

**SOUTH BRISTOL TOWN BOARD MEETING**

June 12, 2017

**REGULAR MEETING**

The regular meeting of the South Bristol Town Board was called to order June 12, 2017 at 7:00pm at the South Bristol Town Hall, 6500 W Gannett Hill Road, Naples, NY 14512.

**PRESENT**

Daniel Marshall, Supervisor  
Donna Goodwin, Councilwoman  
Stephen Cowley, Councilman  
Scott Wohlschlegel, Councilman  
Jim Strickland, Councilman

**RECORDING SECRETARY**

Judy Voss, Town Clerk

**OTHERS**

Bernice Caprini, Wade Sarkis, Anne Jacobs, Dahl Schultz, Maddie Bicknell, Alan Braun, Steve and Patty Janto, Jim Bachman, John York, Mike Murphy, Gail Hewson, Baird and Marcia Couch, Cathy Colby, Kevin Murphy, Robert Brener, Paul Lamphier, Tim Reidy, Mark Costich, Jeff Graff, Arlen Tarlovsky, Fred Sarkis, Ralph Endres, Ted Russell, et al

**I. ROLL CALL**

Supr. Marshall opened the meeting with roll call.

**II. PLEDGE OF ALLEGIANCE**

**III. APPROVAL OF MINUTES**

On a motion made by Councilman Wohlschlegel and seconded by Councilman Cowley, the May 10, 2017 Regular Town Board minutes were ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Cowley, Strickland and Wohlschlegel.

**IV. PRIVILEGE OF THE FLOOR**

Jim Bachman of Hicks Road, read from his notes: I live at 6080 Hicks Road and am a Bristol Harbour property owner. While I'd rather be somewhere else, I am compelled to speak regarding the Bristol Sewerage Disposal Corp (sewer corp) rate increase that's on the agenda this evening. My intent is to be a contributor in advance of this Board's work, as opposed to critical hindsight. I also speak solely as a Bristol Harbour Village property owner.

Since the fall of 2014, I've been directly and indirectly involved in the sewer corp. rate increase submission. As you are aware, a process was developed by LaBella that soon stalled when the sewer corp. was found to be operating outside the permitted area and that the corporation's stock was not in escrow with the overseeing jurisdiction. It would seem that these stagnate issues have been resolved and that the town is ready to proceed with the sewer corp. rate increase request.

Conveyance of thoughts:

- The sewer corp. is a faceless stock bearing corporation. 18 months ago, it was owned by the owners of Bristol Harbour Resorts. Today it's owned by the owners of Bristol Harbour Resort Management. Tomorrow, next week, next month, next year, the sewer

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corp. could well be owned by someone else, even independently from the owners of the resort. In other words: owner cooperation in the future could be very different from that of today. My request is to structure cooperation and don't assume status quo.

- Town Boards are dynamic. I suggest that the process this board follows and its results be well documented for future reference and boards.
- History points to poor jurisdictional oversight and setting of rates, both in process and geography. I believe everyone at Bristol Harbour has hopes that this era has ended. Going forward, sewer corp. customers expect and deserve confidence on how rates and profits were determined. Using a qualified firm such as LaBella and/or Jeff Smith from Municipal Solutions will greatly contribute to restoring trust, both in overseeing jurisdiction and the sewer corp.
- Commercial versus residential usage should be clearly explainable in laymen terms. Further, how are rates going to be set with a growing customer base? Homes continue to be built plus the pending Everwilde project or two dozen or so new cottages. Adding customers equals added income, plus \$2,500 each in hookup fees. How are rates going to be offset by new customers? Current revenue needed by the sewer corp. could become in excess of flush. Hypothetically, if the current rate structure were by example 25% commercial and 75% residential, assuming commercial usage pays at a greater rate; how are residential rates impacted by Everwilde, which could change consumption to 50% commercial and 50% residential? Yet residential rates would still be based on the 75% usage. The same idea applies to rates set on 375 homes and one year later there are 400. With the jurisdictional rate window at 5 years, why should sewer corp. customers have to wait several years to see the scales rebalanced?
- Annual accounting should continue to be a requirement and reviewed annually by an independent accounting firm. Again, I refer to a faceless corporation.

To wrap this up; it's in the communities' best interest to have a healthy sewer corporation. That said, excluding a capitol or maintenance reserve fund, operating costs should be relatively stable and adding customers should lower everyone's cost. One way to keep the scale balanced would be to establish and approve a dynamic rate scale that adjusts as customers are added at some interval. LaBella and Municipal Solutions can figure this out.

Fred Sarkis of Bristol Harbour said he had carefully planned to make a statement tonight during Privilege of the Floor and spent some time writing this up. At this point, Mr. Sarkis said he will trust the work of our Town Board to hopefully insure fairness and equitable treatment for both residential use and a fair share of costs for the commercial usage.

Joe Kohler of Bristol Harbour read a letter for the record from a 40-year customer of the Bristol Sewer Corp. and resident at Bristol Harbour Village: To Whom it may concern, While I am unable to be at this meeting, I want to express my concern and dismay at the thought of additional rate increase on any service, water and sewer or otherwise. I have lived in the community for over 40 years and have had enough. Thank you for attention to this matter, Wayne Chanler.

Mr. Kohler continued, asked Supr. Marshall to address the incomplete financial statements under the state law that need to be provided. You said they couldn't find the money

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or something at the December meeting, Mengel, Metzger. They identified the amount but they couldn't locate it?

Supr. Marshall said he believed what they said is they reached out to the former owners and got no reply.

Mr. Kohler suggested that perhaps that you reach out to them again because it was confirmed to the residents at the tour that the amount is \$600,000 dollars. Not sure we would be here with a rate increase if that particular amount money couldn't be found from a few related share holders that would be very helpful.

Supr. Marshall said the amount is \$360,000 and will reach out to Mengel, Metzger and Barr one more time.

Mr. Kohler noted that if they don't have any success there are other forensic accountants who do not have a conflict that would be very happy to step in and assist the town in finding the money.

### **VII. NEW BUSINESS**

#### **A. BRISTOL SEWERAGE DISPOSAL CORPORATION REQUEST FOR RATE INCREASE & RE-MAPPING OF SERVICE AREA**

Supr. Marshall noted they were going to jump ahead to New Business on the agenda regarding the rate increase and remapping of the Bristol Sewer District. Supr. Marshall noted that there are 3 representatives here tonight wishing to address the Board.

Robert Brenner, an attorney with the law firm Nixon Peabody here on behalf of the Bristol Sewerage Disposal Corp. this evening. With me tonight is Mark Costitch from Costitch Engineering and Tim Reidy, the CFO of Bristol Harbour. We are here this evening in connection with our request for a sewer district rate/rent increase and a remapping of the existing service territory. Mr. Costitch will talk about the remapping and Mr. Reidy will speak about the financials relative to the rate increase. Mr. