

TB - Minutes
October 4, 2005

STATE OF NEW YORK
COUNTY OF WARREN
TOWN OF BOLTON

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

Absent: None

PUBLIC HEARING: None

REGULAR MEETING:

Supervisor Gabriels called the regular meeting to order at 7:00 pm.

Pledge of Allegiance - Supervisor Gabriels

Announcements:

Supervisor Gabriels asked all in attendance to remain standing, bow their heads, and give a silent commemoration of prayers and condolences for the lives lost with the tragedy on the Ethan Allen.

Supervisor Gabriels said that the Town of Bolton had a wonderful Bolton Pride Day, on Sunday in Veterans' Park; the weather was beautiful, the people had a great time, he had a great time and he hopes the Town can continue that effort in future years as it is a wonderful community activity.

The October 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

Ed Corcoran, resident of 260 South Trout Lake Road, said the wind broke a tree down on his property and tore the telephone line in two. He was called Sunday morning by a telephone worker that got Mr. Corcoran's address from the 911 service and he was standing on Trout Lake Road at the telephone pole by Thomson's Garage, because that is where the 911 calls are sent for 260 South Trout Lake Road. It took the telephone worker two hours to find the Corcoran residence; and he requested the Town of Bolton be aware and to check the 911 system to make sure this safety feature is in place.

Supervisor Gabriels asked where the phone worker got the address from and Ed Corcoran answered by saying Niagara Mohawk, as they still refer to his address as Cedar Camps and repair crews are being sent to Trout Lake Road instead of South Trout Lake Road.

George Weinschenk said his address with Niagara Mohawk is not the same one the Town has listed when they signed him up for the 911 service and he has also had problems in relation to that. George Weinschenk said he attended the NoRoWal Public Hearing, which was off the record, so no minutes were taken, and he is looking for answers he did not get at that meeting.

George Weinschenk asked if there is a covenant not to compete with Mr. Lamb and Counsel said no. George Weinschenk asked if that means that Mr. Lamb could open another marina

with the remainder of his docks or do whatever he feels like with that property. Counsel answered by saying that Mr. Lamb is unrestricted and whatever Mr. Weinschenk has in mind that Mr. Lamb may do, he is free to do. Councilman Saris said the docks normally associated with NoRoWal Marina are the docks the BLDC is buying and the docks between NoRoWal Marina and Lake George Camping are referred to as Sawmill Bay Marina, it is a separate parcel. George Weinschenk asked theoretically if Mr. Lamb could open a marina there and Councilman Saris said that Mr. Lamb already has a marina there called Sawmill Bay Marina.

George Weinschenk said the BLDC seemed very happy that it will not have to pay Lake George Park Commission fees, and asked if this will give the BLDC a distinct advantage in renting dock space over the existing marinas like Chic's Marina and the others who do pay the LGPC fees. He asked if the BLDC's dock space rental fees will be competitive with the market or if it will charge less or more. Counsel said his understanding of what the BLDC is doing is that market forces will drive the amount that the BLDC will obtain for the letting of a dock slip. J. Buckley Bryan Jr. solicited what it costs at other marinas for a comparable size slip, which is in all of the minutes of the various BLDC meetings, and taking all of that information and projecting what will also be charged next year by other competing marinas. The answer simply came out that there has not been a definitive decision as to dock space pricing, but he senses that the pricing is at where the other marinas are charging, because the BLDC is not trying to gouge or undercut-neither put out of business or to be the only business, because the BLDC is not-for-profit. George Weinschenk said it would be unfair to private industry. Supervisor Gabriels said the BLDC has been very sensitive to not subsidizing that operation over there and to price its commodities at the market level and not to undercut competing facilities or commodities.

George Weinschenk asked if the money the Town of Bolton advanced or loaned to the BLDC is to be paid back to the Town of Bolton. Supervisor Gabriels said the \$32K advanced in April has been paid back to the Town of Bolton. The \$45K used as good faith in securing the contract between the BLDC and NoRoWal Marina will be paid back either when the deal is consummated or the deal is determined to be valueless. He does not feel the \$75K Bed Tax money is intended to be paid back to the Town of Bolton. George Weinschenk asked if the Bed Tax money was a gift and Supervisor Gabriels replied by saying that the Bed Tax money is used for the purposes that were established in legislation which was tourism promotion and they believe the NoRoWal Acquisition is tourism promotion, much the same way as the \$4-5K for the Adirondack Song Fest on Labor Day is not being paid back.

George Weinschenk said his understanding of the law is that the Town of Bolton cannot give more than \$10K to any organization without a vote by the people of the Town, so the Town giving that money to the BLDC is a violation of the law as he sees it. Counsel said Mr. Weinschenk's characterization of a gift is slightly misleading; certainly, the Town Board is permitted to make a grant. Grants given off to an entity that doesn't do government work; by definition, Local Development Corporations that do governmental work is called quasi-governmental work, that is that the Town Board in its own initiative could promote business and tourism with tax payer dollars as the Town Board thought would be appropriate. From time to time some municipalities, and in this case the Town of Bolton is one of them who has created a separate not-for-profit corporation totally legitimate within the structure of the not-for-profit corporation law, to do the promotion of tourism, promotion of business and commerce. The Town Board is permitted to direct a portion of what it has available from surplus funds or special sources that are not necessarily exposed to a requirement of a permissive referendum; in this particular instance the Bed Tax dollars can only be spent for a very restricted few things and when the Bed Tax dollars came to

Bolton, Bolton could chose to spend them by granting them to the BLDC for the specific restricted purpose that the tax collects revenue for, so it is a perfect stream in terms of the source of the money and the application of the money. As he understands it the Bed Tax money is never to be paid back, it is a grant, and because the private quasi-development corporation does government work, there is no requirement that each and every dollar has to be voted upon by a referendum. George Weinschenk said that is assuming that running a marina is considered government work. Counsel answered by saying yes.

