

TB – Minutes June 6, 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

Absent: Town Clerk Kathleen Simmes

REGULAR MEETING:

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

Pledge of Allegiance – Councilman Maranville

Announcements:

1. Bolton Chamber of Commerce is sponsoring the Lumberjack Show scheduled for June 17, 2006 in Vet's Park in conjunction with the Fire Chiefs Convention. Funds from the 2005 Bolton Bed Tax have been committed to the Lumberjack Show in the amount of \$8,000.
2. Adirondack Runners will hold their 30th annual run on Sunday, July 2, 2006.
3. Plant sale sponsored by the Emmanuel United Methodist Church in Dula parking lot has been re-scheduled for Saturday, June 10, 2006 from 9am to noon.
4. Bolton Free Library will be celebrating its 100th anniversary on Saturday, July 29, 2006—the public is invited.
5. Meal Site Menu is available in the Town Hall.
6. There are now 2 Town of Bolton website addresses: www.town.bolton.ny.us and www.townofboltonlanding.com.

Public in Attendance:

Dave Forshay, representing the Bolton Chamber of Commerce, explained that the Lumberjack Show is scheduled for Saturday, June 17, 2006 in Veterans Park. The half-hour shows will take place at 11:00 am, 2:00 pm and 5:00 pm. They are advertising to promote the event. The intention is to draw day business to Bolton. They will be requesting a donation of \$2 per person with a maximum of \$5 per family to see the show. Any profit made after expenses will be used for a donation to the Fire Dept. and any additional going toward another fireworks show. We have no idea as to the anticipated volume of people attending the event, so the plan is to have people park their cars in town wherever parking is available, but not in the park.

Supervisor Gabriels said this event is not like the OCC where the town knew there would be a significant draw and asked if any seating arrangements are being made. Dave Forshay said the Lumberjack Show needs a 4,500 square foot footprint that the people will gather around, so there are no plans for seating. Supervisor Gabriels asked about volunteers for security. Dave Forshay responded by saying they will be using as many Chamber volunteers as possible. Councilman Andersen said that Dave Stotler spoke to him and the Chamber would like the full Town Parks crew to work that day. Dave Forshay said he would find out and get back to the Town Board.

Supervisor Gabriels asked if there would be hours restricting parking and Dave Forshay said the Lumberjack Show would be there for early morning setup which would only take about a half-hour and the Lumberjack Show would be taking everything down, so it will all be cleaned up on Saturday. Councilman Saris asked where the show would set up in the park and Dave Forshay said they'd set up and if there is any plan to utilize the basketball area. Dave Forshay said the Lumberjack Show brings in a flatbed and to his knowledge the basketball area will not be utilized. Supervisor Gabriels said that there is

a need for somebody to make sure there are no heavy trucks or trailers in the basketball area. Councilman MacEwan suggested the basketball court be roped off to keep vehicles off of it. Dave Forshay ended by saying that the Bolton Chamber of Commerce sees this Lumberjack Show as being an annual event that will be an investment for the future.

Bob Weisenfeld asked if anyone had received the spring stormwater report from Bell Point Shores. Supervisor Gabriels said it has not been received. Counsel said he hasn't received it either. Bob Weisenfeld requested the Town Board authorize Counsel to send a letter reflecting that the storm water report is overdue. Supervisor Gabriels stated the Town will send a letter to the Homeowner's Association regarding the past due report.

Correspondence:

The Town has received a fax from Marci Dreimiller on the Adirondack Run—their insurance certificate. Thank you from Audi Vernum thanking Tim Coon and the Highway Dept. for picking up her mother's refuse during the Senior Citizen's cleanup.

Supervisor Gabriels read a letter from Sandy and Jeff Anthony of Lagoon Manor Marina regarding a request for buoys that was made last year and the request was denied.

Jeff Anthony, representing Lagoon Manor Marina said they originally asked for 5 mile per hour buoys but now thinks white pencil hazard marker buoys would be acceptable. Either one would be okay. Lagoon Manor Marina is a commercial marina licensed by LGPC for 62 boats, which has nothing to do with the Lagoon Manor Townhouse project. It is a separate business. The marina is a rental situation only and anyone can rent a dock and have a boat there. The Lagoon Manor Marina docks are in close proximity to the Lagoon Manor Townhouse docks, which are permitted by the APA and LGPC to dock 34 boats. There is a total of 96 boats plus about 15-20 non-motorized craft there. The channel or harbor mouth lets all the boats enter and exit at virtually one point, which is obscured to the north by the boathouse, and boats that are docked when traveling north on the lake. There is a blind spot there and boats traveling in both directions cause the wake. Considerable money has been put into Lagoon Manor Marina. Last year all the docks were rebuilt. There is considerable interest in keeping the marina a safe place and a family place. People and boaters are allowed to and do swim off the end of the dock. We are requesting the Town Board to consider the buoy installation as a safety issue by installing two buoys. One 100' off the main dock and one out in the open channel where the boats enter and exit .in an effort to nudge the boats out and allow the boats leaving the marina a glimpse down the lake which will result in a safer situation. There are areas on the lake that now have pencil buoys in place. I request that you consider this as a safety issue. The boaters have been requesting this for the last four or five years. The Homeowner's Association would have been here to request the same if they had known this was being discussed, since they get beat up even more in the wake that's out there.

