

TB Minutes October 2, 2007

STATE OF NEW YORK

COUNTY OF WARREN

Present: Supervisor Alexander G. Gabriels III, Councilmen Scott Andersen,

Rob MacEwan, Owen Maranville, Jason Saris,

Town Counsel Michael Muller, Town Clerk Kathleen Simmes

Absent: None

Pledge of Allegiance: Owen Maranville

Public Hearing: None

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

Announcements:

Town Hall parking lot will be used during town-wide garage sale Columbus Day Weekend

Report of arcing on the Town Hall clock tower on Thursday night 09/26/07 - access by Bolton Fire Dept. to Town Hall was problematic - Town needs policy and restricted distribution of all keys to all municipal buildings for Town Hall and Bolton Fire Dept.

RESOLUTION #181

Councilman Maranville moved, seconded by Councilman MacEwan to have all municipal building keys copied and put in a key locker in Town Hall, in addition to having a set made and distributed to the Bolton Fire Dept. and Police Dept. All favorable. Motion carried.

NYSDOT meeting on Thursday, October 25, 2007 from 4-7pm in Town Hall regarding Route 9N "mill & fill" to begin next spring through hamlet area. All interested in project are welcome to attend.

Alonzo Fireworks will have fireworks on October 6 & 13 at 9 pm in Bolton Bay

Bolton Pride Day - Saturday, October 13, 2007 at Camp Walden, Trout Lake Road at 1:00 pm with a light dinner at 5:00 pm

Request by Bolton Fire Dept. to proclaim week of October 7<sup>th</sup> through October 12<sup>th</sup> as Fire Prevention Week

RESOLUTION #182

Councilman Saris moved, seconded by Councilman Maranville to proclaim the week of October 7<sup>th</sup> through October 12<sup>th</sup> Fire Prevention Week and that the Bolton TB gratefully recognizes the Bolton Volunteer Fire Dept. and Bolton Central School for their combined effort and dedication to keeping Bolton Landing a fire safe community. All favorable. Motion carried.

Meal Site Menu is available in the Town Hall.

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

Councilman Maranville read a letter from Ian McLaughlin praising Officer Galante's professionalism and effectiveness in handling an incident where his car was hit.

Comments from Public in Attendance: Chris Navitsky, Lake George Waterkeeper, passed out a letter and said that there is a stormwater conference and trade show on October 18 at Roaring Brook Resort, which will provide the opportunity for information on new technologies and some technical sessions, as well as the opportunity for people to get code enforcement credits. He feels that to make this more accessible to those in towns who make stormwater decisions, he is offering each town two full paid registrations to this trade show for any official, PB member, ZBA member or Highway Dept. TB members agreed the Bolton Code Enforcement Officer and Zoning Administrator should go and the PB and Highway Superintendent and Highway Dept. staff should also attend at the Town of Bolton's expense. Mitzi Nittmann suggested someone from the Water Dept. attend as well.

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

Correspondence: NYSDOS is soliciting grant applications for the Environmental Protection Fund for the local waterfront revitalization program

Letter from Jarrett Martin Engineers with an analysis of the Norwood Drive Maintenance

Indication Saratoga Associates will be having seminars on behalf of the LGPC on stream corridor and tree cutting rules

Correspondence regarding Agnes Nolan vs. Lake George Camping Equipment

Indication of an agreed upon stipulation on Saddlebrook

Ginger Connelly, trustee of the Frick Trust thanking Mitzi Nittmann for all of her help

Tabulation of the attendance and donations to Bolton Historical Museum for this summer.

Proposal from CT Male to evaluate town's heating system

Copy of letter the LGPC sent to Mayor Blase regarding possible regulatory action on fireworks in Lake George Village, stating it is not a LGPC issue, but a local issue

Notification from APA of a 4-lot subdivision to create two residential building lots west of Route 9N and a shoreline access lot on Lake George for the two proposed building lots on the end of northwest Bay

Notification from APA for a project on Skye Farm, located on East Schroon River road and County Route

NYS DOT is holding Land Use and Transportation Connecting Planning Conference at Proctor's in Schenectady on 10/03/07

Flyer from JNS Enterprises of Central Valley, NY dealing with municipal tower ownership program for cell towers, broadband, etc.

Referrals from Zoning Enforcement Officer / ZBA / BPB: Discuss Code Enforcement finding Jacoba Barboza and expansion of structure without permit in 1999 vs. Theta Curri Maille - alternative remedy Nov. 2005 - no SPR/ structures Mitzi Nittmann said that Jacoba Barboza has applied for a variance for the east property line barn which was expanded without permits, which puts a stay on her (Nittmann) actions. The barn on the north side has been there for 10 years and the barn on the south side is in compliance. Counsel said that he doesn't believe this is headed for any litigation or enforcement, because if the variance is granted and it is logical that it can be, that puts it into compliance.

#### RESOLUTION #183

Councilman Maranville moved, seconded by Councilman Saris, to adjourn as the Town Board and to convene as the Local Board of Health. All favorable. Motion carried.

Board of Health/Water Commissioners:

Septic variance - Lichtenstein (TMN 157.05-1-40) - from 3/26/07 - needs variance from ZBA

Atty. Jonathan Lapper, of Bartlett, Pontiff, Stewart & Rhodes, said that they were granted the variance from the ZBA in August after a public hearing so all they have left is the Board of Health variance to request from the TB. He then gave an overview explaining the request by reading excerpts from their original cover letter from earlier in the year to explain the request and said that they propose the best design for this site and have received an approval from Town Engineer Tom Nace as referenced from Tom Nace's letter dated 03/30/07 to Zoning Administrator Pamela Kenyon. He added that they tried to attach to the Lagoon Manor system, but were unsuccessful and had a number of discussions, but that was not granted, so in order for this to be a building site, they have no choice other than to do an on-site system. The Lichtensteins wish to construct a three-bedroom residence on the site and a new on-site system is the only option, since all off-site options have been explored and exhausted, however, due to the layout of the site, a number of site constraints limit construction of a compliant on-site system. Since their last submission, they have determined a way to place the proposed system on the site so that it is the required distance from the domestic well located on the property to the south. He added that the design concept prepared by Jarrett Martin Engineers for this site includes a mound leaching system, which will be located in the northwest corner of the property. In order to gain the necessary separation distance from the neighbors well, setback variances are required from the system fill limits to the north property lines, in addition, variances are required to allow a fill system and to allow a leaching system to be constructed with less than 5 ft. vertical separation. Atty. Lapper said that they believe the wastewater concept prepared for this site protects the lake as well as the neighboring properties. The 3 ft. of vertical separation proposed for the leaching system does not meet the town standard, but exceeds the NYSDOH requirements and although 5 ft. of vertical separation cannot be provided on this site without compromising the setback from the neighboring domestic well, the project engineer feels that the 3 ft. separation in conjunction with the proposed advanced treatment, will provide for an excellent wastewater treatment. Atty. Lapper said that since their last submission, they were able to remove the variance requested for graded side slopes by incorporating a retaining wall around the proposed system, so this request is no longer needed. They did need a variance from the ZBA for the retaining walls, which was granted. Atty. Lapper said that it is their position that if this variance is not granted, then the property would have no value as a building lot and it would be a regulatory taking, because really it would just

remain vacant, but their goal is to justify this to show the TB that this proposed system is not going to have any adverse impact and it is really a very good system for this site.

Bob Holmes of Jarrett Martin Engineers, project engineer, gave details on the proposed system by saying that due to the site constraints they need six variances. He added that many of the locally adopted standards are more stringent and exceed those of the NYSDOH. Regarding the fill system located within 200 ft. of Lake George, he said that they actually do meet the NYSDOH requirement. The leaching system is at the fill mark and their proposed setback is 175 ft. They propose a 3 ft. vertical separation from seasonal high ground water or bedrock, which exceeds the NYSDOH requirement of 2 ft., but the Town of Bolton requirement is 5 ft. He added that they also propose to provide an advanced secondary treatment, where there will be a passing through of peat filters, so the cleansing effect on the septic affluent is considerable and will lower the amount of pollutants transported into the ground requiring treatment by existing soil or fill material, is all being handled by these advanced treatment units. Councilman MacEwan asked if those filters would be forever and Bob Holmes said that the peat filters are estimated to have a 15-20 year life span, so at that time there is potential that the peat in those filters could be replaced. He said the peat would probably be treated as a solid waste and be removed from the property. M. Nittmann agreed and said peat moss is one of the very cleanest mediums that could be used.