George Weinschenk asked if the Library or the Chamber of Commerce would be considered as doing government work since they make presentations to outsiders to get people to come to the Town. Counsel answered by saying that what government does for its people is necessarily defined by law and contract. When the Town Board approached the BLDC in what it was going to do, the BLDC was not for the creation of a training school, but there is an aspect of the BLDC that will promote business. He doesn't know if Chambers of Commerce does something like that, but Town Boards do. George Weinschenk said it seems to him that the Chamber is not eligible for larger subsidies, but yet a marina, that would benefit very few of the Town residents, is eligible for these subsidies. Counsel said that the subsidy comes at the end and throughout in that money realized from all the aspects of the operation, of what Mr. Weinschenk seems to characterize as a private aspect, but that money does not come back to the Town or go to any private individual-it is not profit-it is poured back into the community through other means such as if low-interest loans are going to be made available. If there are going to be grants made available for other types of development, they will come through the BLDC.

Councilman Saris asked if Mr. Weinschenk is referring to subsidy for the Library being Bed Tax money. George Weinschenk said that there is a regulation that prohibits the Town from giving more than \$10K to an organization without a permissive referendum. Counsel said that is correct and said that would apply to organizations like the Boy Scouts, the YMCA and the Chamber of Commerce, but not to an organization that undertakes to do the work of government. George Weinschenk asked if the Town Board determined that the BLDC is doing the work of government. Counsel replied by saying that the Secretary of New York State determined that the BLDC is doing the work of government. George Weinschenk asked who went to the Secretary of State for the determination. Counsel said he was the incorporator who acted upon the instructions of the Town Board, but once the BLDC was incorporated he acted upon the constituency of the BLDC.

Supervisor Gabriels said that last year the Town contributed \$27,500 to the Bolton Free Library and a comparable magnitude to the Bolton Rescue Squad. George Weinschenk asked if those amounts were given after permissive referendum. Supervisor Gabriels said no, there was no permissive referendum, because it was at the discretion of the Town Board. George Weinschenk said if more than \$10K was given to the Bolton Free Library and the Bolton Rescue Squad without permissive referendum, then he believes that is a violation of the law. K. Simmes said she believed the only thing she recalls ever needing a referendum was when the Chamber of Commerce wanted more money, it went to referendum and the Chamber gets \$20K, but has never been that any other organization needed to do that.

Counsel said he has seen other municipal Boards propose to donate money to the YMCA. The Town of Bolton doesn't do that, but that is a clear example of what Mr. Weinschenk is talking about, because the YMCA doesn't do any type of government work. The Bolton Town Board and the majority of Town Boards in the State of New York grant money and provide the budget for the rescue squad that is within the municipality since it is doing the work of government through public health, general welfare and safety of its constituents,

which is perfectly legal and not subject to a public referendum-and it is a grant or gift as Mr. Weinschenk refers to it, and all can agree that it is never paid back.

George Weinschenk said that Town Board Members sit on the BLDC and asked if it's a conflict of interest given that the Town Board Members vote on money and how to spend it. Counsel said that there are two Town Board Members who also sit on the BLDC Board; it is not per se a conflict of interest as the answer is guided by the General Municipal Law-Public Officers Law section and when there is a need to get a construction as to what that law means in a close situation, you look to the cases. The Comptroller of the State of New York and the Attorney General checked all of their opinions and simply there is not per se that conflict, especially so where the Town Board and the BLDC are doing the same things, if you will, they are partners in the intended goal. Mr. Weinschenk would be quite correct that there would be a conflict if there was a dispute among those memberships or some contract that had been breached; ultimately yes, hypothetically there could be some day in which the BLDC had violated its purposes and powers clause or has misspent some money then this Town Board would have a conflict which would be a breach between the agreement between these two bodies and that would be a conflict. George Weinschenk said if one more member of the Town Board was put on the BLDC Board, theoretically they would vote the money and decide how to spend that money, so there would be no checks and balances in place. Counsel replied by saying that in Mr. Weinschenk's hypothetical situation that would be true and that is why there are not three Town Board Members on the BLDC Board.

George Weinschenk said he wanted to get all of this information on the record because he is looking at filing an Article 78, because he doesn't feel the average person living in the Town is getting their say and the only way they can is to file an Article 78.

Supervisor Gabriels asked Carl Schoder to address -Pending Items at this time:

Regarding the New Vermont Road culvert - Supervisor Gabriels asked if Carl Schoder had reviewed the bills submitted by Fort Miller and Gallo and asked for the status of the project. Carl Schoder said he has reviewed the bill to be paid by the Town to Fort Miller for materials for the New Vermont Road culvert and the bill to be paid by the Town of Bolton to Gallo Construction for labor for the New Vermont culvert. Both bills are acceptable and ready to be paid by the Town of Bolton. The culvert replacement project necessitated by the June 13th storm event is approximately a week ahead of schedule, the quality of construction is good, the contractor has been good to work with and he doesn't foresee any problems.

Regarding the C& D Ramp at the Transfer Station- Supervisor Gabriels said that six bids went out on September 29th, five bids came back and were reviewed by Carl Schoder. Carl Schoder said he reviewed the bids and the apparent low bidder is Don Kingsley Excavating at \$111,306.18. The next lowest bid was \$126,100, then two at the \$140,000 level and the final bid came in at the \$175,000 level. He is familiar with Don Kingsley's work and capabilities and he has sent a letter to the Town recommending that Don Kingsley's bid is appropriate if it is what the Town desires.

Supervisor Gabriels said he is not sure this year's budget anticipated an expenditure out of surplus in that amount and the reason the Town Board went out to bid on this item is because it determined it would not be able to rely upon in-house forces- Highway and Parks Departments-to construct the culvert because those departments are playing catch-up from the June 13th storm event.

Councilman White asked for the anticipated completion date of construction and Carl Schoder answered by saying that substantial completion by November 4, 2005 and final completion by November 11, 2005, which presupposes that the Board makes a decision rather quickly, if this item is not decided upon until the November Town Board meeting the completion won't happen by the stated dates.

Councilman Andersen said the Town Board has been working on this project for a long time and the Town Board should get it done. The longer the Town Board waits, the higher the cost will become; and it is certainly something that benefits anyone that goes to and uses the Transfer Station. Several other Town Board Members agreed with Councilman Andersen.

Councilman MacEwan asked if the lowest bid figure surprised Carl Schoder and Carl Schoder replied by saying no and added that his gut feeling was that it would be done in the range of \$115K-\$120K.

RESOLUTION #209

Councilman Andersen moved, seconded by Councilman MacEwan, for the Town Board to formally accept the \$111,306.18 bid from Don Kingsley Excavating and authorize Don Kingsley Excavating to proceed with the C&D Ramp at the Town Transfer Station and authorize the Supervisor to sign the contract. All favorable Motion carried.

Carl Schoder said that he will issue a notice of award to Don Kinglsey and ask that the appropriate paperwork be submitted. He will return the bid bonds to the other contractors.

The Town Board unanimously agreed for the \$111,306.18 to be financed by short-term bond anticipation note and Counsel said he would contact Donna Boggs and prepare the paperwork accordingly.

Correspondence:

Letter from Jens Brondel of 7 Sawmill Lane, to the Bolton Water Commissioner regarding a high water bill - read into the record.

Letter from Al Simo to the Bolton Water Commissioner regarding a high water bill - read into the record.

Letter from Patricia Marki to Supervisor Gabriels regarding the September 19, 2005 variance request granted by the ZBA to Tony and Gail DePace to enlarge an existing guest cottage on the DePace property, she is opposed - read into record.

Letter from Tom Curri to Supervisor Gabriels in praise of Bolton Pride Day-read into record.

Letter from Pat Galea thanking all at the Town Hall for their assistance with her husband Joe's illness and death and asking the Town Board for awareness of its insurance policies in this situation - read into record.

Letter from Carl Schoder

regarding the Solid Waste C&D Ramp.

Numerous correspondences back and forth about the Casaccio vs. the Town of Bolton and the Urtz ditch.

Memo from Code Enforcement Officer Mitzi Nittmann requesting alternative gas allowance measures - read into record.

Memo from Code Enforcement Officer Mitzi Nittmann requesting the Town Board pass a resolution to enable her to use her discretion in enforcement on Section 125-15 Fines

and Penalties for Stormwater and Subdivision Regulations - read into record.

Letter from the Bolton Chamber of Commerce requesting the use of approximately \$1,000-\$1,200 of Bed Tax money for activities for this coming weekend.

Letter from the Bolton Business Association requesting the use of \$300 of Bed Tax money for mums and banner brackets.

Letter from Ronald Helm of 274 New Vermont Road, regarding damage to his property from drainage requesting a gutter instead of a swale to protect his property.

Notification from the Adirondack Park Agency of a completed application for the Sandy Lane Estates Subdivision.

Letter from the Bolton Free Library thanking the Town for its recent grant of \$13,750.

Letter from George Moffitt from the Highway Department requesting two weeks vacation pay, as he will be unable to use vacation time.

Letter from Selective Insurance that they will disclaim coverage for the particular loss of the damage caused to the pump motor at the Little League field off Finkle Road.

Copy of a letter from the Army Corps of Engineers that the Town of Bolton's application dated August 14, 2003 regarding finger docks in Rogers Park has been permitted and it is valid under this permit until 2010.

Correspondence on the Mancini vs. the Town of Bolton on a Tax Certiorari case.

E-mail from the Lake George Watershed Conference that they are going to start looking at promulgation relating to on-site wastewater treatment systems throughout the basin.

Notification from Jeffrey Tennent that he is requesting a variance at the next upcoming meeting.

Notification from Selective Insurance regarding Casaccio vs. The Town of Bolton stating that Mr. Urtz and the Town of Bolton have been named in the notice of claim and Selective Insurance has determined that general liability coverage will be available to the Town of Bolton - read into record.

Notification from Selective Insurance regarding Casaccio vs. The Town of Bolton stating that the situation does not fall within the Town's Public Officials' Liability Policy.

Correspondence that deals with Finkle Brook and the grant indicating that the DEC Finkle Brook Grant Administrators denied use of the grant for both a professional hydrological analysis of the watershed on Finkle Road above Valley Woods Road's intersection and a separate analysis for the land above Edgecomb Pond.

Information from the Lake George Association on the Wide Waters Subdivision.

Information from the Lake George Association on the Byers variance.

Information from the Lake George Association on Byers variance on John Painter's single-family dwelling.

Information from the Lake George Association on the variance from Tony and Gail DePace. Minutes from the Hudson Headwaters Health Network September 12, 2005 meeting.

Notification from Niagara

Mohawk regarding the Niagara Mohawk bills.

Correspondence from

the Adirondack Parks Local Government Review Board regarding the APA's proposed campground regulations.

Indication and document from the Lake George Park Commission on their proposal considering tree clearing and stream corridor protection and planning evaluation the LGPC will be undertaking in the near future.

Correspondence from

John Sweeney to Undersecretary Paulson at FEMA expressing his dissatisfaction with FEMA's negative determination on the Warren County's June Events FEMA application.

Correspondence from State Consumer Protection Board.

Correspondence on Bishop vs. The Town of Bolton.

Reports:

Councilman White:

WATER DEPT:

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ater made: 7,939,000 gals Daily average: 264,630 gals. Currently, the pond level is approximately 9.5" below the spillway.

They are continually busy at the Water Plant and down at the distribution pump. They had to change a 10" butterfly valve that went bad at the plant; put in a new water service line and put in a sewer line at Brook Street for the new house built by Joseph and Lucille Datello. Trouble with a blow-off valve at the old Dairy Queen that needed to be rebuilt by Ross Valve. They shut off the water at Wilson's Laundry until further notice. Had Mark Posteraro locate two water lines for them with his locating machine at Ed Mundy's house and one at **Bayview** Marina. Worked with Bolton Police Department to direct traffic and help out during the wind storm on Sept. 29, 2005.

