

LDC – Minutes
September 8, 2005

Bolton Local Development Corporations

Present: Ron Alcan, Scott Andersen, Buck Bryan, Alexander G. Gabriels III, Dusty Rhodes, Jason Saris and LDC Counsel Michael Muller.

Absent: Richard Bartlett

REGULAR MEETING

Z. Gabriels called the regular meeting to order at 4:36 pm.

ANNOUNCEMENTS:

- Even though there may be three (3) or more Town Board Members in attendance at the LDC meetings, the NYS Open Meetings Law bars members from discussion and certainly deciding any Town Business. Z. Gabriels said the LDC meetings are for LDC issues only.

CORRESPONDENCE:

- Z. Gabriels (1) said he received a letter from David Kaiser of Glens Falls National Bank dated August 31, 2005 stating that the bank will hold June 8, 2005 terms until November 1, 2005 and (2) he provided copies of that letter to all BLDC Members.

- Z. Gabriels said he received a letter from Joe Lyons in favor of the BLDC acquisition of Norowal Marina.
- Z. Gabriels said he received an excerpt of the Adirondack Conservation Council minutes of May 15, 2005 regarding the DEC and other boat launches within the Region showing a different launch from what the BLDC thought.
- Z. Gabriels handed out the Freedom of Information Act requirements to all BLDC Members and said that in response to the first FOIL request from Deanne Rehm, (1) the BLDC has spent \$67,071.25 thus far, which is all attributable to getting the BLDC up to speed and includes the down payment and fees for Curtis Murphy and Jeffreys, Van Dusen & Steves, counsel, the recording secretary and mail expenses, but does not include the ELAN feasibility study, (2) all of the expenses totaling the \$67,071.25 are directly accountable to the BLDC, (3) the BLDC checking account has the original \$75K from the Bed Tax check less \$2,500.00 for the Glens Falls National Bank loan application fee and (4) all of this information has been forwarded to Deanne Rehm.
- Z. Gabriels said (1) Deanne Rehm requested a second FOIL for all of B. Bryan's BLDC reports to date. B. Bryan said he will forward all the information to Counsel on Tuesday for review and distribution. J. Saris said the DEC has said that some information is confidential and also asked what the BLDC's obligation is to Mr. Lamb regarding the information Mr. Lamb has provided. Counsel said he will take the information submitted by B. Bryan and will not allow any of Mr. Lamb's financials or DEC confidential information into the FOIL request, in an effort to meet contract obligations to Mr. Lamb and the conditions set forth by the DEC.

COMMITTEE REPORTS:

Alcan: Treasurer's Report: None

Bartlett: None

Bryan:

B. Bryan provided his Weekly Report to all LDC Members and Town Board Members in attendance.

Financial and Organization Committee: (R. Alcan & B. Bryan):

R. Alcan presented new figures which he said include dock pricing at \$150/foot and also show 40 more available dock spaces. B. Bryan said (1) the figures through Labor Day are in and the BLDC will be pleasantly surprised, (2) the bank wanted figures, so all the figures have been pulled together and he will review them next week in an effort to present updated financials at the BLDC meeting scheduled for Thursday, September 15, 2005, (3) 33 slips were rented out at Norowal Marina this year, (4) there is a waiting list of approximately 40 people for docking at Norowal Marina and (5) Mr. Lamb told him that he will send out dockage notices on January 1, 2006 if the BLDC so desires.

Regarding potential docking prices, D. Rhodes said that in Bayview, docking prices went from \$142/foot to \$162/foot. B. Bryan said the BLDC would not be out of line charging \$150/foot and D. Rhodes agreed. B. Bryan said they don't want to force the balance of the budget, but the BLDC needs to come up with I&E Statements that break even.

D. Rhodes asked if anyone has gotten anywhere with the state and Counsel answered by saying (1) no, he has spoken with two people at the state level and has gotten no response, (2) the BLDC needs to know if the DEC will contribute to dock income or not, (3) a component part of the effort of the BLDC is to propose to the state to pay for docking, (4) somewhere along the way the BLDC has the right to ask DEC for docking fees. Z. Gabriels said the

BLDC should look at getting state money for docking in the future years. B. Bryan said the BLDC should come in with the highest potential rates then and Counsel said that he suggests the BLDC come in with realistic docking rates. R. Alcan asked what the current rate at the marina is and B. Bryan answered by saying he thinks it is \$115/foot, which is way under the market. Counsel said (1) as discussed last week, this dock space is prime space, (2) he thought the BLDC pinpointed the notion regarding dock proposals and (3) he has gotten no answer from the DEC on docking. Additional discussion ensued regarding the premise of pricing for dock space.