Bob Holmes said that the first variance is for the fill system to be located within 200 feet of Lake George, which they propose at 175 ft., which is to the tow of the fill. The second variance requested is for the separation to the north property line from the tow of fill, where the local ordinance is a 10 ft. setback and they are proposing a 5 ft. setback. The third variance is for the vertical separation where they propose 3 ft. where the local requirement is 5 ft. The fourth variance is for a maximum slope of fill where they have a naturally occurring slope of approximately 17%, where the local ordinance requires no greater than 10%. The fifth variance is for the presence of naturally occurring soil where the local ordinance requirement is 3 ft. and they have 1 ft. of soil or less in this area. The sixth variance is for the bed system that has been proposed, which is supposed to be a pressure distribution, but as proposed, they feel that the affluent will be distributed into the leaching ladders by gravity. Councilman Andersen said that it seems like a lot of variances are being requested and asked about Atty. Lapper's reference to regulatory taking. Atty. Lapper said that regarding regulatory taking, he didn't mean to be adversarial at all and this lot was purchased as a building lot in 1971 and the standards for wastewater treatment have changed since then, so his point is only that if the variances are not granted, then the lot will not be able to be used as a building lot. Councilman Andersen said that the TB checked with the Assessor's Office and found that property currently has a restricted use on the property, the applicant is currently paying taxes on an assessed value of \$186,000, where if it were truly a non-restricted lot, which in his mind would be a building lot, the applicant would be paying taxes on \$930,000 of assessment, so when Atty. Lapper said that the applicant would be somewhat for regulatory taking, the applicant certainly knows that he (applicant) is paying on a restricted lot to start with. Atty. Lapper said that he believes that the regulatory taking would be based on the fact that it was purchased as a building lot and the carrying costs became so great over the years when it was assessed at close to a million dollars for a vacant piece of property and it is really because it requires variances to be developed that is why the applicant was able to get the assessment reduced. Atty. Lapper added that part of it is that they have been working on this for a number of years trying to work with the neighbors to see if there were any other possibilities and at one point they were looking at if they moved the system down towards the lake they would not need as many variances, but at the same time they would be closer to the neighbors well, so they thought the best thing to do was to move it as far back as possible from the lake and meet the 100 ft. separation from the neighbors non-conforming well, which is right on the property line. He added that they are trying to do everything right and even though it sounds like there are six variances, they think that based on this particular treatment system that this is justifiable, as Tom Nace wouldn't have given his approval to the design any other way.

Atty. Bob Randall a Lagoon Manor resident, representing himself and Mr. Waehner (immediate neighbor of the applicants), handed out a letter to the TB members and said that what the applicants are looking to do is to put a septic system closer to the lake than they should, make it shallower (less deep) than it should be, put it on a rock that is twice as steep as it should be and is pitched toward the lake, and they want to be able to do that with the TB permission. The Town of Bolton's rules say that you need 5 ft. within 1,000 ft. of the lake, whereas the applicants are within 200 ft. and are using 3 ft., so it is too tiny and too tight. He added that while they have done the best they can with what they have in terms of limitations, but he thinks the limitations are too great for this parcel. Atty. Randall said that he is disturbed by what he heard that Lagoon Manor didn't want to let the applicants into the association and he a member there and would be willing to talk to them about why they wouldn't. Atty. Lapper said that they had been in talks with the Lagoon Manor board for over a year to no avail. Atty. Randall said that he used to be on the board there and it would surprise him why they wouldn't want that and he could think of in-house political reasons, but none compelling. Atty. Randall continued by saying that basically it just doesn't fit and it is a ledge with less than a foot of dirt there, so when it hits, it is going to go down. Atty. Randall said that he thinks this is supposed to be an impermeable barrier to groundwater so it can come in and the slope on this is heading to the lake and while the applicants have a barrier on the downside, according to the rules, there should also be a barrier on the upside, which he doesn't see here, so he is concerned that groundwater can come up right through the bottom, take the affluent and keep going. He added that this is an aboveground system that has a real risk of frost and freezing, so the system won't function.

Supervisor Gabriels asked for clarification on the freezing aspect. Atty. Randall replied by saying that it is liquid which will freeze and being above ground as opposed to underground in addition to the roads being plowed all around it will lead to frost creeping in. Bob Holmes said that regarding freezing, the potential exists for freezing if the home was left vacant over the winter, but obviously there would be a need for use and with the way this system is constructed, if the applicants would be in there for weekend use, the covers on the advanced treatment systems come insulated, which would help protect from that. He added that regarding infiltration coming from the west towards the system with groundwater, the road itself provides some break as far as directing groundwater away from that system, so with the system being constructed above grade he doesn't envision groundwater would be much of an issue, because they could channel it around that. Bob Holmes added that for frequent use over the winter, he doesn't see that frost would be much of a concern. Supervisor Gabriels said that in terms of infrequent use there is a higher risk of probability of freezing and Bob Holmes said that probability certainly could go up, the key to this system certainly is going to be the advanced treatment units and the biological activity in those units will prolong freezing from occurring from those in essence if they are fed on a periodic basis and the insulated covers could protect frost penetration from coming in from the surface.

Atty. Ned Trombley, representing immediate southern neighbors Tim and Karleen O'Hearn, said that you could make a point that there is another variance that would be required that has not been asked in that a case can be made that the system should be 200 ft. from the well on the adjoining property and the sewage disposal system is located in an area that is upgrade from his clients well, so the general path of general stormwater runoff and any other runoff is in the direction of that well. He added that the Town of Bolton sanitary sewage disposal ordinance has a footnote that talks about a 200 ft. separation from a well in that kind of a situation and it is barely a 100 ft. separation here, so he thinks there should be a variance sought for that separation. Atty. Trombley said that the slope variance has to be taken into the context of the lakeshore variance as well, as these were put together with the idea of protecting the lake. While there is a slope variance, when combining that with the distance from the lake, it compounds the problem and makes it more difficult and dangerous. Atty. Trombley said that the same thing can be said for the requirement of 3 ft. of naturally occurring soil and in this case it is a matter of inches on this site. He added that this is a non-traditional system and the Bolton ordinance is very specific on what is required, for which the applicants are asking for many variances from. He said that for something that is this close to the lake and to ask for this many variances of the severe nature that they are, where it is a 17-degree slope, which is 70% in excess of the requirement and it is ledge rock underneath it and it does

run toward his clients well, which is only 100 ft. away. Atty. Trombley referenced the maps to show where the O'Hearns' well is located. He then said that while the applicants have located their proposed well 100 ft. away, which if you just read the chart in the ordinance, that is all they have to do, but if the footnote to the chart talks about site conditions just like this where natural flow is downhill in this direction is 200 ft. Atty. Trombley said that regarding regulatory taking and economics, the Lichtensteins acquired this property almost exactly 36 years ago and saying it doesn't have value as a building lot is not the same thing as saying it doesn't have value, it does have value and he would suggest that it is valuable well beyond what was paid for it 36 years ago. He added that this isn't a situation where the TB acting as the Local BOH should be getting into making certain the applicants get the most value for their money. Atty. Trombley said that the applicants are the ones who elected to wait 36 years to do this, things have changed in 36 years and the regulations have changed, which is the way things are he applicants elected to wait, no one forced them not to build there, so he feels the economic argument is entirely without merit. Supervisor Gabriels said that while the O'Hearns located their well almost 36 years ago, he asked if there was feasibility in the O'Hearns moving their well to another location on their property. Atty. Trombley said that other than cost, he supposes logically you assume they could find water somewhere else, but every time you drill a well you have that risk as well. Supervisor Gabriels said that the Town of Bolton has seen in situations with the wells in subdivisions like this, it seems to be a race to the courthouse, which defines potential building and configurations throughout the surrounding area. Counsel said that Atty. Trombley is correct in that the footnote in the local ordinance in Schedule 75A says that there is a 200 ft. separation requirement when the gradient is in the generic path of drainage to a well and the local ordinance also says that the requirements of state regulations or local regulations, whichever is stricter, but both come to the same conclusion that requirement is part of the code, so that would make it 7 variances being asked of the TB.

Atty. Lapper said that they did try to exhaust every possibility before coming to ask the TB for a variance and a number of years ago they were in correspondence with the neighbor and had proposed to drill a well to relocate their well to the other side of their property, but the neighbors wanted to purchase the site for very little money, so that never went anywhere, but they certainly in good faith tried to do that and they would be willing to drill a new well as a condition if that is what the board wanted. Counsel said that this board cannot impose that on that property owner and Atty. Lapper said no, but his clients can still offer it. Councilman MacEwan asked if with the good neighbor scenario and Atty. Randall offer to speak with the Lagoon Manor board, if it would be feasible for the applicants to go back and try to get onto the Lagoon Manor sewer system. Atty. Lapper said that they spent over two years trying to do that and while there is a file of correspondence, the Lagoon Manor board of directors ultimately said that they were not willing to do that. Atty. Lapper added that they were going to pay a lot of money to do that and that would certainly be a simple solution if there is an existing system, but it is up to Lagoon Manor since it is a private system it is up to the Lagoon Manor board of directors to agree or not agree and they didn't agree. Councilman MacEwan asked if it is not something worth pursuing in the event that doesn't happen and Atty. Lapper said that it was about 9 months ago, only when that failed, when they then submitted the application to the TB.

M. Nittmann asked how many feet of peat are in the module and Bob Holmes said that the overall height of the peat filter itself is 2 ft. 6 in. so the actual depth of the peat that would be in those would be approximately 2 ft. of depth. He added that regarding the necessity for the seventh variance regarding the well being down-gradient, indeed the neighboring well to the south is at a lower elevation than they are proposing for this wastewater system, but in the interpretations he been through, it is a case when it was deemed it directly down gradient meaning if there would be surface runoff that would flow from the wastewater system location directly towards that well and the premise he would take is that the flow would be more toward the lake and not toward the well, which is why that variance wasn't asked for e didn't feel it was necessary.

