

TB – Minutes May 2, 2006

STATE OF NEW YORK
COUNTY OF WARREN
TOWN OF BOLTON

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

Absent: None

PUBLIC HEARING:

At 7:04 pm, Supervisor Gabriels opened the public hearing on proposed Ordinance #45 "Regulations and Provisions for Temporary Signs (Banners)".

John Gaddy, PB member, said the Town should look at a reduction in size of signs. When franchises want to do business with the Town they should be willing to go out and follow the guidelines the Town sets up. He would like the Town Board to consider the value the Town has here and not let the Town get bullied into having larger signs than needed. Supervisor Gabriels asked if John was comfortable with the particular sizes stated in proposed Ordinance #45 and he replied yes. It is a work in progress and thinks it is a good move.

The public hearing was left open.

REGULAR MEETING:

Supervisor Gabriels called the regular meeting to order at 7:07 pm.

Pledge of Allegiance – Supervisor Gabriels

Announcements:

The Bolton Chamber of Commerce is sponsoring the Lumberjack Show scheduled for June 16-17, 2006 in Vets 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.

The Senior Trash Pick-up day is scheduled for May 15, 2006. To schedule pick-up, call Lisa French at the Transfer Station (644-2973).

Assessor's Grievance Day is Thursday, May 25, 2006.

The Meal Site Menu is available in the Town Hall.

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

Public in Attendance:

1. Willie Bea McDonald, representing the Bolton Bed Tax Committee, gave a detailed breakdown of the recommendation for the expenditures from the 2005 occupancy tax receipts totaling \$115,000. Estimated costs for 2006 activities that have already been authorized include the Lumberjack Show (\$8,000), Ice Fishing Contest (\$1,000), Bolton's representation in Lake George's Adirondack Room (\$7,150), operation of Norowal Marina for 2006 (\$75,000), fireworks fund for 4th of July (\$2,000), additional fireworks show (\$4,000). New recommendations include Labor Day Folk Fest (\$4,000), Movies in the Park (\$2,500), Lindsay Gates' project (\$2,500), radio advertising on WCKM and its affiliates (\$5,000), re-enactment by the Bolton Historical Society (\$600), and a long-term project of creating a walking map (estimated total cost = \$15,000, \$3,250 would be put aside this year and additional monies put aside each year until the

total is reached).

Councilman MacEwan asked for an explanation of the walking map project and the reason for the high cost. Willie Bea MacDonald said it is a matter of designing the walking map, which would have actual photographs of the buildings in Town with explanations and snippets on the occupants/businesses of the buildings. They may be able to shop around to get a better price, which will require further research.

Supervisor Gabriels said that the Bolton Bed Tax Committee has done an excellent job. The bottom line of \$115,000 was not an arbitrary number. It was based on the total source of bed tax revenues received in the prior year. He has an idea of what might be received based on last year's receipts at the County, but no definitive number at this time. There may be a small amount of funds left over after these expenditures for any last minute events.

RESOLUTION #83

Councilman Saris moved, seconded by Councilman Andersen to authorize the allocation of the Bed Tax Funds in the amount of \$17,350 for events recommended by the Bolton Bed Tax Committee. All favorable. Motion carried.

John Gaddy is requesting an immediate moratorium on ridge top development in the Town of Bolton. He referenced his letter dated 04/06/04 that was previously submitted to the Town Board on this matter. There is a need for breathing time to let the action the Town Board has taken in the past years to take effect. The Town Board has the ability and intelligence to modify it, as he cannot currently define ridge top development. He referenced the Town of Bolton's comprehensive plan, and said he doesn't think the Town should re-invent the wheel, but he is looking to see a motion for a moratorium this evening.

Councilman Saris said that John Gaddy made valid points. The Town Board should consider putting the moratorium on its agenda for discussion under new business. There are issues that the Town Board would need to discuss with Counsel. Moratoriums are usually used in cases where a pending solution is being contemplated. There is a need to gather input before taking it to the next level. John Gaddy makes a very compelling argument with literature from the Town's own documents that were commissioned for the Town's own benefit. Councilman Andersen said he agrees and added that one of the first things needed is the language. This can be quite involved. Counsel said it is correct that the language is a bit involved and it needs a little revision.

John Gaddy said it would be acceptable to gather further information. Supervisor Gabriels asked about the example of developing a 25% grade road and if there are limits. Counsel replied by saying that the Town has limits on roadways, but no limits on driveways. The Town Board would not feel comfortable in being able to specifically define the difference between a roadway and a driveway, as there is great uncertainty there. Councilman Saris said the Town Board had a ridge line development issue a couple of years ago which was a hot topic that lots of people were sensitive to and interested in, so it is worth examining.

Ed Corcoran said that he attended the most recent PB meeting where there was a proposal to develop the Pinnacle. A PB member asked what could currently be driven on the existing road in that location and the applicant said a pick-up truck and a backhoe. He is worried there may be some development already going on in that area and agrees there should be a moratorium, even if it is only for 60 days. A public hearing should be set up for next month so people can come and voice their opinions on ridge top development.

Doug Houghton, representing Jane-A-Palooza volunteers, said he would like to know what is needed for approval for the requested noise ordinance for this event. The Town Clerk stated that it has already been approved and given to one of the organizers. Supervisor Gabriels said this request met all the requirements of the Ordinance, which is why it didn't need to come before the full Board for approval.