POLICE DEPT:

Hours officers worked: White - 74.5, Howse - 105.5, Schroeder - 84.5. Miles patrolled: 1,231 miles. Fuel used: 128 gals. Officers investigated 3 criminal reports, 1 assist to motorist, 4 uniform traffic summonses, 10 parking tickets, 4 court securities, 1 arrest, 5 emergency medical assists, 20 misc. complaints and 3 man hours for a special court security trial.

JUSTICE COURT:

A/R: Judge Demarest - \$4,515. Judge Stewart - \$8,275. Total: \$12,790.

There is an itemized list located in the court breaking down the amounts.

Councilman Saris:

TOWN CLERK'S OFFICE:

Total Local Shares Remitted: \$15,093.76. Non-local Revenues: \$1,515.94. Total State, Local and County Revenues: \$16,609.70.

SEWER DEPT:

The Plant took in 6,220,587 gals of wastewater for a daily average of 207,579.6 gals.

All monthly samples are complete and there have been no violations; they hauled 40,000 gals. of liquid sludge out; they discussed upgrades with CT Male; They are very pleased to announce that Tom French passed his exam, so the Town now has two licensed operators on staff, which should help in scheduling vacation time and issues like that. They aided in doing the water/sewer taps on Brook Street, fixed a leaking pump at the south station, fixed the diffusers on the EQ tank, and are generally getting ready for the winter.

Mr. Dagles wanted to remind the Town Board that he still doesn't know who is responsible for the maintenance of the grinder pumps at the North Pump Station.

Councilman Andersen:

PLANNING OFFICE:

Permits applied for: 7 certificates of compliance / 3 septic permits/ 8 variances / 3 site plan reviews / 5 subdivisions / 4 stormwater permits and a few miscellaneous items. A/R: \$4,237.20.

CODE
ENFORCEMENT:

Mrs. Nittmann filed a 22-page report.

27 site visits / numerous pages of field notes / numerous letters ranging from violation letters, resolutions, memos, compliances, tree removals, septic inspections, and one foil request, etc.

Councilman Andersen said that it is obvious that office is keeping busy this time of year.

PARKS DEPARTMENT:

Councilman Andersen said that at last month's meeting some citizens correctly brought up concerns with the parks not being as neat and clean as they could be. The Parks Department has started moving forward on that. The bathrooms at Veterans' Beach were repainted, the floors redone, and they have begun sodding and patching some of the grass. At Rogers Park they have removed debris and brush by the tennis court, repaired lawn by the library; they are still almost there with the lights and globes, which they have been waiting on parts since May.

OTHER COMMENTS:

Councilman Andersen said that he attended the Bolton Pride Day, it was well attended. He thinks a lot of local people had a good time and there were lots of activities. He would like to commend the fairly large committee that did a real lot of work in putting that together and on the good job that they did. All Town Board Members agreed the Town Board should thank Bolton United/Bolton Cares.

Councilman MacEwan:

TRANSFER
STATION:

A/R: \$5,946.00.

Lisa French indicates that Northern Car Crushers were in and took seven loads away, but they left quite a mess, which Councilman MacEwan witnessed. She asked Tim Coon to help move some things.

Lisa French said Henry was out on sick leave again, so they got approval to have Al Dague go up and work for the day. Some of the customers commented that he had a nice attitude and helped them out quite a bit.

Lisa French is asking the Town Board to consider Sundays as one of the days the Transfer Station is closed for Winter Hours, as opposed to the usual Mondays and Wednesdays.

Lisa French has 32 hours of vacation left and would like to use it, but time is running out for a date.

ANIMAL CONTROL:

1 barking dog complaint at the Gate House subdivision for the third time - no owner was located. Picked dog up at Marki residence and took it to Schroon River Animal Hospital - owner identified. Dog picked up - lost dog at Cool Ledge - owner notified and picked up at Town Hall. Picked up and disposed of dead raccoon. Report of dog caught in trees behind Hometown Diner -untangled dog and returned to owner. Report of a dog bite - investigated - dog owned by victim - all okay. Called to East Schroon River Road for dog chained to tree with no water or shelter - gave warning to owner. Two dogs seized at Adirondack Camping Resort - took to Schroon River Animal Hospital - dogs identified and returned to owners. 15 hours and 149 miles logged.

Supervisor Gabriels:
SUPERVISOR:

Total receipts: \$404,512.41. Total disbursements: \$733,282.90.

Regarding stormwater, Supervisor Gabriels said that the Finkle Brook grant was provided to the Town under the Department of State five years ago; the Federal EPA is indicating there is no more extensions of the grants, which either need to be completed or lose potential funds. One section under Finkle Brook is still under consideration around the Highway Department and further down Potter Hill Road. He doesn't know if the Highway Department will be able to complete those efforts before the December 31, 2005 deadline.

Warren County: is in the midst of its budget cycle and are focusing on next year's budget. The Town of Bolton indicated and certified to FEMA the damage the Town of Bolton incurred in August 2004 has been completed proper stormwater management has been installed as was promised, so there might be some extra funds coming to the Town for this.

Unfinished Business:

Regarding Michael DeLarm, Supervisor Gabriels said Michael DeLarm wishes to attach to the municipal sewer system, and has received an estimate from North Woods Excavation (Barry

Persons) to install the line across Dula parking lot in the amount of \$3,950; Mr. Flaherty will be asked to make the tap into the sewer line, it will be some time after Columbus Day. He asked for thoughts on negotiating cost sharing on this particular project because the line runs across essentially 100% of Town property and there is a resolution and memo from Counsel that the Town is responsible.

Counsel said the Town Board's plan was that if it was going to cost share on this project, Mr. DeLarm would pay the expenses and the Town would reimburse him; as Mr. DeLarm is responsible from his property line and the Town is the adjacent owner.