Supervisor Gabriels said that one of the disturbing things is the fact that this potential issue is only raised at the 11<sup>th</sup> hour and has not been addressed affirmatively or has not been addressed and ruled out for

the reasons Bob Holmes has suggested from an engineering point of view, so the TB doesn't know how down gradient or directly down gradient that well would be in terms of the 100 or 200 ft. or NYSDOH Schedule 75A. Atty. Lapper said that his answer would be that Town Engineer Tom Nace has signed off on this and he would be the one to make the call on design features. Councilman Saris said that while the TB has traditionally relied on its engineer in the past and the TB past practice of determining the downhill aspect of something, it has never had to do with the surface water or runoff it has never been mentioned. It has always been with the consideration that what leaches into the ground is still affected by gravity, so it has never been mentioned that it would be a consideration that somehow it might overflow and run down towards somebody well over the surface. Atty. Lapper said that the point is that it is going toward the lake, not the well and it is a tertiary system, so this is different. Bob Holmes said that has been a general rule of thumb and once you get into the fractured rock surface of that property the question of where it goes is answered by surmising it goes toward the lake. Councilman Saris said that in all fairness to Tom Nace, he believes his job is to review projects by commenting on what he been asked to comment on based on the variances that have been requested and if the design of the system meets it, but he is not the Zoning Administrator or Town Counsel. He believes Tom Nace should be asked if given the circumstances, if the 200 ft. footnote would apply here.

Counsel said that he believes the 200 ft. requirement is a setback and could perhaps be persuaded or ameliorated, and in reference to the TB as the Local BOH, in this instance it may not be required because the legality that has been suggested, but he believes that it is a requirement and that it is not a flexible requirement. He added that if there is a septic system higher than grade that has a well within 200 ft. in any direction and the configurations are looked at in terms of where surface runoff may go, there will be arguments that may be relevant in determining if there will be some relief allowed from that setback, but it doesn't excuse it in any way as a matter of law at 200 ft. Atty. Lapper said that all of these codes look at a standard system and this is better than a standard system.

M. Nittmann asked if there will be fill under the module and Bob Holmes said there will be fill to bring that up to what will be the final grade. M. Nittmann asked if the fill under the module is sand and Bob Holmes said yes, it is a sandy material, which is nothing more than a foundation material to support the module itself. M. Nittmann asked how many feet of fill would be put in there and Bob Holmes said that this is a closed-bottom module, so they are not infiltrating under the modules and they are moving it from the modules by a piping into a distribution box into the leaching laterals. M. Nittmann asked if the leaching device goes somewhere else and Bob Holmes said yes, while there are other types of modules from this manufacturer in which you can place these directly on a bed system where as it flows in through the peat filter material, it actually absorbs into the ground under that, but this is not that type of unit, as it conveys the liquid to another location, so the bottom of these is sealed off, so the vertical separation is only from the bottom of the Elgin lateral leaching device, not from the bottom of the advanced treatment unit. M. Nittmann asked how far the Elgin device is from the well and Bob Holmes said that the closest Elgin unit would be approximately 110 ft. from the well and the tow to the fill measurement is that horizontal setback to the neighboring well, but the actual infiltrative device itself is farther away. Bob Holmes then passed out pictures of the same type of proposed system to TB members.

Councilman Saris asked what variances were obtained by the ZBA and M. Nittmann said that she thinks it was for the retaining wall. Counsel said that the retaining wall was considered a structure and they needed a setback variance for that structure. Bob Holmes said that there were two; one from the west property line along the right-of-way and one from the north property line. M. Nittmann asked the purpose of the retaining wall and Bob Holmes said that it is to contain both the leaching device and the modules. M. Nittmann asked if they are still under 6 ft. after putting the sand under the Elgin system and the fill on top of that and Bob Holmes said while they are approaching the 6 ft., but he believes they are not exceeding it. M. Nittmann asked if they have all the separation they need with the Elgin system they have and Bob Holmes replied by saying that one of the variances they are seeking at this time is deviation from the 5 ft. vertical separation to a 3 ft. separation, so in the engineering aspects they took involved in requesting that is they are providing a greater amount of treatment for the affluent before it goes into

the ground, they also knew there was the whole site plan issue of placement of 6 ft. of fill or more on a piece of property and part of that also correlated from the discussions they had with the ZBA regarding the overall height of the structure, so they are trying to create a marriage of the three aspects to come up with the best system for this property. M. Nittmann said that she wanted to clarify for the TB acting as the Local BOH that the module acts like a pretreatment like the tank itself, where you have a septic tank which is one treatment, then you are doing a module which is a second treatment, then you are going to the leaching device which is the third treatment, so it is almost pure water by the time everything gets to the leaching device. Bob Holmes agreed. M. Nittmann said that she is just trying to get everyone to understand that the applicants and their engineers have taken every step that they can to get to the point where they are at. Supervisor Gabriels asked if the system is an approval technology by NYSDOH, being that it is advanced and Bob Holmes said that the NYSDOH uses the National Sanitary Foundation Code 40 which is the standard the NYSDOH utilizes for approving and accepting secondary advanced treatment units, which this system is and it is a 40 compliant. Supervisor Gabriels asked if he asked NYSDOH the same question if they would say it was okay and Bob Holmes said yes, he would certainly hope so.

Tim O'Hearn, neighboring southern property owner, said that he purchased his property 36 years ago and put his well in then. He added that his well is in that location because that is where it had to be, as he had no other choice with the southern property line being a blue line (a ravine with running water through it). He then said that he is being taxed at 1.7 and he has never made an offer for the adjoining property in question, nor has he ever been notified or sent any offer to purchase the land as Atty. Lapper said. Atty. Lapper replied by saying that he believes it is in the documentation, but he check it. Tim O'Hearn said that it is all down hill and goes toward his property out of the natural slope and it isn't going toward the lake until it goes through his property then into the lake, it is rock ledge in that area. Tim O'earn said that the ZBA wouldn't deal with the issues that the TB as the Local BOH is required to deal with, as the ZBA dealt with a wall, which he couldn't understand the rationale on that because the ZBA decided that the wall wasn't out of place in keeping in a heavily wooded area that is natural, but they could put in a 6 or 7 ft. concrete block wall with vine over it to make it virtually invisible in that area. He said that he has used pea stone for his driveway and hasn't cut down the trees between his 75-ft. setback and his house, he has no lawn nly a moss area he uses as a lawn area and he feels he has been friendly to the lake and the environment. He added that if you go by their house by boat on the water, you can see their house, which is a 75-ft. setback. Tim O'Hearn then read excerpts from a letter from the Lake George Waterkeeper to the Bolton ZBA regarding concerns for the proposed system. He then asked for an interpretation of "vacation home", in regard to if someone decides to retire there and they live there 365 days a year if the system is still suitable. Tim O'Hearn asked if the septic tank is above or below ground and Bob Holmes said that it will be below finished grade. Tim O'Hearn asked if blasting would occur to accommodate the septic tank being below ground. M. Nittmann said that it will be below ground and potential blasting would depend on how the house is built and the elevation of the house. Tim O'Hearn said that without knowing the elevation of the house, he thinks they need a cross drawing of that system. He added that there are deed restrictions that there is a 15 ft. setback from any property line and the Bolton ZBA has for some reason already allowed that within 1 ft. He said that it doesn't seem logical to percolate through bedrock. Supervisor Gabriels stated for the record that Tim O'Hearn has submitted several letters to him on this matter and they are in the file. He also said that the town received a letter from Glenn Waehner regarding similar concerns on this matter.

Meredith McComb, ZBA member, said that at the ZBA meeting, the ZBA increased the 1 ft. setback to a 5 ft. setback, which was done to provide for planting arborvitaes to screen the wall. Sheknow wonders if the ZBA shouldn't have asked more about what those arborvitaes were going to take root in if it is all bedrock there it not going to be screened. Meredith McComb said that the picture presented tonight is what the ZBA was give to look at, but it is not the height of the proposed wall and she was hoping that when it was stated here that there are photos of what this was going to look like, that the TB as the Local BOH would have photos of what is proposed rather than what is being shown. She said that this is 2.5 to 3 ft. and the ZBA was told to expect 4.5 to 5 ft. of wall, which could have a very different aesthetic

impact. She added that when the ZBA looks at something, they have a set number of criteria that they looked at and balancing all of them, they felt that the benefit of the wall to the applicant outweighed potential detriment, however, the vast number of variances were not very clear to the ZBA during its deliberations. She said that regarding if Town Engineer Tom Nace cross-referenced a plan with the code, apparently the answer is no to that. She said that she can imagine how he (Nace) could get through his immense workload if he tried to be the Zoning Administrator too, but Tom Nace can sign off on something, yet not have it be appropriate for a specific location in Bolton. If she were a member of the TB acting as the Local BOH, she'd want to know just how big this wall is, because this is not an accurate rendition. She questions where water would be channeled, because they only have 5 ft. on one side, then they are channeling over to the neighbors side. She added that it is also a whole building project and if there is bedrock there, she questions what the plans are for stormwater management or if that would not be required because there is no garage with a house, so the square footage doesn't meet that requirement maybe that is a good thing because there isn't soil to do stormwater management with. She said that while the ZBA said yes to the variance for the wall, given an assurance that there was new technology that made this an iron clad lock on there will be no negative impact on the environment, she would encourage the TB as the Local BOH to look at the number of variances which the ZBA was not aware of and their substantiality; 70% on the slope, up to 100% on requirement for existing soil. She said that the TB as the Local BOH should also find out just what it will look like and whether or not the screening that was required by the ZBA in granting the variance is in fact possible, given the absence of soil for arborvitae hedge to grow in. Supervisor Gabriels said that for the record, the ZBA is not required to and does not deal with septic or water as a matter of course of the Zoning Code. Meredith McComb agreed. Supervisor Gabriels said that the six or seven variances that the TB as the Local BOH is looking at tonight are not issues that would have become before the ZBA. Meredith McComb said that is true, but when people asked about this, the ZBA was assured it had been signed off on and yes, there were some variances, but the substantiality of that, when the ZBA does the balancing test, they kind of add up what is being asked for and balance the request against the code, the lake, the comprehensive plan, the neighbors rights, and come up with a solution.