Supervisor Gabriels said that Mother Nature's waves are a lot more persistent and damaging than the allegation of waves from the wakes of boats. Jeff Anthony said that is a secondary concern. Our request is to slow boats down close to the docks where the traffic situation is. Councilman Saris said he is very sympathetic. He has mixed feelings because people go too fast too close to shore. The problems caused by boat wakes are real and significant. It is very disappointing that the enforcement that goes on out there seems to ignore these issues. There are virtually no tickets given to people for going too fast too close to shore and no tickets for people who are irresponsible with their wakes. Boat operators are responsible for the wakes put out by their boats. Enforcement on Lake George seems to concentrate on many other things other than that, there are many other people along the shoreline that would like buoys put out in front of their places. The Town would end up with a perimeter of buoys 100 ft. from the shore or a request for it anyway and he is not sure that is what the Town wants to see. Jeff Anthony sympathizes with each individual boat owner on the lake that has an unprotected dock, but we have 64-65 boats going in and out at one point and it is complicated by the fact that there is a boathouse that obstructs the view and there are boats docked at that boathouse that also obstruct vision.

Melanie Ostberg said she rents from Lagoon Manor Marina and it is a very difficult situation to get a 25' sailboat out into the water when boats are racing along the shore. She is concerned with safety and the blockage of view for those people who are traveling from the south to the north end of Northwest Bay. It is a safety issue, not necessarily a wake issue.

Councilman Andersen asked how many times Lagoon Manor Marina has asked the different enforcement agencies to take action on the matter. Jeff Anthony answered by saying that there have been many phone calls and he has been out there with DEC or LGPC officers on several occasions every summer. They have made complaints and they have talked to them, but he can count on half of my one hand the number of tickets they have seen issued in that area. Not that those agencies don't do a good job, but they have other things on their minds. Supervisor Gabriels said that the Lagoon Manor Marina letter states that DEC won't put buoys in until the local jurisdiction does that and asked if the buoys in the cove were the same. Jeff Anthony said that is what Mike White told him and he would suspect DEC put them in by themselves—the only ones in the cove are DEC maintained buoys. Supervisor Gabriels said no jurisdiction was sought from the Town of Bolton for the buoys in the cove and Jeff Anthony agreed. Councilman Saris said the point is that the cove is still Bolton and DEC didn't ask about the Town's jurisdiction then. Jeff Anthony said that he never talked to DEC—other than he was told by Mike White that DEC puts the buoys in and maintain them. Councilman MacEwan said that he doesn't know much about the bay and it doesn't seem like an unreasonable request from a safety standpoint. Jeff Anthony said they didn't create this request—it was the boaters who rent the space at Lagoon Manor Marina.

Supervisor Gabriels asked what would happen if the pencil buoys were put in and there are still problems. Jeff Anthony said it would give him a reason and more forcefully pick up the phone and call DEC or the LGPC that people are running through the buoys—it would enable him to more forcefully make a complaint.

Councilman Andersen said he has hesitation with 5 mph zones and buoys, in fairness he feels very awkward in putting the Town in the position of authorizing the buoys, because from old school (he did 17 years working for LGPC) he thinks Mike White is a little bit mistaken in that the LGPC does not have anything to do with those buoys or the maintenance, however ENCON does and has for years. Dick Swire at Three Brothers Island did it and got approval—there are two 5 mph buoys on the inside of that 100 ft. from shore. The Town of Bolton did not authorize those. Dick Swire got permission and it went through Green Island to Ray Brook. Ray Brook, which is the director of buoys for Region 5, authorized those, because at some point when it becomes a navigable aid on that waterway, you have now put ENCON in liability. I am a little hesitant in putting the Town of Bolton in that position when from past history (the rules may have changed and he is not disputing that) Ray Brook had to approve those because anytime a buoy went on that waterway somebody is now liable if somebody runs into it. ENCON is big on making sure they are not liable for anything they didn't approve. Jeff Anthony said history as he knows it, as of last year, was from Mike White personally, who said go to the Town Board. It is a local decision to allow buoys to go in and DEC will maintain them and put them in and if there is a procedure that I need to go through with DEC I will do so.

Supervisor Gabriels said with respect to the LGPC, if Councilman Andersen's recollection is correct, then the matter should come from DEC in allowing the state to assume whatever liability might be associated with putting the buoys out. He is sure the Town Board would support DEC's decision, but if not this question could be revisited again, rather than have the Town go out on a limb of who is responsible for what at this point. Councilman Saris suggested the item be tabled so DEC input could be obtained. Supervisor Gabriels said there is enough time before boating season. Counsel thinks Councilman Andersen's rendition is correct and he thinks Mike White is wrong and that DEC is in charge here. Jeff Anthony said Mike White told him the procedure was that the first thing that had to happen is that the Town had to request the buoys and enact a local law, legislation or ordinance that says the buoys could be put in. Counsel said now that tells him he thinks Mike White is dead wrong. I have never done a Local Law or Town Ordinance on buoys and I don't know of any lakeside municipalities that have. I am

standing by Councilman Andersen's rendition, which is my understanding as well. Jeff Anthony said then he might need to get a permit from DEC.
The item was tabled and pending further information.

Letter from Krantz & Rehm regarding the Garrands request for an easement across water district property.

Bolton Free Library minutes.

E-mail from Mr. Jones with concerns of excessive speed and lack of road markings on Braley Hill.

Letter from Mark Sengenberger of the APA regarding an Edgecomb Pond Road development project.

E-mail from Kronus recognizing a service request has been received on the issue time clocks.

Draft preparation of the Holmes and Associates analysis from LGPC on recreational opportunities within the Lake George Basin.

Correspondence from Julie Martin of the LGA regarding the Town's contract dealing with stormwater on Indian Brook.

Letter from Warren-Washington County Healthy Heart Program on the flags for pedestrian walking on Main Street.

Note from the Town Clerk regarding non-payment of a civil penalty owed by Michael DiGiulio.

Note from Nace Engineering on the question of inspection of the septic system on Crown Island.

Reports:

Councilman Maranville

ASSESSOR:

The tentative assessment roll consists of 3,535 entries, which makes a total assessed value of \$1,076,655,207. The assessment roll is at a uniform percentage value of 72% and it is expected that the tentative equalization rate set by New York State will also be 72%, and there were 322 notices of change of assessment sent out.

POLICE DEPT:

q Hours officers worked: White – 149, Howse – 112, Schroeder – 92.5. Miles patrolled: 1,443 miles. Fuel used: 110.6 gals. Officers investigated 3 criminal reports, 7 assisted other agencies, 2 security alarms, 6 uniform traffic tickets issued, 1 parking ticket issued, 1 domestic call, 4 court securities, 1 arrest made, 7 emergency medical assists, 9 miscellaneous complaints, speed enforcement training for three officers and 12 mandates for special assignments.

JUSTICE COURT:

q A/R: Judge Harry Demarest - \$4,795.00. Judge Edward Stewart - \$3,260.00. Total: \$8,055.00. There is an itemized list located in the court breaking down the amounts.

Councilman Saris:

TOWN CLERK'S OFFICE:

q Total Local Shares Remitted: \$12,532.80. Non-local Revenues: \$533.25.

Total State, Local and County Revenues: \$13,066.05.

SEWER PLANT:

q 7,834,730 gals. wastewater for an average of 252,733 gals. per day. Had a lot of rain this month and still have a very large I&I problem. No violations. All beds are dry except Bed #3. Calibrated one of the flow meters and have been doing service on the pumps. Problem still exists with grease entering the system. Stations were cleaned and came out with 5 garbage cans full of grease. Cleaned EQ tank, diffusers and filters. Pump #3 at south station currently down. 32,000 gals. liquid sludge hauled and

general maintenance around the plant.

HIGHWAY DEPARTMENT:

q No report.

Councilman Andersen:

RECREATION DEPT:

q No formal report, but Councilman Andersen said the Rec. Center has lifeguards working until 7:00 pm and there are only two spots left in the day program.

BUILDINGS & GROUNDS DEPT:

q No formal report, but Councilman Andersen said; the Senior Center has requested repairs to the blacktop in front of their entrance. The Parks Dept. is finishing up the bathrooms and George Mumblow will get the quotes for the park fence design.

WATER DEPT:

q 6, 653,986 gals. of water made which equates to 214,664 gals. per day. Pond level is over the spillway and there was 6.7 inches of rainfall in the month of May. Water Dept. kept up with general maintenance and turned on service to several summerhouses. The generator at the Water Plant worked fine during the power outages.

PLANNING/ZONING OFFICE:

q Permits applied for: 20 certificates of compliance / 9 wastewater disposal systems / 3 variances / 3 site plan reviews / 0 subdivisions / 11 storm water permits. Total Miles Logged: 0. A/R: \$2,138.60.

CODE ENFORCEMENT:

q 19-page report filed. 295 miles logged. 1 timber harvest letter / 1 open well letter / 2 Town Board resolution letters and 1 septic bill installation inspection. Councilman MacEwan said he would like the Town Board to consider Town transportation be provided to the Code Enforcement Officer in the future.

SUPERVISOR:

q Total receipts: \$295,805.51. Total disbursements: \$383,033.75.

q Stormwater: Last month there was additional stormwater damage to New Vermont Road and East Schroon River Road.

q Warren County: A full discussion of the proposed Public Authority Law will take place when and if the Albany Legislature enacts the enabling legislation.

PUBLIC HEARING:

Supervisor Gabriels opened the public hearing on proposed changes to Open Container Ordinance #8 SECTION 1. Legislative intent.

It is the intent of the Town of Bolton, as an exercise of its police power, to promise the general health, safety and welfare of the residents and inhabitants of the town by enacting this ordinance upon a finding that the possession of open containers of alcoholic beverages by persons on certain public lands, except under controlled conditions, is detrimental to the health, safety and welfare of the residents of the Town in that such possession contributes to the development of unsanitary conditions and the creation of nuisances, including but not limited to, littering and raucous or other disorderly behavior. It is further the intent of the Town of Bolton Town Board that this ordinance not be considered as a traffic regulation insofar as it relates to motor vehicles or the operation thereof.

SECTION 2. Definitions.

For the purpose of this ordinance, the following terms shall have the meanings ascribed to them. All other words shall have the meanings normally ascribed to them in regular usage.

ALCOHOLIC BEVERAGE – Includes alcohol, spirits, liquor, wine, beer, cider and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being.

CONTAINER - Any bottle, can, glass or other receptacle suitable for, or used to hold, any liquid.

PUBLIC LANDS – Any highway, road, street, avenue, alley, public place, public driveway, park or any other public way, including a parking lot or parking area, as the same are defined in Sections 129-a and 129-b of the Vehicle and Traffic Law of the State of New York.

TOWN – Town of Bolton.

SECTION 3. Prohibitions.

It shall be a violation of this ordinance for any person to:

A. Consume any alcoholic beverage on any public land within the Town contrary to the provisions hereof.

B. Have in his or her possession any open container containing any alcoholic beverage on any public lands within the Town.

C. Have within his or her possession for the purposes of consumption on public lands, by either oneself or another person, any open container containing an alcoholic beverage on any public lands within the town.

SECTION 4. Exceptions.

A. The foregoing prohibitions shall not apply in the event of a fair; picnic or other community gathering for with written permission has been granted by the Town Board.

B. The foregoing prohibitions shall not apply to the transportation of an unsealed but not open container across public lands of the Town from one point to another, with no intent to consume the contents of such open container while upon public lands.