Correspondence:

Notification from John Perry that he will be taking vacation from May 30-June 12, 2006.
Notification that Grievance Day is May 25, 2006.
Letter from the Adirondack Runners regarding its 2006 race.
Notification that the revised residential assessment ratio dropped to 66%.
Letter from Erin Pratt requesting the use of a public parking lot for a church fundraiser.
Bid from Warren Electric on replacing the antique streetlights throughout Town.
Notification from Hadley Town Supervisor, Jeff Trottier, regarding the traveling Vietnam Wall.
Notification of the trash pick-up day.
Text for Bolton's representation at the Adirondack Room at Lake George's Tourist Center.
Letter from Lori LaGoy indicating her interest in serving on the Recreation Commission.
Letter from Margaret Riley regarding concerns with the proposed tree removal on Lot 7 on Federal Hill Road.
Note from Tom Nace regarding the O'Leary septic system.
Note from George Mumblo requesting to transfer 80 hours of his sick leave to Tom French.
Letter from Mr. and Mrs. Bernie French thanking Bob Dunsmore and James LaFoy for helping the Cub/Boy Scouts Pack 25 Den 3 in the community service clean up on Padanarum Road.
Correspondence from the APA on Rosamund Butler septic variance.
Correspondence from Warren County Fire Prevention and Building Code regarding Lagoon Manor.
Letter of collection from Joe Zarzinsky indicating they collected 149 pieces of litter out in front of Rogers Park on Sunday, April 3, 2006.
Letter from Mr. & Mrs. Gaddy regarding the Carpenter septic variance request.
Letter from James Rainey that he is looking to secure a liquor license at Lily's.
Notice of return of \$25.00 to Matt and Becky Coon.
Notice from P. Kenyon of the return of \$25.00 to Don Pratt.
Notice from Lori LaGoy regarding individual e-mail accounts for Town Board Members.
Indication for Transportation Enhancement Programs.
Correspondence from Atty. McNally regarding the Pioneer Village water line extension request.
Notification that the Brass Ring is applying for a liquor license.
Notification that the Lakeside Bar & Grill is applying for a liquor license.
Notification that Ryefield Restaurant is renewing a liquor license.
E-mail from Ron Helm regarding a stormwater problem at 274 New Vermont Road, which has been transferred to Tim Coon for his consideration.
Correspondence from Ray Oliver regarding Brereton Road.
Survey from the American Red Cross regarding emergency preparations.
Indication from Warren County Economic Development Council regarding development projects they have undertaken or taken part in which shows Norowal Marina as a significant development in the County's growth in the coming years.

Reports:

Councilman Maranville:

ASSESSOR:

The 2006 level of assessment is 72% and it is expected that the equalization rate to be set by New York State will be at the same amount.

POLICE DEPT:

Hours officers worked: White – 107, Howse – 108, Schroeder – 75.5. Miles patrolled: 1,916 miles. Fuel used: 160.1 gals. Officers investigated 3 criminal reports, 1 assist for another agency, 5 security alarms, 9 uniform traffic tickets issued, 2 auto accidents investigated, 4 court securities, 5 emergency medical assists, 2 fire department assists, 5 misc. complaints, 1 missing/lost person call, 1 item of property found and 2 mandates for special assignments.

JUSTICE COURT:

A/R: Judge Harry Demarest - \$1,510.00. Judge Edward Stewart - \$2,585.00. Total: \$4,095.00. There is an itemized list located in the court breaking down the amounts.

Councilman Saris:

TOWN CLERK'S OFFICE:

Total Local Shares Remitted: \$9,407.85. Non-local Revenues: \$251.46.

Total State, Local and County Revenues: \$9,659.31.

SEWER PLANT:

No report.

HIGHWAY DEPARTMENT:

No report.

Councilman Andersen

RECREATION DEPT:

There are 33 spaces reserved out of 40 available for the summer day camp program. Three staff members are returning and they are looking for one more. The Rec. Dept. is working on concert nights and movies in the park. There is one vacancy on the Recreation Commission. They are in the process of replacing the Rogers Beach Guard shed. Most of the lifeguards are returning, and most of the activities the Rec. Dept. is working on are complete.

BUILDINGS & GROUNDS DEPT:

Over the winter the Buildings and Grounds Dept. changed the fixtures and re-epoxyed the floors in the park bathrooms.

Councilman MacEwan:

ANIMAL CONTROL: Total Hours Logged: 46, Total Miles Logged: 116. Three incidences addressed. Child bitten by German Shepard, retrieval of loose dog at landfill, and on-going problem with five dogs being left alone—two were removed and three are to be removed.

TRANSFER STATION:

A/R: \$4,829.00. Working on sprucing up the building with windows and painting. The metal pile will be picked up in approximately three weeks, and the leaf pile has been removed with help from the Highway Dept.

WATER DEPT:

5,726, 316 gals. of water made, 115 lbs. of CL2 used, 109 gals. of PC2300 used, 47 gals. of Aqua Pure used. Pond level is over the spillway. The Water Dept. turned on water for summer residents and addressed two water main breaks (Bluebird and Stewarts).

PLANNING/ZONING OFFICE:

Permits applied for: 16 certificates of compliance / 4 wastewater disposal systems / 5 variances / 6 site plan reviews / 0 subdivisions / 6 stormwater permits applied for. Total Miles Logged: 0. A/R: \$2,774.53.

CODE ENFORCEMENT:

25 page report filed. 250 miles logged. 1 temporary stormwater control letter to Smith / 3 notices of violation / 1 stormwater permit letter.

Supervisor Gabriels:

SUPERVISOR:

Total receipts: \$374,159.18. Total disbursements: \$295,314.63.

Storm water: No report.

Warren County: Bed Tax as already discussed in Public in Attendance.

Unfinished Business:

No additional Town Board or public comments on proposed Ordinance #45 on Regulations and Provisions of Temporary Signs (Banners)

RESOLUTION #84

Councilman MacEwan moved, seconded by Councilman Maranville to close the public hearing on proposed Ordinance #45 on Regulations and Provisions of Temporary Signs (Banners).

No vote was taken on Resolution #84 at this time as additional comments were presented.

Councilmen Maranville and MacEwan rescinded resolution #84 motion.

Counsel read proposed Ordinance #45, as it should have been presented. There is fuzzy text and formatting discrepancies, which he thinks are important to clarify. Subsection F2 should not say "12". It is the Town Board's decision as to what the maximum number should be but it is certainly not 12. He read the letter from Ellen George of the APA regarding the sign ordinance inquiry, which said the APA is not sure if this ordinance would be under their review. Counsel recommends the Town Board could exercise its discretion and proceed if it so wishes without having a definitive position from the APA.

Councilman Maranville asked if the Town Board should wait to hear further information from the APA before voting on proposed Ordinance #45. Counsel answered by saying that he doesn't think APA input is needed in this case because it is an ordinance that it is a good temporary fix for temporary banners. Counsel believes it would be comprehensively addressed in the Town's new code that is in the works.

Councilman Saris said he believes the language is correct but said it almost sounds like if it is attached to a rock, tree or utility pole that you don't need a permit. Counsel suggested the wording be altered to say "...and never shall such banner be attached to....." Councilman Saris said that would make more sense to him. Supervisor Gabriels said there is an amendment to the nature and the minor clarification of the proposed ordinance, which clarifies his reading of the intent of the PB. Counsel said that he thought it has the appropriate escape mechanism in it, meaning that administratively if a sign/banner permit is rejected by the Zoning Administrator then the applicant has an absolute right to appeal for a variance.

Councilman Maranville asked if there is any cost for a noise permit and Supervisor Gabriels said no. Councilman Maranville asked what the reason is for having a cost for the sign permit. Supervisor Gabriels answered by saying that noise permits are administered by the Supervisor's Office and the banner/sign permits are administered by the Zoning Office. Counsel said the PB recommended a \$10.00 banner/sign permit fee.

Supervisor Gabriels asked if Town Board members were comfortable with Counsel's suggestion of no more than two banners in one calendar year. Councilman MacEwan asked about the timeframe of 60 days and asked if that would be sufficient. Counsel said the Town Board could make it longer. Councilman Saris said since this would be a temporary ordinance, it doesn't mean an applicant can't go to site plan review for a permanent sign if they need it for a longer period. Counsel said that is correct. This ordinance is a quick fix for those who want to put up a special notice for the short-term. Councilman Saris replied by saying that the whole idea is that this is for signs that perhaps don't rise to the level of requiring a site plan review because they are temporary. Councilman MacEwan said he was thinking of people having different things happening in their shops at the beginning, middle and end of the season, so he thinks this may be restricting them by limiting them to only two signs. Counsel said yes, then the

Town Board would want it to be more than two.

Willie Bea McDonald asked if the 30 days per calendar year timeframe could be interpreted as a business owner putting a banner up for two days on the weekend throughout the whole season (15 weeks) and taking it down during the week. Counsel said the permit is only good for 30 days and you don't get to use it only two out of 30. Willie Bea McDonald said the proposed ordinance doesn't say that—it doesn't say 30 continuous days, just 30 days and Counsel replied by suggesting the wording read "...issuance of a permit which shall be for one 30-day period...."

Tony Hall thinks the point should be to limit the periods of time in which these banners are up. If the Town says 30 days for two periods, it gives the opportunity for people to have the banners up all summer, which isn't very attractive and he would hope the timeframe for banners would be less than 30 days.

Bob Weisenfeld said the proposed ordinance is overly broad in that it could be read to cover usages, which are not commercial, although there is the non-applicability clause at the end of it. He wonders if this won't put a damper on some people who might be wondering if they could put out a holiday or seasonal flag without getting a permit or something else which may or may not be free exercise of religion. The problem with temporary signs/banners has been with commercial application or overuse of these banners, and given there have been modifications made to the proposed ordinance this evening he suggests the public hearing remain open until the proposed ordinance with its new modifications can be further reviewed.

Counsel said there are lots of language changes in the proposed ordinance that may be appropriate for leaving the public hearing open, regarding the last provision in 7A "...no provision of the ordinance is intended to inhibit or impair any person, party, entity or otherwise from the exercise of their constitutional rights." Councilman Saris said regarding decorative items, he knows with the Zoning Ordinance and dealing with structures, landscaping has been excluded and asked if the Town Board could do something along the same lines regarding things used for the beautification of a property where the intent isn't to sell or promote anything, but strictly decorative, and not associated with a land use of any sort. Counsel said absolutely and that the ordinance can be specific to exclude decorative flags. Councilman Saris said he thinks the intent of proposed Ordinance #45 is to not ultimately be the final solution, Hopefully the revamped sign ordinance will be. Counsel said that if the Town Board would like to have it specifically in there, he can't do it on the spot but can certainly give the Town Board some language that there is no intention with respect to this ordinance to regulate or prohibit flags, things that have no message—including pennants, windsocks, etc. Councilman Saris said it would be a good idea, as the Town Board is not looking to get into neighbor disputes.

The Town Clerk asked if there would be any limitations on contractor signs and Counsel said that this ordinance doesn't regulate them. Those signs should be specifically expressed because there is no intent to regulate any temporary sign that constitutes possibly a for sale sign or a garage sale sign. Councilman Saris said he thought those signs had to be kept under 2 ft. by 2 ft. otherwise temporary or not, they were subject to site plan review. Counsel said that is what a permanent sign is all about and any sign so far seems to be permanent because the Town doesn't have any ordinance that regulates temporary signs. The Town Clerk said she doesn't think contractor signs should be exempt. Councilman Saris said he thought as long as all signs are less than 2 ft. by 2 ft. then they are all exempt and the only thing that is subject to site plan review is a sign over 2 ft. by 2 ft. Counsel said signs that are under 2 ft. by 2 ft. are permitted. Councilman Saris said if you want to make it over 2 ft. by 2 ft. it would require site plan review.

Bob Weisenfeld said there are two ways in approaching this. One is to grant everything in the purview of this ordinance, then accept certain things for free speech, First Amendment issues and the other is to possibly start with a more limited scope, like attempting to regulate the thing that has become the

problem which is commercially oriented. It may be beneficial for proposed Ordinance #45 to define a banner as it refers to something placed on cloth or temporarily affixed which advertises a business product or service. Counsel asked what his thoughts are on events which are neither products nor services and Bob Weisenfeld responded by saying that perhaps that could be included, but he would suggest starting with a very limited approach by focusing on the problem areas now.

Supervisor Gabriels said that the language perhaps needs a clarifying amendment as it would need to be reviewed by the PB and the Zoning Office. Those two entities will have the direct responsibility for the intent with this sign ordinance and the enforcement of it and by keeping the public hearing open for too much longer, until next month's meeting, that would be the beginning of June. If it were adopted at that time, there is a certain lag-time in terms of communicating the provisions of this new ordinance to the community at large and securing their voluntary compliance with the conditions of this ordinance. June is a month where one might reasonably foresee any number of banners going up as they have been in the past and the question would be if the Town would allow that to occur again in June for the year 2006. The ZBA has determined a banner is a sign and so if a person wishes to put up a message, on what used to be a non-regulated thing with words on it, it is now a sign and the only way you get a sign in the Town of Bolton that is greater than 2 ft. by 2 ft. is to go to the PB for site plan review. This was an effort, which was trying to streamline that process by allowing the installation of banners and not obligating the applicant to go for site plan review. There is actually a prohibition right now to put up what you are used to seeing as banners unless the person gets a site plan review. If this were enacted he does acknowledge that there ought to be language in there that it is not intended to regulate flags and such.