Supervisor Gabriels said that on a different matter, it has been referenced that there is a deeded setback requirement that falls within at least Mr. O'earn deed and asked if that is an issue for the ZBA. Meredith McComb said that it is not an issue for the ZBA, it is a civil matter and the ZBA is not permitted to factor in deeded restrictions, and in any case, nobody brought the ZBA a deed from Mr. Lichtenstein property saying there was this covenant. Counsel said Meredith McComb is correct on both counts, in that the ZBA would not involve itself in a private covenant and the deed issue was not presented at the ZBA meeting. Meredith McComb said that given the ZBA adjusted this plan, but this plan being presented tonight is pre-adjusted, she is not sure if it comes in, but looking at the west side, she asked if the map shows the system being pulled in 5 ft. from the property line. Bob Holmes said yes, this map was modified to reflect the zoning variances granted by the ZBA. Meredith McComb said she is just wondering why it is still 100 ft. from the neighbors well if it was 100 ft. before it moved in 5 ft. She asked if the system got 5 ft. narrower and Bob Holmes said yes, but that was also a discussion they had with the Town Engineer regarding the effects on the length of the leaching laterals and the basal area as far as to allow for the affluent to seep into the native soil.

Chris Navitsky, Lake George Waterkeeper, said that it is encouraging the applicants are using an advanced treatment and preparatory system there, as the peat systems are effective and do bring in a higher level of treatment, so he thinks that is one benefit of the application. However, that needs to be weighed with the existing conditions and he is not sure that balance can be made. He asked if this is a fill or mound system, because a mound system requires a larger basal area when you have the tapering out of your fill for the system that is required. He added that the system is not just sized for the length of your laterals and your square footage of the laterals, but it is also the basal area that that fill extends out and covers. He asked if that requirement has been met when you bring in the retaining wall because that decreases that fill area in the extent that reduces the area that affluent can be disposed of. He asked what all the alternatives are that have been researched. He said that they are talking about ledge rock on

17%, so as soon as the affluent hits that, it will flow quite rapidly. Chris Navitsky said that this is a subsurface system, so the soils are needed to help assist in the removal of bacterias and nutrients and being this close, that subsurface flow would be that much quicker when it hits the bedrock. He also questioned what type of soils are going to be brought in, because if percolation rates are going to be quicker then water will flow more rapidly, higher ground water velocities, and less treatment that would be available on contact.

Bob Holmes said that it is correct that the maximum height of the retaining wall would be approximately 5 ft., as it will vary between 4.5 ft. and 5 ft. and there will be some areas that will be slightly smaller than that. Regarding planting vegetative buffer along the north property line, while they are aware the existing soil they have tends to be thin, but they also envision placing some additional soil there in order to get vegetative growth to occur so they can get root expansion. Regarding the channeling of surface water, this is a schematic layout when it comes to the actual site development and the driveway, so they would be channeling and conducting some of that surface run off between the house and this wastewater system to get to a stormwater basin of some nature that would be determined at some point in the future. Regarding a mound system versus a raised system, the proposed system is a mound system with the reason being that they can tailor the basal area requirements under the NYSDOH code as well as the local ordinance to make that basal area calculations come out. Regarding the east side towards the lake, the retaining wall is actually constructed a foot above the existing soil, so they can get some migration of the affluent into that area and provide for the expansion of that basal area. He added that the application rates they are proposing for the leaching system were a 5-7 minute percolation rate for the soil and the minimum town standard for that is that it needs to be slower than 3 minutes, so to try to fit this into a tough site and site development, that is where they did select a 5-7 percolation rate for the fill material that is going to be placed under the leaching laterals.

Atty. Randall asked if the water coming out of the peat system would be equivalent to drinking water. Bob Holmes said that it is still considered affluent and is about as clean affluent you are going to get, but it would not meet NYSDOH drinking water standards. He added that as seen on the information from the manufacturer, the oxygen demand for raw sewage is in the neighborhood of 500-600 mg/liter which is target value, but once they get through the advanced treatment, they are actually reducing that biological oxygen demand to less than 10 mg/liter, so they are reducing it by almost 96%. Supervisor Gabriels said that at the Bolton sewer treatment plant, by the time the water gets to the sand filters it looks like it could be drinking water, except nobody wants to try that and when the water gets through the sand filtration system those numbers are in the same magnitude as the ones Bob Holmes referenced. Bob Holmes said that the NYSDEC standard is 85% reduction whereas they are looking at a 95+% removal or reduction.

Atty. Trombley asked where the citing for the Lichtenstein well would be and Bob Holmes said that it hasn been fully evaluated, but one of the items they are looking at now as a possibility would be a lake source for drinking water, which would be an issue they be addressing at site plan review. Atty. Trombley said that the footnote says that "sewage disposal systems located of necessity upgrade in the general path of drainage to a well", so it is not just to the neighbors well, but to their own well too, so there is also an issue there with the TB as the Local BOH in terms of his clients health, the Lichtensteins health and the health of anyone who may use that property in the future.

Councilman MacEwan said that he is concerned about the restrictions the Town of Bolton has in terms of the 200 ft. Counsel agreed and said that the Bolton Town Ordinance as well as Schedule 75A of the NYSDOH regulations, there is a restriction. Supervisor Gabriels read a letter from Town Engineer Tom Nace dated 03/30/7 to Zoning Administrator Pamela Kenyon into the record. Counsel said that he would ask the TB never hold Tom Nace as the Town Engineer responsible for the logistics, requirements and criteria which the Zoning Administrator, Town Attorney and Code Enforcement Officer impose upon an applicant and he thinks Tom Nace looks at projects from an engineering strategy and comments on if it the system could work and it is up to the boards of the Town of Bolton to hold every applicant to each

requirement in the code, not the Town Engineer. Supervisor Gabriels said that he feels there is a seventh variance needed and Counsel agreed.

Councilman Maranville asked if the applicants looked at other alternative systems for this location. Bob Holmes said yes, as far as the advanced treatment goes, they evaluated several different types of fixed media filtration or aerobic treatment, but they were finding that if when these systems are constructed and the house is constructed, the building codes and wastewater codes are designed around a full year-round residency, which is the design criteria they followed. He added that making the assumption that this was to be used as a vacation or seasonal home, some of the other types of advanced treatment require a little bit of prolonged period of in essence ramping up the speed in order for it to function at its greatest amount of efficiency and in their research, they believe this provides the quickest amount of ramp up time, meaning that it takes very little to get this thing up and functioning at top efficiency.

Councilman Saris said that this is a very tough problem, because nobody ever wants to make a ruling that makes somebody property not buildable, but by the same token the applicants have owned the property for over 31 years and if they wait another month, he doesn't think that is an impossible situation. He said that he doesn't want to assume that Tom Nace has considered something, he wouldn't be comfortable acting on it until he knew that Tom Nace is comfortable with the seventh variance and he feels holding off another month would be prudent. Councilman Maranville agreed. M. Nittmann said that these type of systems also need maintenance and the Town of Bolton needs some agreement on the maintenance. Councilman Saris said that this has been done on other septic issues and he believes Counsel has it that people agree to have it recorded in the deed. Counsel agreed and said that they created the covenant with the municipality and they try to make sure that it is not only subsequent owners who are on notice, but the municipality has rights to enforce it is a complex structure. M. Nittmann said that limits adding bedrooms and living space and what would be built need to be determined. Counsel said that the limitations on what would be built have to be determined. Atty. Lapper said that they propose three bedrooms. Counsel said that the applicants would need to be restricted to that by covenant and Atty. Lapper said agreed. Supervisor Gabriels said that these filings have been recorded and have just been instituted and from a public administration point of view they have yet to go through the first iteration, so he is a little skeptical as to the degree to which those filings and maintenance of the other septic systems are going to take place within the Town of Bolton. Counsel agreed saying that they have not been put into enforcement. Supervisor Gabriels said that as an observation, it has been recommended that all septic systems get pumped out once every 3-5 years and there are probably many in the Town of Bolton that have never met that recommendation. Bob Holmes said that regarding a service contract, it is part of the initial purchase of the system through the manufacturer and the local distributor that it does come with an automatic two-year service contract, but they would be willing to put on the condition for maintenance and a service contract.

#### RESOLUTION #184

Councilman Saris moved, seconded by Councilman Maranville, to table the Lichtenstein septic variances for additional information from Town Engineer Tom Nace regarding the seventh variance, if the system would be suitable for a sporadically used vacation home, and if the change required by the ZBA impacts the system in any way in making it 5 ft. narrower. All favorable. Motion carried.

Bob Holmes asked if the Town Board will follow up with correspondence to them regarding Tom Nace responses to the questions in the motion and Supervisor Gabriels said yes.

#### RESOLUTION #185

Councilman Andersen moved, seconded by Councilman MacEwan, to adjourn as the Local Board of Health and reconvene as the Town Board. All favorable. Motion carried.

Reports: Councilman Maranville Assessor: Caldwell Banker bid on the surplus tax maps at \$26.75 per map. RESOLUTION #186 Councilman Maranville moved, seconded by Councilman MacEwan, to accept the bid by Caldwell Banker in amount of \$26.75 per set of surplus tax maps. All favorable. Motion carried. Supervisor Gabriels Supervisor's Report: Total receipts: \$458,240.31 and Total Disbursements: \$733,7783.81.

Warren County: None

Stormwater: None

Unfinished Business: Town Board action on Conservation Park LDC and eventual disposition if a referendum is required? Supervisor Gabriels said that the question is if the TB would like the Conservation Park property to be donated or gifted to the Conservation Park LDC for their purposes to be run by that board with potential of funding by the TB by gift or grant from the local taxpayer, but the title and ownership to the land and property would be theirs. Counsel said that the TB can put suitable and reasonable restrictions on that property. Supervisor Gabriels said that the reason this is being brought up is because the TB needs to know if there is some action or movement to do some work up there at the Conservation Park at some magnitude by some architect yet to be decided, at some point in the near future, then the TB needs have a clear understanding whether or not this avenue of dealing with the capital improvement project is an amenable one to the TB. Councilman Saris said that there are potential advantages of a Conservation Park LDC in not having to pay prevailing wage should construction work be done there, but on the downside, while there is great enthusiasm in the group now, he is wondering whether history would repeat itself in a volunteer-run type group having trouble finding volunteers to run it. He said that while it is a very valuable and terrific asset to the town, all those types of forms of public service are very often somewhat thankless jobs, so he can understand why sometimes the positions are hard to fill, yet the TB should ensure the assets to the public continue. He added that he wonders if the short-term gain of saving some construction costs, while not insignificant, might be outweighed by putting the burdens on volunteerism, which might be expecting a lot. Item is pending. Dave Cummings requests permission to conduct Farmer's Market in Rogers Park each Saturday from June to October, 9am-1pm Sam Caldwell said that they had a farm stand in the Bolton Beans parking lot this past summer and they are looking to continue that in the town park location. He added that before they go through planning and details, it is a matter of whether the TB is interested at all before they put the energy into pursuing a really specific plan. Councilman MacEwan said that Mark Perry was pretty enthusiastic about it. Sam Caldwell said that it was in a gravel parking lot in kind of a bad place, so it would be nice to have it in the public park in the grass and it would be all producers only, so there would be no retail, resale or competition with other town businesses. Regarding the potential conflict with the Arts & Crafts fair dates, Sam Caldwell said that they could either not do it on those dates or possibly be there in conjunction with the Arts & Crafts Fair. Councilman Saris asked what location they are looking at and Sam Caldwell said in the area in front of the Chamber of Commerce. Councilman Saris said that at some farmers markets people bring freezers and Sam Caldwell said that he doesn't think they need any outlets for electric. He said that they wouldn't need much and they would like to get insurance from one of the regional farmers market associations, then potentially have some sort of management. Councilman Maranville asked what types of items have been selling at the farmers market so far. Sam Caldwell said that it has been flowers, maple syrup, baked goods and produce and again, it is producers only where they wouldn't be buying something wholesale then selling it. Supervisor Gabriels asked if the producers are limited to any geographical area and Sam Caldwell said that they could talk about making it maybe Warren, Washington, Essex and Saratoga Counties, but that can be discussed. Supervisor Gabriels asked how big a tent they be looking for and Sam Caldwell said that the tent they used this year was 8 ft. by 8 ft., which is what they generally are. Supervisor Gabriels said that in other places farmers markets have rather huge tents and Sam Caldwell said TB could put a limit on the tent size. Supervisor Gabriels asked them to put a limit on it and Sam Caldwell said that the restriction could be no tents bigger than 200 square ft. M. Nittmann said that the Arts & Crafts Fair vendor tents are 10 ft. by 10 ft. Sam Caldwell said that the tent would be similar to the one they used in the parking lot this year. Councilman Maranville asked if they

would contact the TB if they wanted to use anything bigger and Sam Caldwell said yes. Counsel said that he doesn't believe the Town of Bolton regulates tents now. Supervisor Gabriels asked about insurance and Counsel said that they have some sort of cooperative insurance, so that is workable as well. Councilman Maranville asked if they need minimal coverage and Counsel said that it depends on the expectations of the TB and Town Counsel. Councilman Saris said he thinks it is a nice idea and it would be an asset for people who live here as well as the tourists that visit. He added that he thinks the area for it to be held in should not interfere with the park for the normal recreational purposes, but he doesn't think it would have any affect, and he would like to hear more of a plan before approving anything. Most TB members agreed. Sam Caldwell said that before they go forward with creating a plan that will be quite involved, they just wanted to find out whether or not it was an option. Supervisor Gabriels asked if it is accurate that if they are selling products on town land that the town is in no way liable for the quality of the product and Counsel said yes, that is true, but in the world of litigation, certainly someone might masterfully create a complaint in the nature that the Town of Bolton is liable as well for the spoiled carrots or something like that, but the Town of Bolton is adequately insured. Supervisor Gabriels said that it falls within the TB understanding of the purposes of Rogers Park as a park under the TB current authority to govern the activities within the park. Councilman Andersen said that he is not against the players or the concept as a part time venture, but as an every weekend event where it is a private concern operating on public property and somewhere as that expands he tends to see an issue somewhere, so while he is certainly not against it as a part-time, once in a while thing, as it does have value, he thinks that as an every weekend event the Town of Bolton is providing a public area for a private thing and he has a personal issue with that. He thinks having it every week portrays operating private on public property. He added that he wouldn't have a problem with it solely in conjunction with the dates of the Arts & Crafts Fair dates. Sam Caldwell said that they have also discussed donating a percentage of the proceeds to the Bolton Fire Dept. or the Chamber of Commerce. Item is pending. Rolf Ronning - electric service to Padanarum Road - overhead versus underground - TB decision? Rolf Ronning said that it is misstated on the agenda as to why he is here. He is actually here because he is here representing the interests of Ed English, as he has written authority to do so, regarding getting an application completed and providing power to the property Ed English purchased from him. Ed English application is complete and in his (Ronning ) talks with Alex Hall, the head of installation planning for National Grid, and because Alex Hall spoke with Supervisor Gabriels a couple months ago where Supervisor Gabriels told Hall that it was up in the air. He said that they are ready to get power in there this fall and Ed English wants to build this fall. Rolf Ronning said that according to Town Counsel, it is not on the list of scenic corridors for underground power and Ed English is entitled to it, so the Town of Bolton has an obligation to provide a right-of-way in the town road to get him the power. Rolf Ronning said that his understanding from Alex Hall is that he has called Town Counsel and they need a letter from someone from the Town of Bolton stating they can go above ground. Rolf Ronning said that this has nothing to do with the subdivision. Counsel said that Rolf Ronning is 100% right that Mr. English and his property, in not being part of the subdivision, as a customer of National Grid, he is entitled if he wishes to pay, to have above ground utilities, because that road you go up is not, according to the Zoning Code, a scenic corridor requiring underground utilities, although it is a scenic corridor. He said if he and Mr. Hall and Supervisor Gabriels can get together, he would certainly encourage Supervisor Gabriels, on behalf of the municipality, to properly take the position that there is no impediment to what Mr. English wants to pay for. Rolf Ronning said that Alex Hall needs a letter to be able to put the power in this fall thout it, it won be until next spring and he sees no reason someone can just write National Grid a letter. Counsel said that it is a wonderful thing that National Grid is asking the municipality for permission. Rolf Ronning asked if the Town of Bolton could provide something in writing to National Grid this week and Counsel said they'd work on it. Counsel said that his understanding is that Rolf Ronning didn't want to have the burden of underground utilities with respect to the Padanarum project and Rolf Ronning agreed. Counsel said that the issue is a relevant issue and it is an issue to be addressed before the PB, not the TB. Rolf Ronning agreed. Rolf Ronning asked if a resolution is needed for the above ground power for Ed English and Counsel said that he can imagine why a resolution would be necessary to acknowledge that there are no restrictions on the Ed English power issue. Councilman Maranville asked if property owners have to give permission for the utility company to put poles on their properties and Counsel said yes. Counsel