C. Application of this Ordinance shall not apply on any day between the hours of 7:00 a.m. and 11:00 p.m. at the following locations:

i) Rogers Memorial Park

ii) Veterans Memorial park

iii) Bixby Park

iv) Huddle Beach

v) Conservation Club

D. Special provisions shall pertain to the use of the Conservation Club properties and the application of this Ordinance as follows:

i) During any authorized party or event held at the Conservation Club property by any individual or entity who has rented those premises from the Town of Bolton, their guests, invitees and participants over the age of twenty-one (21) years, shall be permitted to have custody and possession of alcoholic beverages in open containers for the entire limited period of the rental event.

ii) Under all other circumstances where the Conservation Club property has not been specifically rented for a limited period of time for an event as described in paragraph D i), possession of alcoholic beverages in open containers shall be permitted to any individual over the age of twenty-one (21) years only between the hours of 7:00 a.m. and 11:00 p.m.

SECTION 5. Applicability.

This Ordinance shall apply to all persons on public lands in the Town except as provided in Section 4 above and shall not apply to any person drinking an alcoholic beverage, or in possession of an alcoholic beverage, while operating a motor vehicle upon any public highway within the Town in violation of Section 1227 of the Vehicle and Traffic Law of the State of New York. This Ordinance shall not in any manner infer the authorization of consumption or possession of alcoholic beverages by any person under the age of twenty-one (21) years.

SECTION 6. Penalties for offenses.

An offense against any provision of this Ordinance shall constitute a violation punishable by a fine of not less than Fifty Dollars (\$50.00), but not to exceed Two Hundred Fifty Dollars (\$250.00), or by imprisonment in the Warren County Jail for a term not to exceed 15 days, or by both such fine and

imprisonment.

John Gaddy asked how Ordinance #8 relates to the islands and Supervisor Gabriels answered by saying that Ordinance #8 deals with open containers on contiguous land. The island campsites are under state enforcement.

There were no other comments and the public hearing was kept open.

Unfinished Business:

Ridge Line Development

Supervisor Gabriels stated that last month we had a request for a moratorium on ridgeline development. We requested comments from the Planning Board. Councilman Saris noted that the Planning Board recommended no moratorium be enacted on ridgeline development, but rather that there be an increase in enforcement and fines. Counsel said enforcement of an alleged violation could take at least four different paths, which are: civil penalty, non-criminal penalty, alternative remedy and injunctive relief. Councilman Saris asked if there is a maximum penalty under alternative remedy that can be assessed per violation. Counsel answered by saying \$1,000 is the maximum civil penalty established in the current ordinance. The Town of Bolton currently doesn't enforce multiple count, but you could. Councilman Saris asked if the Town Board could request that trees be re-planted and Counsel said yes. Councilman Saris asked if it is also achieved by the Town Board imposing a civil penalty that would require people to bring the violation into compliance and Counsel replied yes. Councilman Saris asked when the clock starts running and ends with regards to multiple counts, each count being a week. Counsel said it continues on until the Town Board terminates it. The only exception would be in the Town Law where there is a violation and the applicant makes a petition to the ZBA to seek a variance to cure the situation. Unless you are talking about a serious matter of public safety or health or general welfare, the enforcement proceedings are stayed. Supervisor Gabriels asked if the counts work by law or discretion. Counsel said those work by law and the discretion comes from the settlement, the stipulation, the order of consent, or the judge's determination.

John Gaddy feels the town needs a moratorium. He still believes with the photographs shown that the Town is still in danger of having its visible assets attacked by excessive clearing despite all of the current town regulations. The town needs a moratorium to develop better guidelines Councilman Saris had the opportunity to speak with Herb Koster (Chairman of the Planning Board) who suggested that part of his concerns is that the moratorium doesn't address already developed properties that seem to change hands then get cleared more and more. That still falls strictly under enforcement. Herb Koster suggested that something more substantial and perhaps more follow-up inspections would be required.

Supervisor Gabriels said that inspection is at the discretion of the Code Enforcement Officer working at the behest of the Town Board and asked which board has the authority to deal with re-planting. Councilman Saris said that all the boards need to be concerned with the issue regardless of which board has that authority. If something substantial needs to be replaced then there is a need to make sure the follow-up is done. Some of that would require some input from the Town Board toward the Zoning Office in suggesting a plan for follow-up visits. Perhaps a policy needs to be put in place. Barry Kincaid said that he clears many Lakeview lot-clearing sites where you can't or shouldn't be able to see houses from the lake. People should be able to look onto the lake as long as the ordinance guidelines are followed and the view is filtered.

Bob Weisenfeld said the town has a situation that was created by developers who don't follow the rules. He suggests the town has a provision in the code, which allows the Code Enforcement Officer to issue notices of violation when she sees a violation

Tax Certiorari Case – Rainbow Beach

Counsel said that this litigation goes back a series of years beginning in 2003 in terms of tax assessment and it encompasses two tax parcels with approximately 40 principal structures. Counsel read the

proposed settlement details and said that the proposed settlement is agreeable to all concerned parties.

RESOLUTION #114

Councilman Andersen moved seconded by Councilman Saris to accept the proposed settlement for the Rainbow Beach Tax Certiorari Case and to authorize Counsel to sign the stipulation as follows: The settlement allows for both parcels to be valued as one assessable unit. The new assessment total for both parcels totals \$6,963,549 for the following years 2006, 2007 and 2008. The only exception would be if there was removal of buildings or capital improvements or a town wide reevaluation. The combined refund due for the years 2004-2005 totals \$6848.00 and the refund for 2005-2006 totals \$7309 without interest or costs. This is agreeable to all parties involved. All favorable. Motion passed.

Tax Certiorari Case – Martinese vs. Town of Bolton

Counsel stated that this litigation is for the years, 2004 & 2005. Counsel read the proposed settlement that is agreeable to all concerned parties.