Willie Bea McDonald asked how Americade banners would be handled. Counsel replied by saying that some municipalities do regulate things like that and if this were enacted that type of banner would be exactly on point and would be limited to 24 square feet and, assuming the Town Board says there is a \$10 fee, they just show up with the \$10, fill out the application, and they are in business. Willie Bea McDonald asked if that would be the case for each business. Counsel said yes and added that if this is not a law in Bolton, and the Zoning Administrator called him tomorrow saying someone wants to put up an Americade banner, isn't that a sign, he would agree with her that it is. She would then ask if she needs to send them to the PB for site plan review if it is bigger than 2 ft. by 2 ft. and he would answer by saying yes. This would put the Town in an administrative jam in that certainly people want to put up Americade signs and they are going to be told that is a real sign and they have to go through site plan review—that is just not user friendly.

Councilman Saris said he thinks he'd be much more concerned about it if he didn't know that part of re-doing the ordinance would be involved in re-doing all of this. There is a need to keep in mind that it is always nice to strive for perfection, but in this case it is going to be relatively short-lived in the scheme of things.

RESOLUTION #85

Councilman Maranville moved, seconded by Councilman MacEwan to keep the public hearing open on proposed Ordinance #45 and that there would be a special Town Board meeting set for Wednesday, May 17, 2006 at 7:00pm for further discussion. All favorable. Motion carried.

The following discussion took place between the motion of Resolution #85 and the actual vote.

Councilman Saris said if the public hearing is to remain open, he assumes the Town Board will table the item and discuss it further next month and Councilman Maranville said yes that is his intention. Councilman Saris said he would like to ask Counsel to add some language regarding what has been discussed and Counsel said he would. Councilman Andersen asked how long it would take Counsel to add the language of all the comments made tonight. Counsel answered by saying that if he knew exactly what the Town Board wanted regarding not regulating/prohibiting flags, etc., the non-commercial stuff, there is a need to have some precision of that language then it is done. Councilman Andersen asked if

there is a possibility of the Town Board having a special Town Board meeting to discuss it so it would be ready to fly at next month's Town Board meeting. Counsel replied by saying that the Town Board has to conduct any business on this at a scheduled Town Board meeting. Councilman Andersen said the Town Board could schedule a special meeting to discuss it then after that there would be an "x" period of days and Counsel said that if the Town Board enacted it at a special meeting, then yes. Councilman Andersen said if the town is going to do it, it should be done sooner rather than later. Councilman MacEwan agreed. Councilman Andersen asked if Counsel is willing to do that and Counsel said yes and asked no more than how many temporary banner permits per premises in any one calendar year do you want. Councilman Maranville said he thinks that the Town Board members should go out and talk to the community business owners to get their thoughts and Counsel said he proposes to leave a blank in there for the time being. Councilman Saris said he agrees with Tony Hall's comments, the whole thing that got the Town to this point is that somebody took exception to what the ZBA determined to be a sign. Once this ordinance is enacted that same sign could be there without review for basically the length of the entire season if the Town Board decides on three times and he thinks that is kind of counterproductive to what the ZBA was saying which was that something of that nature with that degree of permanency should go through a site plan review process. Councilman Andersen said he understands Councilman MacEwan's concern, the proposed Ordinance #45 also says for up to four months and he thinks it should be a maximum of three banners with 45 days between each display within a 12-month calendar year. Counsel said he understands the Town Board is looking for three maximum signs within a calendar year with a 45 day interval between signs and Councilman Andersen said yes, that is correct the 45 day interval would be between each 30 day period the sign is up. All Town Board members were in agreement on the timeframes and number of signs. Supervisor Gabriels asked what the procedural limitations are for scheduling another Town Board hearing after the Town Board and the public gets an opportunity to review the provision as amended. Counsel said it does not require re-notice because the Town Board is not making a fundamental change, but the Town Board is just going to be bound by the notice requirements for a Town Board meeting.

Adirondack Runners request for permission to conduct the 30th Annual Run on July 2, 2006
RESOLUTION #86

Councilman Andersen moved, seconded by Councilman Saris to give permission for the Adirondack Runners to conduct their 30th Annual Run on July 2, 2006 with the Adirondack Runners providing insurance and additional safety operations along with the one side of the street and parking as past practice has been. All favorable. Motion carried.

Contract bid(s) for maintenance of Town flowers

Supervisor Gabriels said that last month the Town advertised for bids for the maintenance of the Town flowers. The Town Clerk notified six interested parties and advertised in the paper. One bid from Mark Perry in the amount of \$7,500 was received.

RESOLUTION #87

Councilman MacEwan moved, seconded by Councilman Maranville to accept the bid from Mark Perry in the amount of \$7,500 for maintenance of the Town flowers. All favorable. Motion carried.

SRA Carl Schoder – repairs to Rogers Park Stone Wall leading to pier

Councilman Saris suggests the Town Board authorize the repairs with the wall having stone facing. The Town can't move forward with adding docks and additional improvements until the stonewall is repaired. Councilman Maranville asked if it is safe for people to walk on and Supervisor Gabriels said yes, as far as he knows, but no vehicles or heavy equipment.

RESOLUTION #88

Councilman Saris moved, seconded by Councilman Maranville to authorize Carl Schoder of Schoder River

Associates, to prepare Plan A and bid specifications with the stone face option. All favorable. Motion carried.

The board discussed the codification of Town's historical Hiring Policy pursuant to our Insurance Agent's recommendation.

This item was tabled pending further information.

Consider Amendments to Ordinance #39 regarding Water Rules and Regulations and anti-meter tampering provision in addition to fixed water charges.

Counsel said he is still working on the Water Superintendent's recommendations. Supervisor Gabriels said the Town Board also needs to decide on fixed water charges, whether they are going to be assessed on a structure basis or on a property tax map number basis. The Town Clerk would like the board to have a workshop to discuss the charges.