R. Alcan said the dilemma is that the BLDC can't raise dock fees 20% in one year and the BLDC can't be under the market. J. Saris said (1) the BLDC will get some customers who will think about it, (2) the BLDC will get some calls and (3) the BLDC can offer payment plans. R. Alcan said the BLDC can make it work and asked if docking, launching and parking are subject to sales tax. Counsel and D. Rhodes both said they will research that question and report back to the BLDC Members with their findings. R. Alcan said the BLDC needs to ask Mr. Lamb where sales tax is accounted for.

B. Bryan asked what the BLDC can charge and reasonably expect for dock fees, so it can be reflected in the revised I&E Statements. Counsel asked if the BLDC came up with its current proposed rates because it made market research of comparable rates and B. Bryan answered yes. Counsel asked if the docking rate is being set for the I&E Statements only or for 2006 rates as well and said (1) that all customers can be invited back with the notation that next year's rates are to be determined and (2) B. Bryan is looking for a benchmark for the I&E Statements and for customers. J. Saris said (1) the current customers are more concerned in the assurance that they will have their dock space next year and are not as concerned with price at this time and (2) the docking rates will be the highest on Lake George if this was a commercial investment. Z.

Gabriels said the BLDC needs to get the current rates from Mr. Lamb.

R. Alcan asked if the BLDC is looking at raising parking and launching fees also and B. Bryan answered yes. Counsel asked if the proposed parking and launching fees in the I&E Statement represent comparable fees in the market and B. Bryan said he is not sure. D. Rhodes said, being a dock renter, the BLDC has a fiduciary responsibility to keep fees in the market, but to not overcharge customers. J. Saris said (1) the BLDC doesn't want to be unrealistic or abusive in pricing, (2) if the BLDC doesn't charge enough to make this work then people will lose all opportunity to launch and (3) if Mr. Lamb increased launching prices in 2005 then there may be issues if the BLDC increases launching prices in 2006.

D. Rhodes asked if the BLDC can run the numbers for docking fees at \$140/foot, \$145/foot and \$150/foot so they can discuss the comparison and R. Alcan answered yes.

R. Alcan asked if the Town of Bolton collects taxes on the \$41 million assessed value of the islands and Z. Gabriels said yes. R. Alcan asked about the dock situation in Harris Bay and Counsel replied by saying (1) Norowal Marina docks are all permitted in place and are pre-existing and non-conforming as of right, (2) the one dock of concern (gas dock) has a verbal agreement with the neighbor that there will be no commercial docking on that one dock and (3) there are no easements with the state on docks. J. Saris said physical docks are worth nothing, but the lake access provided by those docks has value. Z. Gabriels said he has heard nothing of a business or individual who pays money to the state for use of docks—there are just permits. Counsel said (1) Norowal will continue to own the docks when the deal closes, but he will take the stock and grant, deed or convey it to the BLDC and dissolve Norowal

as a corporation, (2) all rights and privileges go with the corporation and up to now, there are no defects and (3) permits and surveys show that the docks are all okay.

Regarding Winter Storage, Counsel said the I&E Statements show zero for this item and asked if there is none or if it has just not been factored in and B. Bryan answered by saying (1) the maintenance facility won't be there anymore and (2) it became evident that the BLDC may not get anything from winter storage so a value wasn't included. Counsel asked if that means winter storage reflecting zero is just an accounting function and does not mean that there will not be any winter storage at all and B. Bryan answered by saying yes, that is correct.

Regarding taxes, Counsel said there are tax liabilities to the BLDC that they should be prepared for: one is the present tax obligation and the second is that in January 2006, the bill will go out with real property taxes and the BLDC needs to plan on receiving a tax bill. B. Bryan asked if the BLDC will pay liability tax and Counsel answered by saying yes and gave hypothetical numbers of what the BLDC could expect to pay in real property taxes. B. Bryan asked if it is correct that the BLDC needs an allowance for real property taxes for year one and Counsel answered by saying yes. Counsel (1) asked if the assessor gives the BLDC an exemption so this property doesn't pay real property taxes, if the BLDC would make a payment in lieu of tax (PILOT) and (2) said the BLDC needs to look at a PILOT and needs to prepare for the question. B. Bryan said a PILOT should be considered, but not in the first year's expenses. Z. Gabriels said the BLDC needs to put in a line item for 2006 real property tax.

Counsel asked if the current owners of Norowal Marina will be paying the 2005 school tax bill that goes through June 2006 and S. Andersen answered by saying that (1) he will check with Mr. Lamb on his feelings on paying the 2005

school tax bill and (2) he thinks the school tax bill will be paid directly out of what would be left in the Norowal account to be handed over to the BLDC at closing. Counsel said the BLDC may have a corporate tax if they have any boat equipment sales after the closing.