RESOLUTION #115

Councilman Saris moved, seconded by Councilman MacEwan to accept the proposed settlement for Bernard & Mary Martinese tax certiorari case and to authorize Counsel to sign the stipulation as follows: The assessment has been lowered by \$75,000 to \$1,246,400 and is applicable for the years 2006, 2007 and 2008. The only exception would be if there is removal of any buildings, or capital improvements or a town wide reevaluation. There is no school tax refund. The following refunds are County: \$225 Town: \$41.25 Fire \$22.50 All favorable. Motion passed.

Banner Ordinance

Councilman Saris believes that the Zoning Administrator's determination is that what is proposed in the Town's temporary banner ordinance still, in her opinion, constitutes a sign. He asked if the TB could appeal the Zoning Administrator's determination. Counsel said that any interested party or person who wishes to be heard on the issue of the Zoning Administrator's determination could present the matter to the ZBA, but if the Town Board wished to do it as the Town Board they could.

Councilman Saris replied by saying that his concern last month was that the ZBA made a determination that a banner is a sign, but we have a Zoning Ordinance that covers signs also. On the other hand the Town is looking at creating an ordinance, but a Town ordinance can't trump our Zoning Ordinance. The Town ordinance would be less restrictive than the Zoning Ordinance. The only way around this would be if that thing described in the Town Ordinance would be considered not a sign. He thought perhaps because it is temporary in nature and when the ZBA considered the banner on the Episcopal Church, which was clearly not there in a temporary nature that they had considered it to be a sign because it was hung in a rather permanent way as signs usually are. They might consider it differently given something that was hung for a much shorter period of time and might not be considered a sign. Zoning Administrator, Pam Kenyon doesn't feel comfortable making that determination or though she made a determination no matter what—even if it is only hanging for 30 days or any length of time, it is still a sign. This kind of leaves our proposed ordinance in limbo. I would suggest the TB appeal the Zoning Administrator's decision to the ZBA, who made the determination that a banner is a sign, and suggest that perhaps a banner when hung for a temporary period of time is not a sign, it is then a banner, and if you hang a banner basically up forever, then yes, it becomes a sign because it is serving the same function as a sign. If the ZBA members were to make that determination then the Town could move forward with its proposed ordinance. Councilman MacEwan said that makes more sense than what's been discussed over the last 2 months.

Supervisor Gabriels said he was under the impression that the Town Ordinance would trump the Zoning Ordinance and Counsel replied by saying that he is not sure he wants to answer as to which would have more power. The ordinance was selected in the effort to try to simplify a process first and foremost in an attempt to make it user friendly. He is trying to convince the Zoning Administrator of pretty much what

Councilman Saris is saying, which is that there is a big difference between a sign that is permanent and one that is not. Many municipal ordinances make that distinction. Supervisor Gabriels asked if the Town should enact a temporary sign ordinance, in the event someone challenges the ZBA. Counsel said he guesses the risk is that if it went in advance upon enacting it and the ZBA favorably somehow determined that a permanent sign and a temporary sign are not different, and then the Town of Bolton would sort of have an ordinance that has no meaning.

Councilman Saris said he thinks the ZBA members were correct in the determination they made given the circumstances of the item for Henrietta's Attic and Counsel agreed. Councilman Saris said the ZBA was right and the ZBA wasn't asked to determine something that gets hung up for three or five days or 30 for that matter. Counsel said to call him an optimist or naïve, but he didn't get a "no" from Zoning Administrator Pam Kenyon he got an "I'm thinking about it."

Councilman Saris said that if Zoning Administrator Pam Kenyon makes a favorable determination in that respect then great, but if not, he feels the matter should be put before the ZBA, as he feels it is a very reasonable scenario.

Supervisor Gabriels asked if the Town Board would like to have this banner ordinance in place prior to, in the event that the ZBA makes a ruling in the favor that says temporary is temporary. Councilman Saris asked if the Town Board can adopt it and choose a date that it becomes effective sometime in the future and Counsel said absolutely—to be effective 10 days after publication and then obviously, the Town Board holds it in its pocket and does not publish it until it knows it has an ordinance that is regulating something.

Councilman Andersen said that Town Counsel represents the Town Board and the ZBA and asked if that would be a different attorney or a different person from Counsel's office. Counsel said it has the potential of having attorney conflict and that is that the ZBA can be of a different opinion. Councilman Saris proposed that if the Town Board would like, he will go before the ZBA as his status as a citizen on this matter and Supervisor Gabriels said that it should be clear that he (Saris) is being asked upon the request of the Town Board.

RESOLUTION #116

Councilman Andersen moved seconded by Councilman Maranville to empower Councilman Saris to represent the Town Board before the ZBA on the matter of the banner/sign issue. All favorable. Motion passed.

RESOLUTION #117

Councilman Andersen moved, seconded by Councilman MacEwan that given consideration to all possible environmental impacts regarding Ordinance #45, that the Town Board declares that there are no negative impacts noted and that this is not a substantial change in any existing ordinance and it does not in any way impair anything in the environment in the Town of Bolton, and to declare a negative declaration. All favorable. Motion passed.

RESOLUTION #118

Councilman Saris moved, seconded by Councilman Andersen to adopt Ordinance #45 entitled "Regulation and Provision for Temporary Banners" with the provision that it doesn't become effective until ten days after publication and to declare a two-week grace period on the enforcement of the ordinance. All favorable. Motion passed.

Proposals from Thermal Associates

Supervisor Gabriels: Thermal Associates presented two proposals: one for system leaks in the air conditioning system in the Town Clerk's Office. The cost for fixing the problem totals \$4,225. To correct

the winter heating problems in the court area the cost would be \$5,910. The Town did not seek two other competitive quotes as of yet for these services. Counsel said the matter is a unique situation of a contractual relationship so competitive quotes are not needed in this situation.