A Town Board workshop was set for Wednesday, May 17, 2006 at 6:30 pm to discuss this matter.

Bolton Recreation Commission

Supervisor Gabriels said there is one vacancy on the Recreation Commission and two interested persons. Recreation Commission has not provided its recommendation to the Town Board. Councilman Saris asked if the names the Town Board received were forwarded to the Recreation Commission and Supervisor Gabriels said yes.

Town of Bolton/Sagamore Resort emergency water system

Counsel indicated this item is still pending.

Pending Items:

Citizens Committee – Water District land –“Land swap” or sale & gift

Counsel said he is pretty close to telling the Town Board that they are permitted to do this, but before he does that he wanted to contact his counterparts. He sent letters to Michael Stafford, Attorney for the Fire Department and Monica Duffy, Attorney for Bolton Central School on April 5, 2006, followed up with a fax inquiry and a phone call and has not heard back to date from either.

This item is still pending.

Referrals from Code Enforcement Officer / ZBA / BPB:

Michael Garguilo, Lot #8 Cobblestone Subdivision regarding storm water violations. Two conditions satisfied – alternative remedy for violation to be determined

Michael Garguilo said that Code Enforcement Officer, Mitzi Nittmann issued a stop work order on him for unfinished stormwater management on a lot still under construction. Code Enforcement Officer Mitzi Nittmann came out a couple of days later and they had all of the items resolved that she submitted. Supervisor Gabriels said Mitzi Nittmann indicated that once the stop work order was put in place, there was an agreement and understanding that if the applicant took care of the two conditions then the stop work order would be lifted so the applicant could proceed with the other work on that particular property, but there is still the issue of prior to issuance of the stop work order, there was a violation of the stormwater regulations. There was a lot of erosion that had the potential of causing a serious problem. Mr. Garguilo said the stormwater went off the lot onto his own private road. Supervisor Gabriels said there was still development happening without proper management and Michael Garguilo said he understands.

Councilman Saris said that Mitzi Nittmann indicated that she contacted the applicant over a 1 ½ month

period prior to the stop work order being issued to get the applicant to do something about it. He asked why the applicant didn't stop prior to the stop work order being enforced. Michael Garguilo answered by saying that in the month and a half prior to that was the warm weather trying to hit and with the frost left in the ground they couldn't reasonably dig up the area and re-grade it without having to deal with the frost and all the other problems they were having on the site at that time.

Councilman Saris said there were storms in the area last spring that resulted in huge amounts of damage and without having those preventative things in place the applicant is rolling the dice. Michel Garguilo replied by saying that they had a lot of their silt fencing up, but the biggest issue was really the bottom portion of the driveway. Councilman MacEwan asked if the applicant had communicated with Code Enforcement Officer, Mitzi Nittmann in that timeframe and Michael Garguilo said he talked with her on a couple of different occasions and the thing that happened that he believes resulted in the stop work order being issued was a photograph given to Mitzi Nittmann showing siltation going into a creek that feeds into the lake. Upon further investigation, that siltation had nothing to do with their construction.

Councilman Andersen referenced the list of Mitzi Nittmann's follow-up on the matter and said that after the Code Enforcement Officer followed-up repeatedly with the applicant, it looks like the applicant took no action, which creates concern. Michael Garguilo said he thinks Mitzi Nittmann's version of action was putting in permanent retention basins on the driveway, but what they had done prior to that sometime in February was to trench across the top of the driveway where the hillside comes down then down onto the side to divert the water coming out of the hillside into the area which now has the retention pond.

Councilman Saris said that the PB, Zoning Administrator, Code Enforcement Officer and the Town Engineer all told the Town Board what needed to be done to properly develop the site. That was transmitted to the applicant, that under no uncertain terms that that is what needed to be done and it didn't get done. If the applicant had a difference in opinion whether or not that was necessary or the proper way to do it, that would be dealt with through all of those people. During all the time the Code Enforcement Officer tried contacting the applicant, the applicant had not responded. Councilman MacEwan said that was the reason for his previous question, because it seems like the applicant made no communication efforts in that timeframe.

Supervisor Gabriels asked the Town Board members for feedback on an alternative remedy. Councilman Saris said that this situation is a new one. It is important to note that there is nothing here to be undone. This is not a situation where it was not permitted or anything of that nature. What finally has been done by the applicant is a benefit, and he thinks as is past practice, imposing a civil penalty would be adequate in an effort to send the message that the Zoning Office recommendations are not to be ignored.

Supervisor Gabriels asked if the Town Board members are looking to an alternative remedy. Councilman Saris answered by saying that there is always some validity in comparison but this is clearly a different situation and the Town Board needs to take into account that it is not something that can't be undone like an un-permitted cutting of trees. That would be hard to go back and restore. It is actually a lack of something getting done rather than something not permitted being done. Councilman Andersen said that for historical purposes, the Town Board has tried to initiate civil penalties, if for no other reason, than the Town Board is really trying to get people to comply. The Town has spent a lot of time and effort to set up the boards, the process and the office—which he thinks works pretty well. Bolton has become very desirable and he thinks it is because of these rules that everyone wants to come here. It ultimately puts the Town Board in a position he is very uncomfortable with. The Town Board has generally imposed a civil penalty of \$1,000, and the fact that this is an alternative remedy and there is no permanent damage and the applicant did finally accomplish the work and the stop work order was rescinded he recommends a \$500.00 civil penalty be imposed. This will send the message that no matter what the timeframe or whether you really need to go through the office and do it correctly; if it is a violation there will be a penalty.

RESOLUTION #89

Councilman Andersen moved, seconded by Councilman MacEwan to impose a civil penalty in the amount of \$500 upon a finding that Michael Garguilo was responsible for two violations of the Town of Bolton Storm Water and Erosion Control regulations that occurred on the Cobblestone Subdivision, Lot #8 with the further requirement that the civil penalty be paid to the Town Clerk within 30 days. All favorable. Motion carried.

Timothy Harrington, 4 Forbidden Forest Lane-regarding extensive tree clearing without a permit

This item was tabled to the June 2006 Town Board meeting at the applicant's request.