said that National Grid is asking him (the municipality) to grant its permission to use the right-of-way and Rolf Ronning said that is the issue. Counsel said that is something that requires a board action, but he was told the question was if the municipality requires underground utilities and his answer is a resounding not on that parcel. Counsel said that regarding the question if the municipality has granted an easement to the utility that has not been done. Rolf Ronning said that it is a matter of law. Counsel said that it is a matter of law to grant relief and it is also part of what he thinks is being asked in terms of if there are any private interests. Rolf Ronning said that he talked to Highway Superintendent, Tim Coon, who wrote a letter saying he like the power above ground and he like the poles set 23-25 ft. from the center of the road, which is fine with National Grid. Rolf Ronning then said that when a private property owner wants to build a house, the easement for power goes through the county or town right-of-way, which is a 50-ft. clearly defined right-of-way, which the town can then allow National Grid to go put their power in and what Alex Hall wants from the Town of Bolton is a letter saying yes, you may put the power above ground to honor Mr. English request. Counsel asked if what the utility seeks would be entirely in the public right-of-way including the guide wires and Rolf Ronning said yes, while he owns most of the land and will give them permission, there may be a couple people that don't then they figure out a way to do it. Counsel said that County Route 11 is the only road specifically mentioned in the scenic corridor legislation in which, if it is feasible, underground utilities are appropriate. Counsel added that Rolf Ronning does have a lot of property out there and it is proposed for subdivision. In the subdivision regulations, it refers to all regional subdivisions the utilities shall be located underground if feasible. He said that issue puts it clearly before the PB and it became a regional subdivision because a regional subdivision is a subdivision of two or more lots in a resource management area. Counsel asked if this English project is not circumstance that requires any PB review, which is his advice, and that it is not a project that by local ordinance, code or subdivision regulations requires even the issue of entertaining the possibility of underground utilities, then he would ask if that would give the TB members enough information to make the decision so the Town Supervisor can write that letter to National Grid indicating that the Town of Bolton has no objection and that it is understood that the public utility has this easement within the town road.

RESOLUTION #187 Councilman Saris moved, seconded by Councilman Andersen, to authorize Supervisor Gabriels to write a letter to National Grid indicating that the Town of Bolton has no objection to above ground power to provide electric to Ed English and that it is understood that the public utility has this easement within the town road. Four favorable (Gabriels, Andersen, MacEwan, Saris). One opposed (Maranville). Motion carried. Rolf Ronning said that regarding the spelling of Padanarum Road, he'd prefer it be "Padanaram" because he feels it is the classier spelling. Councilman Maranville asked why the power on County Route 11 didn't have to go underground and Counsel said that the WCPB gave Rolf Ronning permission, because they accepted his argument that he could not feasibly achieve that. Rolf Ronning said that the other reason is because Warren County owns that land and the Town of Bolton has no jurisdiction over the county because the county supersedes the Bolton Zoning Ordinance. Counsel said that the corridor was intended to regulate from the edge of the right-of-way and it does not presently say that, so while it does not presently say that, you carefully review that map that goes along County Route 11 and it is the oddest configuration of county setbacks, which is very tough to regulate. Supervisor Gabriels said that in superseding circumstances, generally the county should have coordinated discussions with the town, which they didn't at that point.

Transfer Station petty cash - Lisa French does not want an increase of petty cash until next summer. RESOLUTION #188 Councilman MacEwan moved, seconded by Councilman Andersen, to rescind Resolution #169 regarding an increase in the transfer station petty cash. It is not needed at this time. All favorable. Motion carried.

Geese in Veterans Park - individual permission given for certain dogs to be free in the park until 8:30am to scare geese off the beach and grass - 8/15/07 - Executive decision amends Parks Ordinance

John Gaddy said that he has been researching geese deterrents with one of his classes and he'd like to get TB permission to have his classes try out a few short-term, non-invasive, non-lethal experiments. Councilman Maranville asked what type of experiments and John Gaddy said that he wants to play some calls, as apparently having a bird call of a distressed goose can deter them for a while, but they would like to be able to try a couple of experiments and video tape them if possible. Councilman Maranville asked if it would just be calling and John Gaddy said yes. Supervisor Gabriels asked if they'd be bothering the neighbors with noise and John Gaddy said no. John Gaddy said that he doesn't need a resolution now, all he would like to

do is say they are working on this and he like to come back before the TB with a proposal on how they could do this for a limited time. Supervisor Gabriels said that he thinks that since this is a student project, the town would be better served if John Gaddy didn't come back, but the students did and John Gaddy agreed. Mary Owens said that at Hondah Cottages they have put a rope across the beach from dock to dock then another rope below, which has worked well. Regarding the dog tactic, when the dog barks the geese go away, but then they return when the dogs leave. She said that George said he could put rope all across the front and down the side of the swimming area. Meredith McComb said that as reported in the Lake George Mirror, potentially a buffer strip next to the water of higher grasses would also keep geese off, because they like to be able to see potential for predators. She has a meadow along the waterfront on her property and she has zero geese, so it may be something to add into the mix. Item is pending. Authorize contract for professional engineering services with CT Male for inspection and assessment of Town Hall heating system - \$3,500 (9/24/07) vs. dated estimate from Thermal Associates to replace horizontal heat pump in court/Police - estimate \$6,000 - future action? Councilman Maranville asked about the existing ceiling insulation and possibly insulating the Town Hall as well. Councilman Saris said that he thinks that would be great in an effort to be as energy efficient as possible, but that has nothing to do with the furnace not turning on. RESOLUTION #189 Councilman Saris moved, seconded by Councilman Andersen, to hire CT Male at the cost of \$3,500 for inspection and assessment of the Town Hall heating system. All favorable. Motion carried. Supervisor Gabriels said that there is 5/8 sheet rock all the way up and down as a firewall except for the access panel that was punched out, so a firewall with an access hall put through by a hammer doesn't do much in terms of fire safety, which is another problem that has to be solved/repaired at some point. Action on Walter Law's house served August 17, 2007 thirty-day clock runs - Authorize attorney to proceed with action in NYS court at normal rate of \$175/hour - contact minimum 3 contractors for demolition of all structures. Possible partial solution by Bolton Fire Dept. Supervisor Gabriels said he received one bid from Crandall Excavating in the amount of \$22,010 for the demolition of Walter Law's house. Councilman Saris said that the Fire Company used to burn down structures upon request and the Fire Company felt they found a way around the restriction and showed an interest in doing that, but if they were going to do it, roofing material would need to be removed from the structure and trees would need to be cut back around it. In addition, they would only do it during winter months when there is snow on the ground. Councilman MacEwan asked if anyone has done a walkthrough of the house, because someone told him the other day that it is probably wall-to-wall full of papers and documents. M. Nittmann said that isn't the main house, but one of the cabins is full of files. She added that when she was there with Tom Nace, the house is fairly empty with the roof collapsing on it and all the files she saw in the house were on the one side in the back. Councilman MacEwan said his concern was that if you were to burn the house, you might get more than you bargained for if the house is full of paper. Councilman Saris said that the only reason he mentioned it was because for far less than \$20,000, Walter Law might be able to do the work needed to prepare the house for the Fire Company to burn it down. Counsel said that he contacted Walter Law early on who seemed to be very amenable to that possibility, then he (Law) said that the Town of Bolton put a requirement about the trees not being damaged and Walter Law said that the trees would be a problem. Councilman Saris said that the Fire Chief feels that many of the trees would need to be removed prior to burning. Counsel said that he is not speaking for Walter Law or the owner, Barbara Law, but he was trying to encourage it from the standpoint of a way to save money, as both estimates have been about \$20,000. He added that the proceeding that would be required to mandate this house coming down would be great. He said that it is a two-tiered process with notification and inspection, physical notice to the owner, followed by posting and 30 days, which they did lawfully. The next step would be getting a demolition permit from the county, which the Laws haven't done, then get a contractor who is ready to go, which they've gotten an estimate for. Counsel said that it is in the litigation state, but if someone magically from the Barbara Law side saw the sense to take the roof shingles off, allow the trimming of trees and partially burn the building, then they would stop litigation. RESOLUTION #190 Councilman Andersen moved seconded by Councilman Maranville, to authorize counsel to keep moving on the Barbara Law matter at normal rates of \$175/hr. All favorable. Motion carried. Councilman Saris asked if assuming they don't hear back, what type of time frame is the town talking about before the town is actually knocking it down and assessing the Laws the charges and Counsel said that the very first thing he will do is to write a letter to Barbara

Law letting her know he has been authorized by the TB to proceed on the litigation and if he gets ignored, he presents the papers on notice to Barbara Law, who would then have 20 days to respond to that and in Judge Krogman's hands in November. He said that he doesn't think it is something that gets argued about. Supervisor Gabriels asked if the TB can do a preemptive motion, that if they get to that point and they've gotten three bids for this that the TB automatically authorizes the low bid to proceed. Counsel replied by saying that he would suggest the TB wait and he would also say that the TB is not mandated in going through the bidding process on this, because this is a health issue. Councilman Saris said that it sounds in the best-case scenario that it could take at least two months. Counsel agreed and said all of that time allows Mrs. Law to take all of her steps and hopefully beat them and he thinks that she has a better plan, actually, because what the Town of Bolton is attempting to do is follow Tom Nace's instructions that the principal building/dwelling is a health hazard and must come down, but notably Tom Nace hasn't said to get the cars out of there and take down any associated out buildings and Mrs. Law's plan was that she was going to have that contractor take out everything, so her plan is better. Councilman Saris said that it would be a zoning violation without the primary dwelling. Item is pending. Consider Town Pier construction plans and finger dock - as drawn by Schoder Rivers Associates. Supervisor Gabriels gave an overview of the plans. Councilman Saris asked if the Town of Bolton is limited by the total linear footage of dock space allowed. He also asked if the width of the dock could be 6 ft. instead of 8 ft. Councilman Andersen said that the longer docks are the only way to go and if you re-orient all four docks at an angle pointing toward shore, you lose no boat slips and you also eliminate the length across the front of the dock where a boat would intercede with those outside boats in the first place. He said about the only spot that may be an issue would be the very front dock and you could build a structure there to keep people from tying there. Supervisor Gabriels said that he has no idea what it would cost to reconfigure the existing two piers. Councilman Saris suggested extending the pier out another 6 ft. Supervisor Gabriels said that Carl Schoder didn't like that idea when he mentioned it. Councilman Andersen said that he thinks that in going through this expense, it would be foolish not to go through the extra expense to get what they want. Councilman Saris said that he'd like to have a meeting with Carl Schoder on potential scenarios and TB members agreed. TB member workshop meeting with Carl Schoder tentatively scheduled 1/2 hour prior to a to be determined budget workshop meeting. Pending Items: Reviewed and no action taken.

