s normal routine. This is really a codification and he hopes it is perceived as a codification of historic practices. The Town Board is adopting this policy because it would like to go on record encouraging the Town Highway Dept. to continue sweeping parking lots in order to maintain the beautification and cleanliness of the Bolton hamlet area.

#### RESOLUTION #147

Councilman Maranville moved, seconded by Councilman MacEwan to adopt Town Policy that the Highway Department continue the sweeping of the private parking lots in the hamlet as listed in the Highway Dept.'s proposal and to also include the following parking lots: Lake George Land Conservancy (former Tavern on the Pond) and Hometown Diner. All favorable. Motion passed.

#### Kelly Bishop – Possible Litigation Against Town for Stormwater Damage to Pond from 06/15/06

Supervisor Gabriels: This is a case where Ms. Bishop has a notice of claim against the Town and in discussing the option of dredging her pond, he still gets the sense that there is an allegation that there is something wrong with the Highway Dept.'s drainage culvert across the bottom of Church Hill Road, which is the cause of her particular problem. This is an allegation he is not particularly comfortable with and doesn't know how to handle at the moment. He does not believe the Town is at fault. Counsel said he thought the Town of Bolton was beyond that impasse. If there was an agreement between Kelly Bishop and the municipality he had urged it certainly be in writing clearly specifying what the Town is supposed to do, what she expects and it constituted language of release, meaning that this does it all and that there is no further plan. If an impasse is there, then they are not willing partners who will sit down and do what needs to be done in such an agreement and Kelly Bishop certainly maintains and deserves the right to proceed in the so-called lawsuit. It is a lawsuit that just has a chance of going around in circles and eventually getting to the table to negotiate a resolution. Supervisor Gabriels said that he thinks the Town of Bolton's difficulty is that there is no draft release language that would make the Town of Bolton comfortable in proceeding with this and solve Kelly Bishop's specific concerns in releasing the Town. Counsel responded by saying that he wouldn't mix words here—whatever it is the Town of Bolton was willing to do and Kelly Bishop was willing to accept would certainly be in this stipulation/agreement, but that would manifest at the end of the document as a clear understanding that this is in every respect a full and final settlement with respect to the claim.

Supervisor Gabriels said it may be, but he thinks they were very close to an agreement and may have jumped the line between rational thinking and emotional reaction on this and it was done because there was no paper in front of them. Counsel replied by saying that there was a time that Mr. Bartlett did represent Kelly Bishop and Mr. Bartlett indicated to Counsel a couple of times that if it had to go to litigation that he would not be representing Ms. Bishop. Both Counsel and Mr. Bartlett clearly understood that if there was an agreement it would certainly be comprehensive, detailed and final—there could be no lawsuit after that agreement. Supervisor Gabriels said that he thinks that the impasse is not having the language for review, and for Kelly Bishop's review. Counsel said he could give the Town Board a draft agreement for review. Supervisor Gabriels said he hopes with Counsel's drafting the Town of Bolton will be able to get something in writing, because he hopes they would be able to solve this reasonably and Counsel said he will contact the Town Board and propose something that is middle of the road and

doable.

#### Replacement of Antique Streetlights

This item is pending.

#### Bolton Zoning Map

Supervisor Gabriels: There was an area on the colored zoning map that was found to be an error on the Northwest Bay area where an RLC Zone was misclassified as an RL Zone only and it needs to be corrected, and getting it corrected in an electronic direction to the Warren County GIS services. Getting additional map copies may be costly, but correct maps need to be made and available. Councilman Andersen said if the map is not correct, the Town of Bolton should have it corrected—at the very least the Town of Bolton should have accurate maps on file.

Supervisor Gabriels said that in delineating the zones from the center line on certain roads on the original map it is either a specific figure of 528 feet and a larger size with twice that amount which is the only place where the center line and the zoning line are known to exist on that map. He is hoping there may be a way to make an amendment to the Zoning Code immediately incorporating those particular measurements so the Town of Bolton has something written indicating where the zoning line exists. Counsel asked if there is a metes and bounds description as to where the boundaries are in the Zoning Code, or if the reference is to the original map. Zoning Enforcement Officer Mitzi Nittmann said that she doesn't see it written anywhere. Counsel said it is an interpretation of the map done by resolution. If this is a correct interpretation then the Town Board does so and quite frankly the process would then be that the official map then has stapled to it the interpretive resolution, so that should this occur at that site on those properties of that zone the map is not misleading and can be interpreted by the Town Board's resolution. It does not require a brand new map and it is not something the Town of Bolton has in its code as metes and bounds. Mitzi Nittmann said that the only thing she uses is what is on the GIS. Counsel said yes, that is sort of a patch on a tire and eventually when Bolton's new Zoning Code is made there is a correct map, but right now it is an economical and a workable fix.