Board of Health/Water Commissioners:

RESOLUTION #90

Councilman Andersen moved seconded by Councilman Maranville to table the matter concerning extensive tree cutting without a permit on property owned by Timothy Harrington, 4 Forbidden Forest Lane, Tax Map. #185.00-2-28. It will be rescheduled for the June 6th Town Board meeting. All favorable. Motion carried.

Rosamund Butler, Crown Island –

Supervisor Gabriels said that public notice and notification to the neighboring property owners was distributed and asked if anyone was present on this issue. No one responded. Counsel asked if the applicants themselves got notice that they were supposed to be in attendance and the Town Clerk said she sent them a copy of the public hearing notice. Supervisor Gabriels said that the only observation he makes is that the Town Board may want to consider a periodic pump-out if it decides to approve the septic variance. Counsel said that at the same time the Town Board started making the periodic pump-out requirement, the Town Board did impose upon the current owner some sort of deed language so subsequent owners would be alerted to the circumstances and the obligation for pump-outs. Supervisor Gabriels said the applicant got approval from the ZBA on April 25, 2006 that the number of bedrooms should not exceed two.

Councilman Andersen asked if the applicant got notice that they actually had to attend this evening's meeting and the Town Clerk replied by saying the applicant got the same letter stating the time and place for the public hearing. Councilman Andersen said his only hesitation is that the applicants are asking for relief and he thinks it is important that the Town Board has the opportunity to ask questions of the applicants. Counsel agreed and said he would really like to recommend the Town Board allow the applicant an adjournment and an opportunity to establish whatever the criteria is necessary to support their variance, and perhaps the Town Clerk can give the applicants a specific notice that they must be here.

RESOLUTION #91

Councilman Saris moved, seconded by Councilman Maranville to adjourn the septic variance for Rosamund Butler, Crown Island, Tax Map #17112-1-3 since no one was in attendance to explain the request. The resolution also directed that the Zoning Administrator's office provide a written notice to be delivered to the applicant indicating that they or an agent on their behalf would be required to attend the June 6, 2006 Town Board meeting to present the application. All favorable. Motion carried.

Robert Carpenter, 299 New Vermont Road

Supervisor Gabriels said the Town received letters from Hal Gaddy and Ronald Helm stating they have no problem with the Carpenter variance. The Town received a letter from Town Engineer, Tom Nace that there are no problems, but had a few recommendations.

Engineer Tom Hutchins, representing Robert Carpenter, gave an overview and said that the system is currently in failure which was brought to the applicants attention through the Code Enforcement Officer. The existing wastewater system is partially across the property line. The system has been there prior to the applicants owning the property and its construction timetable is somewhat of an unknown. The site is sloped and they conducted a number of test hole pits. There is a great amount of rock ledge on the property. There is an area near the adjacent system that they feel is the best location for a replacement system on this parcel. The actual system would be more than 10 ft. from the property line but the fill required to grade a level area to build a bed system would have to taper out to the property line. They are agreeable to all of Tom Nace's suggestions.

Councilman Andersen said the applicants are improving an existing system, the proposed system was designed professionally and reviewed by the Town Engineer who had no problems with the concept, and the applicants are trying to comply with all of the Engineer's recommendations.

RESOLUTION #92

Councilman Andersen moved, seconded by Councilman Maranville to grant the following septic regulation variances for real property owned by Robert & Laurie Carpenter, 299 New Vermont Road, Tax Map #123.00-2-19

1.) a 10' setback from the property line is required: 0' is proposed from toe of slope on the north side of the property. 2.) a 100' setback from the Carpenter domestic water well is required: 81.64' is proposed. Both variances were approved upon condition that the applicant provide a signed deed covenant to the satisfaction of town legal counsel, and thereafter record same in the Warren County Clerk's office specifying that the current owner of the premises and all successors in interest "shall be required to pump out the septic system at least every three years." It was also explained to the applicant that if Mr. Carpenter's attorney objects to the required covenant, Mr. Carpenter may return before the local board of health to be reheard on the issue and such requirement. All Favorable. Motion Carried.

The following dialogue took place between the motion of Resolution #92 and the Town Board vote.

Tom Hutchins said he is uncomfortable accepting the deed covenant condition without the applicants getting their private counsel to review it since it is not his expertise. Counsel said that rather than hold the application up he suggests it be accepted with the understanding that if the owner wishes to then consult with an attorney and it turns out to be entirely objectionable, then the owner is welcome to come back. He doesn't think it will be, because it is quite benign in terms of putting a notice with a deed record so that subsequent owners are alerted to this three-year requirement. Tom Hutchins asked if the owner agrees if they can do this conditionally and Counsel said yes. If the owner agrees it is a done deal and someone will just need to submit the covenant.

Judith O'Leary, 24 South Trout Lake Septic

Supervisor Gabriels said the Town Board received a letter from Tom Nace requesting another test hole pit for this septic system. The Town received a letter from Mrs. O'Leary that if the Town wants another deep test hole pit, she suggested the Town pay for it.

Councilman Saris said he does not know how much of the history of that property Mr. Nace is aware of or whether or not that is even a concern of his from an engineering point of view. He suggests another test pit be dug and he appreciates Mr. Nace's opinion as an engineer. He is probably right if that is what he thinks is necessary it most likely is and should most likely be done. Councilman Saris remembers the past history of this property is a comedy of errors as far as the septic system being installed without proper inspection. Not all of that problem being the responsibility of the owner, or perhaps none of it being the fault of the owner. Supervisor Gabriels said or the fault of the Town, and Councilman Saris said he is not sure, as there seems to be a couple of versions of events. He is somewhat sympathetic to the property owner who feels somewhere along the line the safeguards that are designed into the system to protect the owners from having what happened happen failed them. It has caused them great inconvenience and

money and he asked if there is any estimate of the cost of a deep test pit and Supervisor Gabriels gave an estimate based on Don Kingsley's figure.