R. Alcan asked about taxes on licenses and permits and B. Bryan said (1) as long as the operations are not concessioned they are not taxable by the LGPC and (2) if the BLDC does concession out operations, it will be responsible for taxes to the LGPC.

Z. Gabriels (1) said the state pays real property taxes to the Town and (2) said it would be nice to indicate an expense line for a PILOT and (3) asked for details on PILOT obligations. Counsel said PILOTs are per the agreement made and can be annually, bi-annually, every five years, or whatever term is made in the agreement. Z. Gabriels said (1) a PILOT is a political and moral responsibility for the BLDC and (2) the BLDC will have other revisions that are not listed on the current I&E Statements. R. Alcan said they are trying to give a budget that works without including future Bed Tax money. These matters were tabled for discussion at next week's meeting.

Gabriels: Regarding the second DEC appraisal, Z. Gabriels said Al DeFrey of McGrath Appraisers should be on site in the near future and this item is pending as no further information has been received to date. B. Bryan said he suggests that Z. Gabriels contact Michael Grove or Les Eggleton of the DEC Bureau of Real Property to find out the status of the 2nd DEC appraisal.

Regarding Glens Falls National Bank's appraiser, Z. Gabriels said Neil Cherkosley, appraiser for Glens Falls National Bank, met with him on Tuesday, September 6th

and made comparables to Bolton Landing Marina, Snug Harbor and possibly Mooring Post that day as well.

Regarding the DEC decision, Z. Gabriels said this item is pending.

Saris: None

OLD BUSINESS:

Regarding the Conflict of Interest Policy, Counsel provided all BLDC Members with a 4-page draft to review immediately and said that all BLDC Members need to review the document and present any changes then sign a final copy. All BLDC Members in attendance reviewed the document and signed off on two copies as a final draft. Counsel said (1) he will deliver one copy to R. Bartlett for review and signature, (2) he will give the other copy to Donna Boggs to have on record, (3) he will submit the final draft with all BLDC Member signatures to Paul Curtis who will then send it to the IRS and (4) each year every BLDC Member will be required to sign the approved Conflict of Interest Policy. S. Andersen asked if any committee members are also required to sign the Conflict of Interest Policy and Counsel answered by saying yes.

Regarding the Adirondack Life article on conservation easements, Z. Gabriels said this article will be posted on the Town of Bolton websites tonight.

Regarding the second installment of educational /outreach information, J. Saris provided each BLDC Member with a draft of the second installment which includes response to Janet French's letter to The Post Star for immediate review and feedback.

RESOLUTION #20

B. Bryan moved, seconded by R. Alcan to adopt the second installment of the educational / outreach information send it bulk mail to all Diamond Point and Bolton residents and to post it on the Town of Bolton websites as soon as possible. All favorable. Motion carried.

Regarding Public Informational Meetings, Z. Gabriels asked if the BLDC Members were ready to schedule those meetings. B. Bryan said he needs 1-2 weeks to update the financials with the new information he just received from Mr. Lamb before presenting the information to the public. Counsel said (1) regarding the Conservation Easement, he has asked for permission to disclose information to the public, but needs DEC approval and (2) he followed up on DEC Conservation Easement disclosure with a phone calls to Ron Montesi and the DEC Attorney on this matter and is waiting for replies.

J. Saris said (1) as long as the public understands that the BLDC doesn't have all the answers yet, then the meetings should be scheduled, (2) people need to have questions answered, (3) the BLDC needs to receive comments from the public, (4) these meetings will also give the BLDC the opportunity to respond to public concerns, which may be addressable through operating plans and (5) he would like to have one meeting now, then one at a later date to avail the BLDC of public concern. S. Andersen said (1) he agrees that the BLDC needs to get information to and from the public and (2) he feels both the BLDC Board and the Bolton Town Board should be present at the public informational meetings. D. Rhodes said (1) he is not sure of having both the Bolton Town Board and the BLDC Board there at the same time, (2) there is a need in keeping the two separate governances separate and (3) the BLDC Board could defer questions regarding the Bolton Town Board to the Bolton Town Board to answer on another occasion. J. Saris said the Bolton Town Board meets once a month and can invite people to come early to address any Norowal concerns.

From the public, Susan Volkmann said (1) the Conservation Easement needs to be explained-not details disclosed, but an

explanation of what a conservation easement is, what this particular Conservation Easement does and what the BLDC plans on doing with the Conservation Easement. Counsel said (1) that if Susan Volkmann knew what he knows, she'd ask why the DEC is requesting the information remain confidential and (2) keeping details of the Conservation Easement confidential is the DEC's decision—not the BLDC's. J. Saris said disclosure of Conservation Easement information is out of BLDC control.