Supervisor Gabriels said an issue did arise some years ago, which is how they found out about those particular measurements and asked Counsel if he could come up with some draft resolution language. Counsel said yes, he would work on it.

#### RESOLUTION #148

Councilman Andersen moved seconded by Councilman Maranville to authorize correcting the Bolton Zoning Map and to have copies made for distribution. All favorable. Motion passed.

#### Request from Bob Phillips to Use Rogers Park as an Access to Black Mountain Point on Monday, July 7, 2006 for a Picnic to Benefit Double H Ranch

Supervisor Gabriels said that the request is for dropping off and picking up staff and counselors from Double H Ranch at the dock at Rogers Park and it would be about 6-8 vans accommodating approximately 80 people on Monday, July 17, 2006 in order to access Black Mountain Point for a picnic. Councilman Andersen said he has no problem with this request and the Town of Bolton should accommodate groups like this. Councilman Maranville said that there may be a need to section off part of the Dula parking lot if the vans will be parking there.

All Town Board members were in agreement to grant the request.

Public in Attendance:

Andrew Holding asked if it is correct that the Town Board is ultimately responsible for new Town of Bolton legislation and therefore proposed legislation should ultimately start with the Town Board.

Supervisor Gabriels said yes.

Andrew Holding said: he is in receipt of a letter from Zoning Enforcement Officer Mitzi Nittmann dated

November 22, 2005 that says in part that "...Town Counsel and the Town Board will be informed about your concerns about loopholes regarding the certificate of completion that you request to come from this office..."; he has been involved in some zoning issues and has had many discussions with the Zoning Administrator and Zoning Enforcement Officer. He has a great concern that he has also discussed with Warren County Zoning Enforcement Officer Frank Wait Coles who handles building permits for the Town of Bolton. He is the owner of ARH Construction Company for 35 years and has to deal with zoning, boards and zoning regulations. The Town of Bolton has come under some criticism for lack of enforcement of Zoning Regulations. There is a loophole that the Town Board should be aware of because it makes the whole zoning issue mute because it is almost impossible to enforce. The loophole is that most towns and cities have dealt with have at the end of a project, an affidavit of final completion which requires the applicant or the applicant's contractor or representative to make a sworn statement that the project was completed as per code or specifically only varied from code as per variances or permits granted to that specific project from the town. The problem is that when something gets built in Bolton, contrary to the PB permit issue or contrary to the Zoning Ordinances, it is strictly a Bolton matter and Bolton does not control the building permit. Because Bolton does not have a registered engineer in its building department, it cannot issue building permits, consequently that task has been passed on to Warren County. For example, Bolton issues a Letter of Compliance saying the plan that is here fits Bolton's zoning and Bolton is approving it, then Warren County takes that and issues a building permit. If the surrounding site work is done completely in contravention of the original PB permit, you go to Warren County and say there is a permit violation and tell them it is on the site plan and then Warren County says they don't have a site plan because they are not responsible. Bolton is responsible; therefore, the Certificate of Occupancy that is issued from Warren County cannot be withheld because of any violations of the Bolton Zoning Ordinances. Warren County is not willing or able to enforce our ordinance. If the Town of Bolton is not going to have a registered engineer and not going to keep all of the components of the permit process within the town government, they can come to an agreement that is also passed through Warren County that says that when we grant you a building permit we will do the site inspections and take care of that for which we have always had the responsibility for, however, before you can issue a Certificate of Compliance you need a final inspection of the building and you need an affidavit of final construction where someone, to not slow the process or put additional weight on the town zoning staff—it wouldn't even have to be a zoning officer's duty to do that final inspection, although it would be much better if that were the case—if you have a sworn affidavit from the owner or the owner's representative that is required before the C of O gets issued, then, at any time after the Town of Bolton has given up control of the C of O to Warren County and the Town of Bolton comes up against an owner saying he's going to do what he wants because you can't stop his C of O, the Town of Bolton has plugged the loophole because the owner doesn't get his C of O or to use his property until he has sworn to the Town of Bolton that he has done it in compliance with the Town of Bolton's plans; it is a very simple solution that he (Holding) thinks should be considered and put into place as soon as possible. Supervisor Gabriels said that it does sound like a simple solution requiring only legislative language. Counsel said; what Mr. Holding has stated holds a lot of merit; it is a system where what the Town of Bolton does and how it makes sure projects are reviewed and permission is granted then gets handed off to the County and they do their tasks as to what is required by the building code. The County is not concerned about the setbacks, grades, etc. It is very frustrating when you hand over an approval you don't necessarily have the guarantee that it is approved. Supervisor Gabriels asked if it could also apply to a septic system. Counsel said yes it could and added that what is interesting about what is proposed is that by making a sworn statement, which is supposed to be the truth and the whole truth, but should there be a misrepresentation it also cranks it up a serious notch because from an enforcement standpoint. You've offered a false instrument for filing with a public official which constitutes a crime. It has a great deal more impact to it. It has merit. There is enough in the code that would allow it to be done. It is a reasonable requirement. Zoning legislation starts at the PB, and this is the proper body upon Counsel recommendation and review unmanaged by the PB, but there are probably quite a few people on the PB that are quite capable of that because they get pretty frustrated granting permission or requirement then over time some are either misunderstood or just ignored. Supervisor Gabriels asked if during that process the Town Board would seek input from the Zoning Office