Councilman Saris suggested the Town Board authorize and pay for the test pit, maybe not as an absolute obligation, but as a goodwill measure. Counsel said that he was led to believe that when progress is going on a project that it is incumbent upon the contractor or the owner to call the Town to inspect. Counsel asked if the owner/applicant is saying they asked the Town to inspect and Bolton failed them. Councilman Saris replied by saying basically yes. He believes it is more the contractor assured the owner that the Town was contacted and the Town did not make a reasonable effort to come and look at it. In all fairness, the Town did issue them a CO. Counsel asked if the Town issues a Certificate of Compliance to get this project going, not a Certificate of Occupancy that it was done well. Councilman Saris replied by saying the owner was in no permit violation. They received their septic permit, built their house, everything was signed off on and in the meantime the Town didn't inspect it. It is his understanding the system failed, it was re-done and it wasn't inspected a second time and subsequently failed again. The Town clearly didn't issue the owner any notice of violation for not having the Town inspect it.

Counsel said he feels great pain in that this is not a great moment in municipal law. He asked if there is a possibility that if the Town were to undertake what it feels, and not necessarily in the nature of what businesses characterize as goodwill, but as what a Town government can characterize as responsibility, is this an agreement the Town can enter into with this particular homeowner. If it is done at Town expenditure that which is then required to correct the circumstance is done at the applicant's expenditure and within a defined timetable, in other words, the Town gives a little and it gets a lot. He doesn't feel comfortable saying "let's take a stab at it" and spend some money to do something that is perhaps the Town's responsibility. He asked if it is reasonable to get in writing from the owner that when it's done what is ascertainable from inspection of the pit then is a mandate that the system will be completed by them at their cost by a certain deadline, because that is how you get complete compliance.

Councilman Saris asked if the Town has to permit whatever the owner does septic wise and Counsel said yes. Councilman Saris asked if the Town digs the hole and Tom Nace looks at it then wouldn't it be somewhat automatic to supply a design for a septic system that will function there or the owner won't get the permit. Counsel said yes, but he wants the owner to know that by advancing and paying what the Town does not ordinarily pay for, but has assumed the responsibility for because process 1 and process 2 failed this applicant, that the Town will now know the applicant stands ready to complete whatever has to be done to be in compliance.

RESOLUTION#93

Councilman Saris moved seconded by Councilman Andersen that due to problems with property owned by Robert & Judith Ruge, 24 S. Trout Lake Rd, Tax Map #185.00-1-5, the Town will assume financial responsibility to have test pit(s) excavated at a cost to be paid by the municipality in an amount not to exceed \$500. Additionally, the municipality would also pay the fee for a qualified soil scientist to inspect the test pit(s). These considerations were extended to Mr. & Mrs. Ruge based upon the understanding that previously required municipal septic inspections may not have been undertaken or completed, and in an effort to encourage the property owner to bring the premises into compliance, such proposal was extended upon a further requirement that Mr. and Mrs. Ruge will enter into a Memorandum of Understanding with the municipality that upon completion of test pit(s) excavation, witnessing of test results and by direction of the municipal engineer and/or qualified soil scientist, the applicant will be bound by an agreed timetable to apply for a septic system permit and complete same in accordance with approved plans. All Favorable. Motion Carried.

Additional discussion took place between the motion of Resolution #93 and the motion being seconded and voted upon.

John P. B. Miller, 22 Brook Street – request for exemption from Water Regulations and Sewer Regulations due to hardship of distance and ledge rock

Supervisor Gabriels said this item is still pending.

RESOLUTION #94

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

New Business:

RESOLUTION #95

Councilman Saris moved, seconded by Councilman MacEwan to authorize a refund of \$25.00 to Matt and Becky Coon for a certificate of compliance not required. All favorable. Motion carried.

RESOLUTION #96

Councilman MacEwan moved, seconded by Councilman Maranville to authorize a refund of \$25.00 to Don Pratt for a certificates of occupancy not required. All favorable. Motion carried.

Purchase of "Meter Tap" for reading water meters from Network Oriented Solutions

RESOLUTION #97

Councilman MacEwan moved, seconded by Councilman Maranville to authorize the purchase of "Meter Tap" for reading water meters from Network Oriented Solutions in the amount of \$1,695.00. All favorable. Motion carried.

Erin Pratt's request to use Dula Parking on Saturday, June 23, 2006 from 8am-1pm

RESOLUTION #98

Councilman Maranville moved, seconded by Councilman Saris to grant the use of Dula Parking lot on Saturday, June 3, 2006 from 8am-1pm to the Emmanuel United Methodist Church for a perennial flower sale. All favorable. Motion carried.

Revision to Water Regulations regarding fixed water charges

This item was tabled pending further information.

Replacement of antique streetlights

This item was tabled pending additional information.

Highway Road Agreement

This item was tabled pending further discussion at a special Town Board workshop scheduled for Wednesday, May 17, 2006.

Time Clocks – possible future use by the Town of Bolton

This item was tabled pending additional information.

Zoning Office – memo on replacement copier machine dated 04/28/06

Supervisor Gabriels said the Zoning Office gave him a memo for replacing their copier. There are 11 months left on the current lease

This item was tabled pending additional information.

Human Resources Practices and Procedures

Councilman Saris said that he suggest the Town Board review the current Human Resources Practices and Procedures and set up a workshop for discussion with the Human Resources Company. Supervisor Gabriels asked what he estimated time of completion would be. Councilman Saris replied that there is a

difference between completion and implementation. Supervisor Gabriels asked if this is a generalized or a professional service and Counsel said it is a professional service.

All Town Board members were in favor of setting up a workshop with the Human Resources Company for a date yet to be determined.

Kelly Bishop vs. Town of Bolton

Supervisor Gabriels said that authorization is needed by the Town Board to have Town Counsel represent the Town of Bolton in this matter.

RESOLUTION #99

Councilman Andersen moved seconded by Councilman Maranville to authorize Town Counsel to represent the Town of Bolton at regular rates in the matter of Kelly Bishop vs. Town of Bolton. Councilman Andersen yes, Supervisor Gabriels yes, Councilman MacEwan yes, and Councilman Maranville yes. Councilman Saris abstained. Motion carried.