Councilman Andersen said the quote is for replacing the heat pump unit in the court area and the Town Board has talked about replacing the whole system. Supervisor Gabriels replied by saying that this was the first go round into replacing the whole system. Councilman Saris said he doesn't think the Town has too many options at the moment, other than to maintain what it currently has. The Town should seriously consider at some point perhaps getting a more reliable system.

Donna Boggs said the Town Clerk's offices air conditioning works right now because more fluid was put in the unit, but the fluid leaks out. Councilman Andersen asked if there was any time estimate given by Thermal Associates on how often the fluid needs to be refilled and Donna Boggs said no and added that the repair estimates are only good for 30 days. Councilman Saris said he thinks the TB is not going to look at this problem as this as an unbudgeted expense .It is going to take a long time to get quotes and proposals. Someone needs to develop a set of specs for a new heating system, and the Town should try and take care of it during budget time. The heat problem at that end of the building is not going to go away. Councilman Andersen and Supervisor Gabriels agreed.

RESOLUTION #119

Councilman MacEwan moved, seconded by Councilman Saris to accept the proposal from Thermal Associates for repair of the system leaks in the Town Clerk's Office in the amount of \$4,225. All favorable. Motion passed.

Councilman Saris suggested the Town Board hold off on the Thermal Associates proposal for repairs to the system in the court because while they are not adequate, the systems there are still working and Councilman MacEwan agreed. The Town Board tabled the Thermal Associates proposal for repairs to Town court system.

Contract with Sagamore Resort Regarding Emergency Pumping Station
This item is pending.

BLDC Norowal

Counsel said his legal advice is to table any action on the activities of the Town Board with respect to accepting or facilitating the conveyance of the Conservation Easement until directions in writing from the CPA are received.

RESOLUTION #120

Councilman Saris moved, seconded by Councilman Andersen to table any action on the activities of the Town Board with respect to accepting or facilitating the conveyance of the Conservation Easement on the NoRoWal property until the directions in writing from the CPA are received. All favorable. Motion carried.

Possible Future Use of Time Clocks
This item is pending.

Zoning Office – Memo Dated 04/28/06 on Replacement Copier
This item is pending.

Close Public Hearing on proposed changes to Ordinance #8 on Open Containers
No additional Town Board or Public comments at this time.

RESOLUTION #121

Councilman MacEwan moved, seconded by Councilman Maranville to close the public hearing on proposed changes to Ordinance #8 on Open Containers. All favorable. Motion carried.

RESOLUTION #122

Councilman Maranville moved, seconded by Councilman MacEwan to adopt the proposed changes to Ordinance #8 on Open Containers. All favorable. Motion carried.

Pending Items:

There was no information given or action taken on pending items.

Referrals from Code Enforcement Officer / ZBA / BPB:

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

Timothy Harrington gave an overview and said; when he bought the property the land was cleared—he didn't realize there was a problem with the initial builder, they cut down saplings—not full-grown trees. He understands the laws but the Town of Bolton needs a clearer definition of what constitutes a "tree", and whenever they inquired, nothing on the property has ever been considered forestry, trees, etc.

Supervisor Gabriels said there was a young birch tree taken down that was pretty substantial. Timothy Harrington replied by saying that there is nothing on that hill that is old growth at all. There needs to be a definition of a tree so tax payers can have a road map of how they can operate on their own property. Councilman Saris asked if it was a violation of clear-cutting tree ordinance or a no-disturbance area where there is not supposed to be any cutting activity. Counsel referenced Code Enforcement Officer Mitzi Nittmann's letter that stated, "...Clear-cutting in a no-disturbance zone referred to in the subdivision conditions of approval..." Counsel said that Code Enforcement Officer Mitzi Nittmann cites the section in the Bolton land use code to which the applicant must be in compliance with his site plan review, specifies scenic travel corridor overlay district D, cites soil erosion standards that are included within the supplementary regulations including clearing regulations. Counsel said Ms Nittmann says in her correspondence dated 04/14/06 that the site specific site plan review requirements have been violated, which means that there is a portion of this that is not only code violation, but PB review has been overlooked or ignored. Timothy Harrington said that would be from the prior owner or builder and the problem also arises that apparently the previous builder literally cleared from the bottom of the property straight back which is where the previous owner and builder had an issue with the Town—he wouldn't know anything about that because he didn't build the house and they plant trees every year because they want their property to be beautiful.

Counsel asked if the applicant's position is that the cutting that is apparent now pre-existed his ownership of the property. Timothy Harrington said no, the cutting they have done now is on their property, but not logging, old roads or tree cutting in the definition and if there was an ordinance of what a tree is and some sort of guideline to manage it instead of a vague ruling they wouldn't be in this position. Councilman Saris said that if somebody cuts down old growth trees in violation and then somebody else comes along and keeps cutting down the small trees there will never be big trees there to replace the ones that got cut down, that was the whole idea in protecting in the first place. Timothy Harrington said he agrees 100% but you can't make it up on somebody's back or make a sacrificial lamb of a person who pays taxes to the Town, cares about his property and actually plants trees every year, but at the same time they have to be in the position to actually spell it out as to what is expected.

Counsel referenced Code Enforcement Officer Mitzi Nittmann's letter dated 04/14/06 that says, "...there will be no construction or destruction including the removal of vegetation..." which doesn't even mention the word "trees." Supervisor Gabriels said the Town does have a definition of trees included under clear-cutting which is determined to be 6" at breast height, 4 ½ feet above the ground and in less than 60 feet of basal area is determination of the amount of trees for clear-cutting.