Councilman Saris said it should be done, it brings things more into compliance and it just makes sense as a septic system functioning in the middle of Town doesn't make sense. Councilman White asked if completing this hook-up also disconnects the use of the septic system. Supervisor Gabriels said yes, and that he doesn't know where the line actually runs through Dula parking lot, with heavy rains a large puddle already forms there, and is not sure how this particular line might impact future stormwater infrastructure in that particular area. Councilman Andersen asked if it would be unreasonable for Town Engineer Tom Nace to review where the proposed running of the line to ensure it will be going through a low area rather than a high area to the hook-up, so if they decide to put drainage in the low area it will not be in the way. The Town Board Members agreed to have Town Engineer Tom Nace look at the proposed location for the line and to have the Supervisor make a decision if it is determined there will be an increase in cost due to possible location changes.

Counsel said that there was a discussion some time ago regarding a tap sewer line hook-up expenditure where he had said that it was routine and ordinary if you had a policy, as many municipalities do, to pass that to the party-consumer-that would be hooking up and asked if that is unfinished business. Supervisor Gabriels said that is unfinished business.

Supervisor Gabriels asked if there is any particular language needed in the resolution. Counsel answered by saying that in compliance with Town Ordinance #39 the responsibility incurred and understood by the municipality would be that it is the Town's responsibility to provide the sewer line up to the private owner's property line. The Town Board needs to include an amount it feels is appropriate.

RESOLUTION #210

Councilman Saris moved, seconded by Councilman Andersen, to authorize the \$3,950.00 reimbursement to Michael DeLarm for sewer service to the edge of the right of way at Dula parking lot with the conditions that Town Engineer Tom Nace review the proposed location for running the line and the Supervisor has the latitude to run the sewer line across Town property however it suits the Town's needs if an additional cost is to be incurred for relocation. All favorable. Motion carried.

Regarding the BBA, Supervisor Gabriels said the BBA requested up to \$300.00 from the Occupancy Tax funds for mums to be planted throughout the Town and for banner brackets.

RESOLUTION #211

Councilman White moved, seconded by Councilman Andersen, to authorize Occupancy Tax expenditures of up to \$300.00 to the BBA for mums to be planted throughout the Town and for banner brackets. All favorable. Motion carried.

Regarding the Bolton Chamber of Commerce, Supervisor Gabriels said the Bolton Chamber of Commerce requested \$1,200.00 from the Occupancy Tax funds for various activities associated with the Columbus Day Garage Sale for kids' activities.

RESOLUTION #212

Councilman Andersen moved, seconded by Councilman Saris, to authorize Occupancy Tax expenditures of up to \$1,200.00 to the Bolton Chamber of Commerce for various activities associated with the Columbus Day Garage Sale for kids' activities. All favorable. Motion carried.

Regarding the review of the contract with the Sagamore Resort regarding the emergency pumping station, Counsel said he contacted Atty. Ben Pratt regarding renewing this contract and was told Atty. Pratt approached his client and is waiting to hear back. The Town definitely needs a cooperative party to sign an agreement. Supervisor Gabriels tabled this item to November's meeting.

Regarding the Park's Department 1996 Ford One-Ton truck, Supervisor Gabriels said that this vehicle was replaced with a new one and asked for suggestions for the old truck.

RESOLUTION #213

Councilman Andersen moved, seconded by Councilman Saris, to authorize the Town to remove all necessary hardware (the plow, plow frame, etc.) from the Parks Department's 1996 Ford One-Ton Truck, declare it as surplus, and put it out to bid in "as is condition" with a minimum bid of \$500.00. All bids will be opened at the November 2005 Town Board Meeting. All favorable. Motion carried.

Pending Items:

Regarding the Rainbow Beach Tax Certiorari Case, Supervisor Gabriels said that there is a meeting scheduled for Wednesday, October 12, 2005.

Regarding the Highway Garage and the "floating concrete pads," Counsel said that he doesn't seem to get any positive notion that Mr. Kruger is a bidder or interested, although he has been told personally and by telephone that he is. Supervisor Gabriels said that the one time he was able to speak with him, Mr. Kruger was very interested. Further discussion ensued on this item.

Board of Health/Water Commissioners: No issues pending.

Referrals from Code Enforcement Officer / ZBA / BPB: NONE

Regarding mileage payments, Supervisor Gabriels said the Town Board will be making that resolution authorizing the change in mileage reimbursement retroactive to September 1, 2005 from \$.405 to \$.485 in accordance with the IRS. Town Enforcement Officer Mitzi Nittmann still doesn't believe that is enough.

Several Town Board Members agreed that M. Nittmann should not be paying money out of her pocket for Town business; and the roads here are harder on cars, especially on brakes, than what is used to calculate the national average. Councilman MacEwan asked if the Town should consider providing a Town vehicle for that position. Councilman Andersen said it would be more cost effective for the Town to increase the mileage reimbursement rate than to have the expense of purchasing and maintaining a vehicle as well as insuring it.

From the public, Jim Casaccio said that he does Human Resources and Payroll for a living. He asked if anyone looked at the population that made up the national average, because the gas prices in the area are average and the cost of car repairs in this area are below average. He said that there are tax ramifications in that M. Nittmann will be taxed on anything over the government amount.

Supervisor Gabriels asked if mileage was listed on the Code Enforcement Officer's reports in the last few months and Councilman Andersen said that he doesn't know her mileage for this month, but as a rule there are months where she has over 200 miles easily. The position was created because everybody said people continue to build and nobody looks at it and if she does her job, she will be out all the time, which is what the Town Board has asked her to do, in fairness. Councilman Saris said that M. Nittmann has no control over how much mileage there is because it is dependent on how much building there is. Supervisor Gabriels said the question is whether to pay at the rate the IRS computed, which Mr. Casaccio said is average.

RESOLUTION #214

Councilman White moved, seconded by Councilman Andersen, to authorize a change to Town Board Resolution #7 changing the gas mileage reimbursement from \$.405 to \$.485 retroactive to September 1, 2005 in accordance with the IRS. All favorable. Motion carried.

Regarding Code Enforcement Officer Mitzi Nittmann's memo requesting the Town Board pass a resolution to enable her to use her discretion in enforcement of alternative remedies on Section 125-15 Fines and Penalties for Stormwater and Subdivision Regulations. Councilman Andersen said that seems like opening Pandora's Box and may involve a meeting with the Town Board, Counsel and M. Nittmann, with perhaps some written guidelines first.

Counsel said he thinks M. Nittmann should have some discretionary opportunities; it is not only a case of to prosecute or not prosecute, which more than likely would involve an inquiry to Counsel and he is not going to make that decision on his own, but he is certainly going to call the Supervisor and discuss it; the discretion inside the issue. The Town Code permits different types of enforcement, "Alternative Remedies," there are alternatives in the Town Code, for instance to merely take the infraction and present it to justice court for a fine or present it to the Town Board as an alternative remedy for a civil penalty or bring it to a court of record because the Town is going to bring a civil action to bring the situation into compliance-those big decisions are not going to be made by M. Nittmann, but he thinks she needs some wiggle room inside of her Code Enforcement Authority to give some determination as to this is a case that could be quickly remedied. She said she is going to talk to Counsel about it and he is not about to give her a blank check nor does he want a blank check on that because he doesn't want to take the heat on that if it is the wrong decision. He would like M. Nittmann to be able to suggest a situation just be taken to justice court to see if it can be brought for a fine. In no avenue of these alternative remedies do we have what they call _fair and equitable relief-that comes from Town Board and court of law, like take it down, repair it, etc., so M. Nittmann is not asking for discretion in that regard.

Councilman Andersen said it is often easier for the person there to work through it and get a situation into compliance than it is to go through a lot of formality. He asked if policy is established by process or if a written policy would be the starting point. Counsel answered by saying the Town establishes policy by process, but if the Town could put a written policy together, he'd be the first to admit that it will not work in all cases.

Councilman White said it should be noted that the Code Enforcement Officer position can become quite controversial and all Town Board Members agreed. Councilman White said that the Town Board has had the opportunity to weigh into some of these issues as all five members do by hearing all five opinions on these subjects and if the Town were to put M. Nittmann into what she might think is a comfortable position today, could turn out to be a very uncomfortable position if M. Nittmann's decision proves to be not the right one or not consistent with what the Town Board might have done. The Town Board has tried to maintain a consistency for alternative remedies and has followed it very thoroughly so far and he thinks it could backfire. He still thinks M. Nittmann can make recommendations to the Town Board if it is a simple matter of settling quickly and it can be resolved at one Town Board Meeting and be done.

Supervisor Gabriels said that he thinks the Town Board can work with that each case can be presented as clearly as possible to the full Town Board with the concept of alternative remedies and perhaps M. Nittmann's suggestion on whether it is minor and she would handle it one way or it is a decision the Town Board should make and the Town Board would be on its own in making those decisions. Counsel said that is fine, as it takes the heat off M. Nittmann, but it slows her down, because the Town Board only meets once a month.

From the public, George Weinschenk suggested the Town Board base the decision making process on a percentage of what it would cost to correct the problem. For example if it would cost \$500 it would go to the Town Board, \$1K it goes somewhere else, etc and asked if that would make it simpler. Counsel said that as a rule that would make it very simple, but there would be arguments about the value of the costs.

Supervisor Gabriels said that some of the issues seem to be procedural matters and the failure to get permits ahead of time which have no monetary value other than respect for society's rules and regulations.

Counsel said based on this discussion, he would suggest the Town Board leave it alone and not mess with the system that is okay and maybe the Town will revisit this; it is just going to become another layer of controversy. The Town Board should leave it alone because the system has been working uniformly well in terms that when the criticism comes that the Town Board let somebody go, but prosecuted two other people unfairly, the criticism has been lodged at the Town Board Members and the Town Board Members can take it. M. Nittmann doesn't need that overlay because it is hard enough; and he will explain his position to M. Nittmann. Councilman White said that he agreed it would lead to controversy.

Councilman Saris said that the Town doesn't have a full year since implementing the Code Enforcement Officer Position and that after a full year with that position in place the Town Board should review and see if changes need to be made, but it would be smart to be patient unless it is a really large glaring problem.

New Business:

Regarding Kelly R. Bishop - Supervisor Gabriels said that the Town received a Notice of Claim from Kelly R. Bishop at 160 North Bolton Road against the Town for negligence in the maintenance of Church Hill Road which caused damage to her property and particularly to her pond, specifically from the June 13th storm event. The Notice of Claim was received on September 7, 2005 and copies of the Notice were sent out to the appropriate authorities. Hopefully Counsel believes the Town's insurance carrier will assume responsibility for defending the Town in that particular action.

Regarding Proposed Local Law #1 of 2005, Supervisor Gabriels said last month the Town Board had a draft of that law authorizing contributions of contracts of the BLDC. There was no Town Board Member response, so this item is still pending.

Regarding Tom French - Supervisor Gabriels said that Tom French passed the DEC Wastewater Plant Operator test at the end of August and by policy the Town Board has established an indication that Tom French's \$1,000 raise for receiving that certification and that payroll change has been in effect, as this is just public notice to that effect.

Regarding the New Vermont Road culvert project - Supervisor Gabriels said that there are two bills pending before the Town Board that have been reviewed and approved for payment by Carl Schoder.

RESOLUTION #215

Councilman Saris moved seconded by Councilman MacEwan, to authorize payment of \$156,188.86 to Fort Miller for materials for the New Vermont Road culvert project. All favorable. Motion carried.

RESOLUTION #216

Councilman Saris moved, seconded by Councilman White, to authorize payment of \$154,618.91 to Gallo Construction for labor performed thus far to date for the New Vermont Road culvert project. All favorable. Motion carried.