B. Bryan asked if the details of the Conservation Easement become public once the negotiations with the DEC are finalized and Counsel answered by saying (1) right now, the BLDC and DEC are in negotiations, (2) once negotiations are final the details of the Conservation Easement will be recorded and (3) he can answer any questions on the Conservation Easement in generic form.

Susan Volkmann said in reading the Adirondack Life article, it seems to her that the state is looking for more in this deal. Z. Gabriels responded by saying that the BLDC doesn't know how the state is going to appraise all of the assets. Counsel said efforts have been consistent in the business plan.

Z. Gabriels asked if the BLDC Members would want the DEC present to answer questions at the informational meetings if the BLDC gets the go ahead to release DEC and Conservation Easement details to the public. Several BLDC Members said no, having the DEC there will complicate things.

Regarding other public concerns, R. Alcan said he has been approached by people asking about deed restrictions, marina-only zoning and public vs. private enterprise. Counsel said it is important to show that Members of the BLDC can answer questions at meetings and in the minutes. J. Saris said part of Mr. Lamb's value is that real estate companies would battle for the property, so if it was re-zoned marina-only, that would not be fair to Mr. Lamb. R. Alcan asked if it

is legal for the Town of Bolton to zone property as marina-only and Counsel answered by saying, no, spot zoning is unconstitutional.

R. Alcan said another concern posed to him regarded private ownership possibilities if the private owner says they will forever keep it a marina. Counsel said "forever" is defined by the owner and can be changed. J. Saris said regarding the state partnering with a private person, (1) the state didn't make that offer, but responded to the Town of Bolton and the BLDC, (2) the BLDC Members' commitment, time, energy and getting together has kept this on track—which is the only way this is going to happen.

R. Alcan said he has been asked if Mr. Lamb came to the Town of Bolton with an offer and J. Saris answered by saying (1) no, the Town Board approached Mr. Lamb, (2) there was a feasibility study done by ELAN that showed the BLDC should partner with the state. Counsel said (1) there is no way a governmental unit (the Town of Bolton) could buy the business as it is being sold, (2) the task was to figure out who could buy it and the quasi-government unit of the BLDC was the answer, (3) there are four vacant lots on the Norowal property now that are all part of what the BLDC is acquiring and (4) if those lots stayed there intact for private development, the owner would maximize the lots and build condominiums.

Z. Gabriels said (1) you have to remember that the Norowal Marina property was on the market for 18-24 months before the Town Board and BLDC approached Mr. Lamb and (2) the state could have come in at any time and made a deal with a private individual, but they didn't. Counsel said (1) Mr. Lamb wanted the property to go to the Town of Bolton and (2) the package would be different if it was not going to the BLDC.

The BLDC Members agreed on scheduling the first BLDC Public Informational Hearing for Thursday, September 29, 2005 at 7:00 pm (replacing the regularly scheduled 4:30 pm BLDC meeting for that day) at the Bolton Town Hall and noted that no minutes need to be

taken for public hearings. Susan Volkmann said the BLDC should have people go to the microphone so the same question is not asked several times and J. Saris agreed that is a good idea.

NEW BUSINESS:

Regarding weekly BLDC meeting times, Z. Gabriels said some public have requested to move the BLDC meeting times to later in the early evening so that more can attend without the need to leave work early and have suggested 7:00pm to replace the current 4:30 pm meeting times. J. Saris said he is not comfortable changing the meeting times without asking R. Bartlett. This item was tabled for further discussion.

Regarding the Norowal Agreement September 2005 deadline, Counsel said the 30-day deadline extension has been granted, so the next deadline is October 9, 2005.

PUBLIC IN ATTENDANCE:

From the public, Susan Volkmann asked why Mr. Lamb is going to send out letters to customers in January 2006 and B. Bryan replied by saying (1) right now, Mr. Lamb is not going to, as there is no plan in place to send letters out at all at this point in time and (2) Mr. Lamb offered to send letters out as a courtesy, but the BLDC has no plans to take Mr. Lamb up on his offer at this time.

APPROVE PAYMENT OF LDC BILLS: None

EXECUTIVE SESSION:

The LDC Members adjourned the regular meeting and entered executive session at 6:27 pm to discuss the NYSDEC Conservation Easement and contract negotiations.

The LDC Members adjourned Executive Session, reconvened the regular meeting and adjourned the regular meeting at 6:25 pm.

Respectfully submitted by

Jennifer Torebka

Recording Secretary

09/15/05