#### New Business:

Town Clerk presented the Budget Officer's Tentative Budget for 2008

Tom Torebka - grandfathered for retirement time. What was date of resolution vs. date hire for Torebka?

Supervisor Gabriels said that Town of Bolton hired Tom Torebka on March 17, 2003 then last year beginning January 2007 the TB passed a resolution that says for retirement purposes you have to be employed by the Town of Bolton for 10 years in order to become eligible for the town retirement system. Tom Torebka bought back some of his time, which he was allowed to do, between March 2003 and January 2007 giving him by the time he retires, vested time in this and he (Torebka) wants to make sure that the Town of Bolton is going to believe that he is grandfathered into the Town of Bolton portion of the state retirement system, where the Town of Bolton would pay 25% of his health insurance and 25% of his spouse health insurance. Councilman MacEwan asked if when he was hired, if he was under the impression he fell into that category and Supervisor Gabriels said that there was no category at that time, as there was no category that you had to work 10 years for the Town of Bolton in order to get vested into the New York State retirement system, which is why they clarified that with the provision in January 2007. Councilman Andersen said that he thought when you bought back time you bought it back to raise the dollar limit and not the year limit. Donna Boggs said in the state system you get back money and time. Councilman MacEwan said that his first initial thought when he read that, unless there is something that says he can't, he thinks he should be grandfathered, because Tom Torebka was hired then the Town of Bolton changed something four years down the road. Supervisor Gabriels said that Tom Torebka just wants to be clear, because you are talking with retirement systems and this is an issue where the Town

of Bolton ought to be really clear. Councilman MacEwan agreed and asked if the TB will have someone other than Tom Torebka come forward with the same thing. Supervisor Gabriels said that he doesn't think so. Donna Boggs said that the issue is not with the retirement system, but it is if he will be covered under the town retiring health insurance. Supervisor Gabriels said that Tom Torebka would be the only person out there in this instance and Donna Boggs said yes, she thinks he was the only one employed at that point of time. Supervisor Gabriels said that it is new hires coming into the town where it gets problematic. Councilman Saris said that anybody that comes in after that clarification was made, they are clear of the terms. Supervisor Gabriels said yes, they would have to be a Town of Bolton employee for 10 years and the question is that Tom Torebka would like it clarified for him that his health insurance would be covered. Councilman MacEwan said his thought is that it should be covered. Councilman Saris asked if Tom Torebka's retirement is eminent and Donna Boggs said she doesn't think that is the case. Supervisor Gabriels said that he doesn't know when Tom Torebka is going to retire.

RESOLUTION #191 Councilman MacEwan moved, seconded by Councilman Saris, to state that Tom Torebka is grandfathered where the Town of Bolton would pay 25% of his health insurance and 25% of his spouse health insurance upon his retirement. He was hired on March 17, 2003, four years prior to when the TB passed a resolution in January 2007 concerning retirement eligibility that stated you had to be employed by the Town of Bolton for 10 years in order to become eligible for the town insurance benefits. All favorable. Motion carried.

Authorize signing new Warren County Occupancy Tax resolution to solve procedural (multiple resolution annually) issue

RESOLUTION #192

Councilman Saris moved, seconded by Councilman Maranville to ratify the Local Tourism Promotion and Convention Development Agreement Occupancy Tax Revenues dated September 17, 2007. All favorable. Motion carried.

Discuss Bolton Police Dept. request for new car to replace 1997 Chevy - either 2007 or 2008 funds

Councilman Saris asked if there is money in this year budget for it and Donna Boggs said there is, but the Police Dept. put it in for next year budget. Councilman Maranville said that he told them to, because the Caprice is falling apart and every month there is more money put into that vehicle. Councilman Andersen said that it should be a four-wheel drive SUV and he wouldn't even consider a two-wheel drive, because in the off-season they are always asked to check areas that are harsh in the winter. Councilman Saris agreed that it would be a more practical vehicle and make more sense for upgrading and maintaining the fleet. Councilman Andersen said that for the few dollars more, the amount of stuff and versatility you have is what it's all about and why they have them in the first place. Supervisor Gabriels said that there is probably enough money left over in the 2007 budget for a Caprice, but not for a 2007 SUV. Item is pending.

Sewer District - I&I situation - alternatives to solve - reduce flows to pump station and plant

Supervisor Gabriels said that it is a serious problem for the Sewer District, as they videoed the lines in October 2005 and there are very few places where the sewer collection system has cracks, slippage of the pipe joints or anything else. They have a sewer meter on Green Island that is wirelessly taking readings up at the sewer plant and it has been videoed that there were at least 56 homes down the hamlet area who have flows coming in the collection service on a pulsed basis (pulse coming from motors/pumps). Councilman Maranville asked about people who have storm drains connected to the town sewer and Supervisor Gabriels said yes, if they have direct storm drains, there might be one or two of those too and the only one he can recall is the problematic one that seems to be down by the Subway,

as there seems to be a running flow pipe down there that nobody can figure out where it is coming from. Councilman Saris said he thinks the TB should reassess its priorities based on its recent experiences. Additional discussion ensued on the matter. Item is pending.

#### RESOLUTION #193

Councilman Saris moved, seconded by Councilman Maranville, that it is the desire of the Town Board to instruct Alex Rhodes of CT Male to get with Bill Lamy then USEPA to consider, design, implement and approve a new force main from the north pumping station to some location on Sagamore Road or the Norowal pump station , rather than go across the swamp area in front of Buzz Lamb Sawmill Bay, as the primary expenditure of the remaining funds of the Warren County Sewer Project. All favorable. Motion carried.

Transfer Station - when to go to winter hours - 5 days per week 8-4:15pm, which day closed?

Councilman MacEwan said that he thinks the hours should remain the way they are until the end of November, because there were complaints last year when they closed. People didn't have a place to bring their leaves and things like that. Councilman Andersen said that he thinks having the Transfer Station opened more hours than closed is a great thing.

#### RESOLUTION #194

Councilman Andersen moved, seconded by Councilman Maranville, to authorize Transfer Station winter hours to begin November 19, 2007. They will be closed all day Monday and Wednesday All favorable. Motion carried.

Guard Rails for 1,200 feet of Padanarum Road? If so, Tim has 3 options for consideration

Supervisor Gabriels said that there is a steep ravine in that area and it has been suggested, by residents there to have guardrails put in. He said that the following bid was received: from Town & Country Bridge with three options under state contract: \$20,400, for new posts and guardrails, \$17,400 for used posts and new rails, and \$14,400 for all used materials. Councilman Saris said that if it is a safety issue, they should get the guardrails and Supervisor Gabriels said that it is a safety issue.

#### RESOLUTION #195

Councilman Saris moved, seconded by Councilman MacEwan, to accept the state contract price from Town & Country Bridge and Rail in the amount of \$20,400 for the purchase and installation of 1200 feet of new guardrails for Padanarum Road. Four favorable (Gabriels, Andersen, MacEwan, Saris). One opposed (Maranville). Motion carried.

Need to revise septic ordinance on at least two issues - fees for application from \$10 to current \$25. Section 2.010(b) holding tanks deposited in the Town landfill is no longer applicable, and should consider clarification of authority in Zoning Office to approve and to inspect septic systems

Supervisor Gabriels said that in the septic ordinance, the application fees are listed as \$10, but the Town of Bolton is currently charging \$25. It also says in Section 2.010(b) that holding tanks shall be deposited in the Town landfill , which is no longer applicable, because the Town of Bolton no longer accepts holding tanks there. He said the third thing to be considered is clarifying the authority of which individual in the Zoning Office (the Zoning Administrator or the Code Enforcement Officer) is to inspect and approve septic systems. TB members agreed that they want to have a public hearing on these issues.

RESOLUTION #196 Councilman Saris moved, seconded by Councilman Andersen to authorize Town Counsel to draft the proposed amendments to the Septic Ordinance. A public hearing will be held at the November 7<sup>th</sup> meeting at 7:00 pm. All favorable. Motion carried.

Declare as surplus the old ambulance located at the Water Plant - auction to highest bidder

RESOLUTION #197

Councilman Andersen moved, seconded by Councilman Maranville to declare the old ambulance located at the Water Plant as surplus and to advertise it in s is condition. All favorable. Motion carried.

Judy Ramsay has parking problems on Stewart Avenue - there is little room to pass when cars are parked on street- solution/action?