Councilman Saris said he has a problem with clear-cutting of a no-disturbance zone referred to in the subdivision's conditions of approval, as he is uncomfortable in what is meant by a no-disturbance zone in

the subdivision conditions of approval. Supervisor Gabriels read the PB Chairman's decision of July 13, 1993 into the record. Councilman Saris said that it appears that decision is saying you can't remove any vegetation at all until the site plan review is completed and then one would assume that there are conditions in that site plan review that are supposed to be met, but they don't have that and if the site plan review said you can't cut anything here and the previous owner did anyway then that doesn't mean you get to keep cutting it forever. Timothy Harrington said the previous owner would have been in violation for that and asked how he is supposed to know what the previous owner did.

Councilman Andersen asked if the conditions of site plan would follow from owner to owner. Counsel replied by saying yes and it is entirely possible accepting Mr. Harrington's notion that he didn't know, he's still chargeable with knowing because it is a matter of public knowledge—it is a filed map in the Clerk's office—and he would assume that is what that would be read from and it is a burden upon the land which is absolutely an obligation of all successive owners that you need to know it or be held responsible for it. Councilman Andersen agreed. Counsel said there are two issues; what the site plan limitation requirements are and subdivision wise and the Town Board needs to take note of the fact that it is in the scenic corridor.

Timothy Harrington asked what the scenic corridor is and Counsel replied by saying that it is a section of the Bolton Code that talks about specific requirements of not disturbing vegetation, it manages building requirements and trimming of trees and it is a provision that is specified in the area of the applicant's location as to what he can and cannot do. Councilman Saris said there is a no-cut zone along County Route 11 where you can't cut anything 75' from the edge of the right-of-way. Supervisor Gabriels said that to the extent the conditions of the site plan review are an open question he feels these need to be provided before the Town Board can make any decision. Councilman Saris said he would like to see that and a map from the Code Enforcement Officer regarding where the cutting she referenced took place.

RESOLUTION #123

Councilman Andersen moved, seconded by Councilman MacEwan to table the Code Enforcement Officer's referral regarding Timothy Harrington to the July Town Board Meeting pending further information. All favorable. Motion carried.

Board of Health/Water Commissioners:

Supervisor Gabriels said regarding the inspection of frequency of Butlers, Crown Island, SRA and Town Engineer Tom Nace have suggested two-year inspection and depending on where the sledge line is the Town either acts or lets it go.

New Business:

Authorize Hiring Julie Pratt

RESOLUTION #124

Councilman Andersen moved, seconded by Councilman Maranville to authorize hiring Julie Pratt for 3 days per week effective Thursday, May 25, 2006 for Parks and Grounds at \$9.95 per hour for caring of the Town flower beds and for whatever else needs to be done provided the flower beds are done first. All favorable. Motion carried.

George Mumblow Vacation Time Payment Request

RESOLUTION #125

Councilman Andersen moved seconded by Councilman Maranville to authorize payment of 44 hours of unused vacation time to George Mumblow. All favorable. Motion carried.

Recreation Commission Vacancy

Supervisor Gabriels said the Recreation Commission recommends the appointment of Sue Huck.

RESOLUTION #126

Councilman MacEwan moved, seconded by Councilman Maranville to appoint Sue Huck to the Recreation Commission. Her term will expire 12-31-2006 All favorable. Motion carried.

Town Clerk's request to retain Deb MacEwan.

RESOLUTION #127

Councilman Saris moved, seconded by Councilman Maranville to approve the request to retain Deb MacEwan for services for 2 days per week in the unbudgeted amount of an estimated \$3,000. Four favorable (Councilmen Andersen, Maranville and Saris and Supervisor Gabriels). One recused (Councilman MacEwan). Motion carried.

RESOLUTION #128

Councilman Andersen moved seconded by Councilman Maranville to approve a new private road "Cedar Ridge Lane" located 660 ft. SE from the intersection with Edgecomb Pond Road. Four favorable (Councilmen Andersen, MacEwan, and Maranville and Supervisor Gabriels). One absent (Councilman Saris – was out of the room when the vote was taken). Motion carried.

RESOLUTION #129

Councilman Andersen moved seconded by Councilman Maranville to approve a new private road name "Woods Hollow" located 2,300 ft. SE from the intersection with County Route 11. Four favorable (Councilmen Andersen, MacEwan, and Maranville and Supervisor Gabriels). One absent (Councilman Saris – was out of the room when the vote was taken). Motion carried.

Water Billing for Jon and Doris Richardson

Supervisor Gabriels said Jon and Doris Richardson own property on the corner of County Route 11 and Finkle Road. Years ago the Town entered into an easement with the previous owners of the property for the privilege of placing the water main on their property for which they would receive water free of charge. This was long before the water filtration plant was installed. It is the Town Clerk and Water Superintendent's interpretation (they checked with Counsel on the matter) that because the old water line has been discontinued and the fact that the new water line is on the opposite side of the road, and they have been hooked to the new water line, that they should be billed for water consumption. They were billed for consumption and a bill was sent to them for \$180 last quarter.

Counsel agreed that Supervisor Gabriels' rendition is correct. The Town Clerk pointed out to him that in January 1950 there is a resolution and agreement between the Town of Bolton and the landowners and successors in interest where pursuant to the 1950 agreement they basically get free water which continues so long as the main that the easement was granted for shall be used and maintained by the Bolton Water District. That water main was terminated and the current landowners were added onto the new main. The Town did not go through with formalities with the landowners in notifying them of the new change. Counsel suggested the first bill be exonerated, and the Richardsons should be given notice and then billed for future water consumption.

Supervisor Gabriels said that he wants to clarify that the Richardsons have been paying a \$25 annual fee, but have not been billed for their consumption of water and he encourages the Town Board members to take Counsel's advice. .

RESOLUTION #130

Councilman MacEwan moved, seconded by Councilman Andersen to exonerate the Richardson's first bill for water consumption and give them fair notice that they will be billed for future water consumption. All favorable. Motion carried.