Regarding George Moffitt - Supervisor Gabriels said that George Moffitt from the Highway Department has requested to be paid two weeks vacation pay and he has accumulated 120 hours vacation to date.

RESOLUTION #217

Councilman Andersen moved seconded by Councilman MacEwan, to authorize payment of two weeks vacation pay to Highway Department employee George Moffitt. All favorable. Motion carried.

Regarding the Transfer Station - Supervisor Gabriels said that it is about time to establish winter hours at the Transfer Station; he suggests the winter hours be established as of Columbus Day. Last year the Transfer Station winter hours consisted of being closed all day Mondays and Wednesdays. There has been a request from staff that they would like to have the Transfer Station closed on Sundays. Discussion ensued on this matter and the Town Board decided to keep the Transfer Station winter hours as they were last year being closed on Mondays and Wednesdays with further discussion on the possibility of closing for an additional half day on Sundays pending receipt of further information.

RESOLUTION #218

Councilman Andersen moved, seconded by Councilman MacEwan, to establish winter hours for the Transfer Station beginning Monday, October 10, 2005 with the schedule being closed Mondays and Wednesdays all day. All favorable. Motion carried.

RESOLUTION #219

Councilman Saris moved, seconded by Councilman Andersen, to authorize the \$1,000.00 pay raise to Tom French retroactive to late August when he passed his test, pending his receiving his DEC Wastewater Plant Operator certification. All favorable. Motion carried.

Regarding a part time Deputy Town Clerk - Supervisor Gabriels said that the Town Board put money into the 2005 budget for additional help for the Town Clerk. The Town Clerk has

hired part time help while Pat Steele is out; this is notification that Debby MacEwan was hired for the position at a pay rate of \$9.55 per hour. The hours to be determined by the Town Clerk.

Supervisor Gabriels said that he is also giving notification that as Supervisor he requested Cate Persons, Justice Clerk, to be re-tasked to the Zoning Office with the same title as Justice Clerk until the next Civil Service Exam for Zoning Clerk becomes available. The hourly rate to be paid is \$12.00 per hour and the effective date is September 22, 2005.

Councilman White said that the Town is real fortunate to have someone in-house and the Town should consider cross training in case of sickness or departures so the Town system will be more efficient.

Regarding the APA's Campground Regulations - Supervisor Gabriels said that the APA Local Government Review Board has proposed a resolution on the APA's Campground Regulations. Councilman Saris asked if anybody knows the feelings of the Bolton Campgrounds. Supervisor Gabriels answered by saying not from those campgrounds particularly and the President of the Campground Association has spoken before the Board of Supervisors on this particular topic and they didn't think the APA was acting in their best interest. Councilman Saris suggested the Town Board consider going along with the resolution because the Town Board represents those people and they are people of the community. There was no further comments on this matter.

Regarding Senator Little - Supervisor Gabriels said that Senator Little has proposed legislation along with a one-page memorandum of support and read the proposed bill into the record. He believes Senator Little's desire is to have some uniformity between the APA's Rules and Regulations and the Department of Health's Rules and Regulations. He asked if the Board would like to consider supporting the Senator's bill.

RESOLUTION #220

Councilman Andersen moved seconded by Supervisor Gabriels, to have the Town Board support Senator Little's campground legislation. All favorable. Motion carried.

Regarding fixed water charges - Supervisor Gabriels said that there are certain areas throughout the Town of Bolton that apparently received a fixed water charge of \$100 per year based on the tax map number independent of the number of principal structures that may be on that particular tax map number. The question has been posed, if that is fair. The only regulation that have been found where the Town creates a fee for the water and sewer rates did not address this issue in any way, shape or form.

Counsel said that the Town Board should look carefully at the Zoning Code regarding the definitions of what an occupied principal structure is. Sometimes guest cottages are big and use water even though they don't have a kitchen in them and it is not the principal structure on the property, but as the Zoning Code looks at it, sometimes the Town has more than one principal structure on the property; and if that example falls within a zone where there is one tax bill and one water bill for one parcel, there is a two-for-one special.

Kathy Simmes said an example is Brooklawn Village, which used to be a cottage colony with one tax map number. There are now seven houses all with water meters. The way the water program is set up now and the way the Board has done it is that there is only one \$25 charge for water per quarter because it is all on one tax map. She has been going in and trying to change it so that each person pays the same rate since there are seven different owners.

Councilman Andersen said he thinks each person with a water meter should be paying the \$25 charge for water per quarter. Kathy Simmes replied by saying that was not the way it was set up. Counsel said there is a need for uniformity. Kathy Simmes said the Town Board will run into a sticky situation with Juniper Hills (32 water meters) and Sunrise Shores (10-11 water meters) because they have individual meters and a master meter. At one time the Town read each individual water meter then read the master meter, charged each individual for what they used based on their meter reading then charged them for the balance between the individual totals and what was on the master meter and neither one of the places liked that. She did not find any Town Board resolution that says to dispense the \$25 charge and just bill the individuals equally for what was used on the master meter.

Kathy Simmes said at the Sagamore the Town does the reverse, where the Town reads every water meter, each individual pays his/her bill, \$25 charge and then what is left over afterwards The Sagamore pays for. Councilman Andersen said the Town Board needs a workshop on this matter. Counsel said the Town Board would have to achieve uniformity because fundamental fairness requires it and from a procedural standpoint, if the workshop manifests some sort of agreement in how the Town is going to approach this so everybody has a fair system of billing. It is more than passing a resolution-it is probably a local law, the people that are affected have an opportunity to be heard and know why the Town Board is doing this and after the public hearing if it still seems to be a good idea, then the Town Board passes it.