Ridge Line Development Moratorium

Councilman Saris asked if it was an actual proposal the Town Board would certainly have a public hearing before enactment and Counsel said yes, that is correct. Councilman Saris asked about public comment or requesting comment from the PB or ZBA or other groups concerning this matter. Counsel answered that the Town Board definitely has a right to refer the issue to the PB to seek their recommendation, but it is not a requirement. Whatever is proposed has to be on public notice for a public hearing before there is any implementation of a moratorium. Then at the public hearing, if the Town Board finds the proposal is satisfactory then it should be enacted. Counsel urges the Town Board to be specific in the nature of what he can offer as a recommendation in terms of elevation and natural grade, because those are the relevant concerns as to what is going on in terms of the development pressure. It would be across the board in your Town in that it would be all zones and then therein lies the ingredients as to what the Town Board has to think about and what the public ought to comment on and the end product is what the Town Board desires to enact. If enacted there needs to be some activity going on about how to then appropriately regulate it.

Councilman Saris said he knows it is going to be considered in the review of the ordinance but in terms of the timeframe for that whole process is very involved. This would only be one part of that process and asked if it is unreasonable to enact a temporary moratorium. Counsel said that a reasonable time for a moratorium is 5, 6 or 8 years according to New York State Court of Appeals. Counsel doesn't feel that is a reasonable time, and for this moratorium he thinks 6-9 months is a good target zone to start with the understanding that the moratorium can be extended for good cause.

Willie Bea McDonald asked if projects already started would be part of the moratorium. Counsel said that is a good question. As a matter of law, that which does not already have a building permit would by virtue of the moratorium automatically be stayed. It is well tested in courts of laws that there is no vested interest in a pending application.

Councilman Saris said he has no opinion on the moratorium either way. John Gaddy makes a very compelling argument that is backed up by excerpts from the Comprehensive Plan that the need is there for it. Whether or not the Town Board needs to stop that measure with a moratorium or whether the Town can afford to wait for the Zoning Ordinance review is the question. The Town Board is a long way from enacting this moratorium; he would like the PB's input first because they are the people who grapple with this issue on a monthly basis. Supervisor Gabriels asked if Councilman Saris is looking for the PB to give input on the question of a moratorium or if he is looking for the PB to give input on slopes, elevation, and the other components that may fit into whatever the Town Board describes as ridgeline development. Councilman Saris said that he is looking for PB input on both. If the PB doesn't think that a moratorium would be beneficial or necessary maybe the Town Board doesn't go any farther, but he

doesn't think that decision should be left solely to the PB. Their input would be absolutely critical. If the PB answers that there should be a moratorium then the next logical question would be where would it apply and again the Town Board would want the PB's input in addition to professional input from someone like ELAN Associates who were involved with the Town's Comprehensive Plan.

Willie Bea McDonald said people looking to develop should be aware of this prior to spending money on a project.

John Gaddy said that he started this process in 2004 and he has appeared repeatedly asking for a moratorium. Councilman Saris said anytime you start to invest resources before you have the completed site plan review and a building permit you are somewhat taking a chance. Willie Bea McDonald said that there are certain things that need to be done before coming before the PB.

Supervisor Gabriels asked if Councilman Saris is suggesting the Town Board seek input from the PB and ELAN. Councilman Saris said he would start with just the PB since they are the ones closely involved with this.

RESOLUTION #100

Councilman Maranville moved, seconded by Councilman Andersen to refer this matter of a ridgeline development moratorium to the Planning Board for their recommendation. Counsel will send a letter to Zoning Administrator, Pam Kenyon to have the item added to the May 2006 PB meeting agenda. All favorable. Motion carried.

Supervisor Gabriels said it suggests to him that the Zoning Code should be modified on a more expedited basis on the issue of whether or not 25% grade is an acceptable grade for driveways and to clarify that particular provision in the Zoning Code, because it does seem to apply to roadways. Counsel said yes, a roadway has specified limits—a driveway does not and although there is a definition of what constitutes a roadway and what seems to be different about a driveway, the weird thing about it is that when an applicant comes before the PB it seems like the applicant gets the choice as to if the driving surface is a driveway or a roadway.

Councilman Andersen asked if there is a formal statement of distinction on that and Counsel said no. Councilman Saris said he made a note to pass those concerns on to Lisa Nagle. Counsel said that right now driveway is a wildcard, in that if an applicant can convince the PB that it really is a driveway it just has some negotiable reasonable rules. Councilman Andersen said he seems to remember from his time on the PB that past practice, while not in print, was that if it was a subdivision serving 3-4 houses it was a road, and if you built 1 house it was a driveway, more than one house meant it was a road. Counsel said three lots seem to get away with the persuasive it is a driveway and five or more look like it's a road. Councilman Saris said that even going by that rule of thumb you almost never saw a driveway over 100 yards long, but now the Town has driveways miles long and at some point maybe they do become roads.

Willie Bea McDonald asked what the timeframe is for a moratorium being enacted. Counsel answered by saying hypothetically the Town Board could have it on the June 2006 agenda and could set a public hearing for July's meeting. Counsel said that is correct. Willie Bea McDonald asked if it would then be voted on in August. Counsel said no, if the public hearing was closed at the July meeting it could also be voted on then.

Public in Attendance: None

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

RESOLUTION #101

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

FROM TO AMOUNT

Conservation Park 71502 Equipment \$1573.18 plus interest
General Fund - May Sewer District \$15,000.00
General Fund - February Sewer District 6,500.00
General Fund - March Sewer District 7,000.00

All favorable. Motion carried.

Payment of Lake George Watershed Conference Bills:

RESOLUTION #102

Councilman Andersen moved, seconded by Councilman Saris, to authorize payment of the Lake George Watershed Conference bills as presented. All favorable. Motion carried.

Payment of Town Bills:

RESOLUTION #103

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

Public in Attendance: None

Other Business: Rainbow Beach

Counsel said he provided documents to the Town Board on the Rainbow Beach Tax Assessment Litigation. The school board, the taxpayer's attorney, the homeowner's association and Mr. Rosebrook have all agreed, and he recommends this settlement on the specified terms, which will end six years of litigation.

Supervisor Gabriels said that he hasn't read the settlement documents yet. The Town Board members agreed to address this item at the special Town Board workshop scheduled for Wednesday, May 17, 2006.

Executive Session: None

Councilman Saris moved, seconded by Supervisor Gabriels, to adjourn at 10:34 pm. All favorable. Motion carried.

Minutes transcribed by: Respectfully submitted by:

Jennifer Torebka Kathleen Simmes

Recording Secretary Town Clerk

05/16/2006