Lee and Patricia Garrand Request to Have Town Provide Easement Right-Of-Way Across Water District Property to Access Their Landlocked 33-Acre Property

Counsel asked if this property is part of a possible land swap with the School. Supervisor Gabriels said

yes. Counsel said this would be subject to permissive referendum since it would be government to individual. Supervisor Gabriels said that for the record it appears from the map that there are several pieces of property similarly landlocked that are potentially accessible from this property also. Town Board members agreed to table this item pending further information.

Authorize Signing of NYSDEC Grant for Indian Brook Stormwater Improvements to Control Sedimentation
Supervisor Gabriels said the Town has had a NYSDEC grant for stormwater improvements on Indian Brook for quite some time and has not proceeded in doing any remediation on Indian Brook for two reasons. Tim Coon has been working on Finkle Brook and two control measures for Indian Brook both occur abutting county property. Tim Coon seems willing, if there are not too many heavy rains to undertake this effort in conjunction with the County. We need authorization to sign the contract to send to NYSDEC to receive a matching grant.

RESOLUTION #131

Councilman Andersen moved, seconded by Councilman Maranville to authorize Supervisor Gabriels to sign the NYSDEC grant contract for Indian Brook Storm water Improvements. All favorable. Motion carried.

Kelly Bishop – Possible Litigation Against Town for Stormwater Damage to Pond from 06/13/05
Supervisor Gabriel: Kelly Bishop has a possible lawsuit pending against the Town for stormwater damage to her pond from the June 13, 2005 storm event alleging that the culvert from the north to south side is improperly placed diverting the stormwater into her pond. Warren County and our Highway Superintendent have both been up there and determined that dredging Ms. Bishop's pond is not a problem if it can be fit into the schedule. Ms. Bishop is looking for a written commitment from the Town that they will undertake efforts under the supervision of Warren County Soil and Conservation to clean up the pond.

Counsel responded by saying that he would like the Town Board to proceed if they are willing to reach an agreement with Ms. Bishop. Whatever the Town does is should be in the form of written stipulation, so whatever the understanding becomes, the Town and the Highway Superintendent are signators along with Kelly Bishop in a bonafide agreement that says this is what is going to be done. Councilman Saris recused himself from discussion on this item as he owns the neighboring piece of property. Councilman MacEwan asked if this is an easy fix and Supervisor Gabriels said yes. Warren County Soil and Water Conservation said it would take 1 ½ to 2 days to remedy the situation. Councilman Andersen said he agrees there is a need to have something in print and that the NYSDEC should write a letter with the specific details.

Replacement of Antique Street Lights

This item is pending.

John Gaddy said he faxed the information to General Electric, has not heard back from them to date and will follow-up and report back to the Town Board.

RESOLUTION #132

Councilman Saris moved, seconded by Councilman Maranville to declare as surplus 6 phones and one answering system from the Highway Dept. and to get rid of the items. All favorable. Motion carried.

Bolton Zoning Map

This item is pending.

Contract with Schoder River Associates for Final Design for Rogers Park Retaining Wall Replacement
Supervisor Gabriels said the signing of the contract has been authorized and that SRA is currently working on the project.

Sandy Lane Estates

Councilman Saris: Herb Koster is pursuing Sandy Lane Estates II and has received approval and met the criteria of all APA staff and the Town of Bolton, but was then held up by the APA Commissioners. He feels the Town Board should send a letter of support to the APA because all the standards for Bolton have been met for the project. The project fits in with Bolton's Comprehensive Plan. If a project meets all the requirements, it should move forward, and he finds it very troubling that a Commissioner who is not even that familiar with the project can basically stop it from happening.

Councilman Maranville asked what the Commissioner had a problem with on this project Councilman Saris said while Herb Koster satisfied everything, the APA commissioners could have allowed the project to move forward, but one Commissioner felt the project needed more review. The owner of the project has cut two lots out of the original proposal, made some other changes to reapply and gave up a huge amount of money to try to avoid this continuing. This has been going on for 17 years now.

RESOLUTION #133

Councilman Saris moved, seconded by Councilman Andersen to authorize the Town Board to send a letter to the head of the Adirondack Park Agency in support of Herb Koster's Sandy Lakes II project. All favorable. Motion carried.

Public in Attendance:

Bob Weisenfeld requested a copy of the letter that goes out to Bell Point Shores HOA regarding the overdue spring stormwater report. Supervisor Gabriels agreed to send him a copy.

Budget transfers: Donna Boggs presented the following budget transfers to the Town Board for authorization

RESOLUTION #134

Councilman MacEwan moved, seconded by Councilman Saris, to authorize the Budget Transfers provided by Donna Boggs as presented.

FROM TO AMOUNT

General Fund

85104 Beautification 85101 Personal \$4,000.00

19904 Contingency 14101 TownClerk 3,000.00

General Fund Sewer Transfers May additional
6,600.00

General Fund Sewer Transfer June

22,000.00

Highway

51104 Repairs 14404 Professional 1,260.00

Sewer

81202 Equipment 81101 Equipment 1,446.50

81304 Treatment 81302 Equipment 7,983.40

All favorable. Motion carried

Payment of Town Bills:

RESOLUTION #135

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

Executive Session:

Councilman Saris moved, seconded by Councilman Maranville, to adjourn the regular meeting and enter executive session at 10:20 pm to discuss civil penalties. All favorable. Motion carried.

Councilman Saris moved, seconded by Councilman Maranville to adjourn executive session and reconvene

the regular meeting and adjourn at 10:50 pm. All favorable. Motion carried

Minutes transcribed by: Respectfully submitted by:
Jennifer Torebka Kathleen Simmes
Recording Secretary Town Clerk
06/19/2006