RESOLUTION #198

Councilman Andersen moved, seconded by Councilman MacEwan, to have the Bolton Police Dept. evaluate and report back to the Town Board on the parking problems on Stewart Avenue. All favorable. Motion carried.

Discuss Adirondack Runners request for finish line in Rogers Park (not Veterans) on July 6, 2008 Bolton Police Dept. thinks it is a good idea

RESOLUTION #199

Councilman Andersen moved, seconded by Councilman Maranville, to grant the Adirondack Runners request to have their finish line in Rogers Park on July 6, 2008. All favorable. Motion carried.

Ratify Mortgage Modification Agreement as drafted by Town Counsel Atty. Mike Muller email distributed

RESOLUTION #200

Councilman Andersen moved, seconded by Councilman Saris, to ratify the Mortgage Modification Agreement as follows:

**WHEREAS**, the **Town of Bolton ( own** , a municipal corporation created and existing by virtue of the laws of the State of New York, and having a principle place for the conduct of its business at 4949 Lake Shore Drive, Bolton Landing, New York, is the owner of a certain Note and associated Mortgage lien ( **ote and Mortgage** originally dated December 14, 2005 given by the **Norowal Marina, Inc. ( arina** to Walter Lamb, Cheryl Lamb and Roger Phinney to secure the sum of TWO MILLION DOLLARS (\$2,000,000.00), copy of which was recorded in the Warren County Clerk Office on December 16, 2005 in Book 2837 of Mortgages at Page 153, said ownership having been acquired by Mortgage Assignment recorded in the Warren County Clerk Office on September 15, 2006 in Book 3054 at Page 5, and

**WHEREAS**, the **Town of Bolton Local Development Corporation ( LDC** is legally constituted as a Not-For-Profit Local Development Corporation created and existing by virtue of Article 14 of the Not for Profit Corporation Laws of the State of New York with a mailing address at PO Box 7, Bolton Landing, New York and with respect to the aforementioned **ote and Mortgage** the **LDC** is a signatory guarantor and surety for the full and faithful performance of all of the borrower obligations due and owing from the **arina** as more specifically set forth within the **ote and Mortgage** and

**WHEREAS**, the **own LDC** and **arina** are desirous of entering into an agreement manifesting an understanding with respect to modifying the original terms, obligations for repayment of the principle and interest specified within the **ote and Mortgage**

**NOW** and **THEREFORE**, in exchange of **ONE DOLLAR** and the other mutual promises hereinafter specified, it is **AGREED** as follows:

**REPAYMENT PROVISIONS:** The terms for repayment of principle and interest as specified in the original ote and Mortgage are hereby amended and restated and by this amendment and modification shall be as follows:

he obligation for repayment of all principle and interest shall be deferred and there shall be no monthly installment due on account of principle nor interest in any year in which the Mortgagor shall upon the conclusion of its fiscal year and after the close of its books by audit, or otherwise it is determined that the Norowal Marina, Inc. business activities in conducting marina operations for the Town of Bolton Local Development Corporation have not realized a net profit. Net profit shall be determined upon sound accounting principles recommended by the Town of Bolton Local Development Corporation certified public accountants. The Town of Bolton Local Development Corporation and the Norowal Marina, Inc. financial records shall at all times be subject to audit and review upon any reasonable request from the Town Board for the Town of Bolton. The Town of Bolton shall in each and every year of allowing the deferral of mortgage installment payments, also permit deferral or if appropriate reduction of principle and deferral or if appropriate forgiveness of interest. The Town of Bolton deferral, reduction or forgiveness determinations shall give consideration to the fact that Norowal Marina, Inc. and the Town of Bolton Local Development Corporation provide public marina access within the municipality promoting sustained tourism, seasonal camping and boating with a positive business environment within the municipality constituting the reasonable basis for such decision in the sound discretion of the Town of Bolton Town Board.

It is acknowledged by the terms of this Modification Agreement that upon a series of annual deferral of mortgage installment payment requirements to the benefit of the Norowal Marina, Inc. and the Town of Bolton Local Development Corporation, there may be considerable sums due and owing on the ote and Mortgage and in appropriate instances consideration shall be given by the Town of Bolton, in its sole discretion as it may deem appropriate to forgive, assign or otherwise dispose of all or any part of the indebtedness, n kind as may be appropriate to promote, protect and otherwise preserve public marina access and the terms and specifications of a Conservation Easement granted to the State of New York creating ark lands at the subject premises.

**REAFFIRMATION OF UNMODIFIED TERMS:** With respect to all of the original terms, conditions, provisions and the respective rights and obligations between the parties as specified in the original **ote and Mortgage** dated December 14, 2005 and recorded December 16, 2005 in Book 2837 of Mortgages at Page 153 and except as it is specifically modified herein, those terms as originally agreed upon are hereby reaffirmed and in no way are impaired nor modified by this instrument. With respect to any inconsistency or ambiguity that may arise in construing this Modification Agreement with the original Note and Mortgage and with respect to the repayment provisions herein, it is intended by the parties that the terms hereof shall prevail thereby superceding any inconsistent or ambiguous original term.

All favorable. Motion carried.

Matt Coon wishes to be paid for three (3) weeks (120 hours) unused vacation time he has accumulated the time and Lisa French requests to be paid for 46 hours of vacation time, which can be used by her anniversary date of October 16, 2007.

#### RESOLUTION #201

Councilman Saris moved, seconded by Councilman MacEwan, to pay Matt Coon for three (3) weeks (120 hours) unused vacation time and to pay Lisa French for 46 hours of unused vacation time. All favorable. Motion carried.

Consider revising 5 MPH zone in Sawmill Bay further south

#### RESOLUTION #202

Councilman Andersen moved, seconded by Councilman Saris, for Town Counsel and Councilman Andersen to meet to draft an amendment to Ordinance 28 entitled Mechanically Propelled Vessels. Regulating the Speed of Motorboats in the Town of Bolton and to set the public hearing on November 7, 2007 at 7:00 p.m. All favorable. Motion carried.

The board needs to determine a correct and consistent spelling of Padanaram/Padanarum Road

Item is pending.

Consider appointing Craig Hannon as member of the BLDC

Item is pending.

Consider for adoption as Town policy 08/03/07 proposed policies for new fleet vehicle Counsel says document needs work

Item is pending.

Gov. Spitzer Smart Growth Initiative Should Bolton consider grant application planning for full broadband throughout all town roads? ast Mile issue others Kathy Simmes will to go to meeting.

Councilman Saris said he thinks that cable is a good item for the grant application, not for watching television, but for the computer aspect of it in people homes. It has become part of the education process and it can be part of somebody livelihood, so it has really gotten to the point where that is a real quality of life issue for people. All TB members agreed that the Town of Bolton should consider applying for the grant for full broadband throughout all town roads.

Discuss new sidewalks from Sagamore Road north to U. S. Post Office and then to Veterans Park Buddy Foy requests and will donate easement on his properties to the Town of Bolton

Supervisor Gabriels said that they need to look at the easements required. The sidewalks do not fall within the state right-of-way any place along that road as far as he understands. He said that he doesn't know what the costs would be. Councilman Saris said that he thinks it is a wonderful thing. Supervisor Gabriels said that there is a NYSDOT meeting down at Proctor tomorrow where one of the issues is funding for these types of projects. Item is pending.

#### RESOLUTION #203

Councilman MacEwan moved, seconded by Councilman Andersen, to approve the October 2007 transfers as follows:

TRANSFERS FOR OCTOBER 2007 FROM TO AMOUNT

GENERAL FUND

11104 Justice Court, Cont. 11102 Court Equipment \$351.00

12202 Supervisor, Equip. 12204 Supervisor Cont. 800.00

13552 Assessor, Equip 13554 Assessor, Cont. 500.00

16204 Buildings & Grounds, Cont. 16202 Buildings, Equip. 1,525.00

10104 Town Board 19204 Municipal Dues 150.00

16204 Buildings & Grounds, Cont. 71104 Parks, Cont. 2,000.00

Transfer to Water District for Debt payment \$150,000.00

Transfer to Rogers Park Docks \$200,000.00

Water District

83304 Purification 83104 Administration 2,000.00

Sewer District

81302 Treatment 81104 Administration 2,000.00

81204 Sanitary Sewers 81304 Treatment, Cont. 5,000.00

All favorable. Motion carried.

Establish 2008 Budget Workshops in October

The first workshop for the 2008 Budget was set for Wednesday, October 10<sup>th</sup> at 5pm with subsequent workshops to be determined.

Supervisor Gabriels noted that the next Town Board meeting will be held on Wednesday, November 7, 2007, at 7:00 pm as Tuesday, November 6<sup>th</sup> is Election Day.

RESOLUTION #204

Councilman Saris moved, seconded by Councilman Maranville, to set the public hearing on the 2008 budget for Wednesday, November 7, 2007, at 7:00 pm. All favorable. Motion carried.

Comments from Public in Attendance: None

Approve payment of Town bills

RESOLUTION #205

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

Executive Session: None Councilman Saris moved seconded by Councilman Andersen, to adjourn the regular meeting at 10:45pm. All favorable. Motion carried.

Minutes transcribed by: Respectfully submitted by:

Jennifer Torebka Kathleen Simmes

Recording Secretary Town Clerk

10/08/2007