staff also regarding validity and Counsel said yes. Counsel said that he would like to research the code because he still thinks there are still some provisions in there that permits it to be done, and if the Town Board as a body resolves that is something it would like to see the Town of Bolton PB doing then it would put some heat in enforcement because he thinks the Town of Bolton has a code that says that reasonable requirements may be imposed.

All Town Board members agreed to authorize Town Counsel to prepare draft language on this matter. Mitzi Nittmann, Zoning Enforcement Officer, said that in their meetings with GIS, Sherry Norton and Warren County, more permit tracking sharing of information has been discussed and while Mr. Holding has a good point, she is not sure how the Town can enforce what Mr. Holding is proposing.

Supervisor Gabriels said he thinks the Town of Bolton would have a problem with enforcement, but in any rule of regulation there is always the problem of enforcement, but a sworn affidavit would hopefully be self-policing and hopefully would resolve a considerable number of those potential violations right up front—the intent is to get to a majority of them and not to put the Zoning Enforcement Officer's job out of business at all. Mitzi Nittmann said her whole thing is whether you are actually going to get the truth or not. Supervisor Gabriels said that is always the case.

Bob Weisenfeld said that this is an intriguing idea and in response to Mitzi Nittmann's question of enforcement the matter would be referred to the District Attorney's Office for further investigation.

Counsel said: the truth and reality is that the District Attorney's Office would decline to prosecute it (their plate is full in dealing with big stuff) then the Town Board would have to appoint Town Counsel as special prosecutor; and it would be a crime and could be prosecuted in addition to being enforced, it would be another tool in the arsenal. Supervisor Bob Weisenfeld said that this is an intriguing idea and in response to Mitzi Nittmann's Gabriels said that he would ask District Attorney Hogan her input on the matter as the Town of Bolton goes through this deliberating process.

#### RESOLUTION #149

Councilman MacEwan moved seconded by Councilman Andersen to authorize the following Budget Transfers:

FROM TO Amount

General Fund

12204 Supervisor 12202 Equipment \$151.00

Surplus 30102 Public Safety/Radio\$20,000.00

Highway

Surplus 51104 Road Repairs \$11,000.00

Surplus 51204 Bridges \$22,000.00

Sewer

81304 Treatment 81302 Equipment \$606.00

All favorable. Motion carried.

Payment of Town Bills:

#### RESOLUTION #150

Councilman Maranville moved seconded by Councilman Andersen, 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 9:13 pm to discuss possible litigation due to June 14, 2006 storm damage. All favorable. Motion carried.

Councilman MacEwan moved seconded by Councilman Andersen to adjourn executive session and reconvene the regular meeting and adjourn at 10:00 pm. All favorable. Motion carried.

Minutes transcribed by: Respectfully submitted by:

Jennifer Torebka Kathleen Simmes

Recording Secretary Town Clerk  
0716/2006