Supervisor Gabriels said the Town is now moving from its old billing computer system to a newer one, so now would be the appropriate time to re-visit this. He feels the Town Board has to have a workshop. Kathy Simmes said she would provide Counsel with an outline of the existing water billing systems. Supervisor Gabriels said that the Town has very little in the way of resolutions that address this question. The only resolutions the Town Board had were \$5 per \$1000 assessed for water, \$4 per \$1000 assessed for sewer, \$25 for vacant parcel and \$100 for others. They were unable to find any resolutions indicating how any of these instances arose to figure out where we are now.

Regarding a Flood Insurance quote, Supervisor Gabriels said that the Town asked David Stotler for a Flood Insurance quote for the Town Pumping Stations (north, south and NoRoWal) because they seem to be the properties lowest to the lake and most susceptible to flooding; the premium provided is \$1K and the deductible is \$25K. Councilman Andersen said he thinks that the deductible is steep. Councilman Saris asked if the pump stations have ever flooded to the Town's knowledge and Supervisor Gabriels said neither the north nor south has to the best of his knowledge, which goes back 40 years and the Town doesn't know about the new pumping station. Town Board Members agreed to leave this matter for future discussion.

Regarding the 2006 tentative budget, Supervisor Gabriels said that the 2006 tentative budget has been submitted by the Town Clerk; the Town Board members need to schedule a minimum of 4 workshops at 1.5-2 hours each to be completed and presented to the Town Clerk by October 21, 2005. Discussion ensued.

RESOLUTION #221

Councilman MacEwan moved, seconded by Councilman Andersen, to hold four Town Board budget workshops: Tuesday, October 11, 2005 and Thursday, October 13, 2005 at 7:30 am; Monday, October 17, 2005 and Tuesday, October 18, 2005 at 8:00 am; and a fifth workshop to be held on Thursday, October 20, 2005 at 7:00 pm; to review and amend the

2006 Tentative Budget for presentation at the November 1, 2005 Town Board Meeting. All favorable. Motion carried.

Regarding Dave Stotler, Supervisor Gabriels said the Town Board Members needs to schedule a 45-minute workshop with Dave Stotler of TD Banknorth Insurance to discuss Health Insurance-particularly Medicare-for 2006. The Town Board Members agreed to have Supervisor Gabriels invite Dave Stotler to the October 20, 2005 potential workshop at 7:00 pm.

Regarding a Public Hearing on the Town 2006 budget, Supervisor Gabriels said the Town Board needs to schedule a Public Hearing on the Town 2006 Budget for Wednesday, November 9, 2005 at 6:30 pm.

RESOLUTION #222

Councilman MacEwan moved, seconded by Councilman Andersen, to schedule a Public Hearing on the 2006 Town Budget for Tuesday, November 1, 2005 at 6:30 pm. All favorable. Motion carried.

Other Business:

Regarding a local ordinance book, Supervisor Gabriels said that Kathy Simmes brought to his attention if the Town Board Members would like to consider preparing a book of the Town Ordinances, similar to what they have done for the Zoning Ordinance; the estimate is \$9K; and if the Town Board Members would like that to happen, the decision needs to be made if it is to be paid out of the 2005 or 2006 Town Budget.

Councilman Saris asked if an electronic copy would be provided to put on the Town websites and Kathy said yes. Counsel said it is also on our website. Kathy Simmes said that this item is included in the 2006 Tentative Budget and the Town Board Members agreed to review this item when they review the 2006 Tentative Budget.

Regarding the new Town Basketball Court - Councilman White said the Town recently spent about \$25K to resurface the basketball court in the park. His concern is that the basketball court will become a parking lot in the fall and winter. There needs to be a fence or some way to secure the basketball court, as he has already seen people drive across the basketball court over the summer. Councilman Andersen said he would make sure George Moffitt gets estimates for that.

Regarding grinder pump maintenance - Supervisor Gabriels said that the Sewer Department raised the question of who is responsible for the maintenance of the grinder pumps at Brickner's cottage and Saw Mill Bay Marina. Councilman Andersen said the Town changed the system; it is the only way that system will work; and he thinks the Town is somewhat responsible. Supervisor Gabriels said that he knows of two other pieces of property that have had grinder pumps on since the 1960's. The property owner takes care of those so if they go bad and they have to replace them they go for \$100-150 a pop. They are very easy to change the grinder pumps he knows of have only needed to be changed once or twice since 1960's. The Town Board will have to get an answer for Chet Dagles, Brickners and Buzz Lamb. Supervisor Gabriels said the Town Board will consult with Mark Posteraro regarding grinder pumps.

Regarding Bolton United/Bolton Cares - Supervisor Gabriels asked if the Town Board Members wanted to do a resolution to thank Bolton United/Bolton Cares for the wonderful Bolton Pride Day they put on.

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RESOLUTION #223

Councilman Andersen moved seconded by Councilman White, to have the Town Supervisor draft a letter of thanks to Bolton United/Bolton Cares for Bolton Pride Day. All favorable. Motion carried.

RESOLUTION #224

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

RESOLUTION #225

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

TRANSFERS FOR OCTOBER 2005

FROM

TO

AMOUNT

GENERAL FUND

19904 Contingency	35104 Dog Control	\$240.00
51322 Garage Equip	51324 Garage Cont.	1,500.00
19904 Contingency	71102 Parks Equip	707.00
Surplus	71104 Parks Contractual	11,935.00
Conservation Park Savings	71502 Cons. Park Equip	641.61
"	" " 71504 Cons. Park Cont.	358.39

Storm Damage Highway Transfer
\$10,013.58

Storm Damage Water District
316.11

Loan to Water District to cover Serial Bonds & Interest 69,000.00

WATER DISTRICT

83304 Purification 83404 Transmission 1,200.00

All favorable. Motion carried.

Executive Session: None

Councilman Saris moved seconded by Councilman Anderson to adjourn the regular meeting at 9:28 pm.

All favorable. Motion carried.

Minutes transcribed by:
Jennifer Torebka
Recording Secretary
10/17/2005

Respectfully submitted by:
Kathleen Simmes
Town Clerk

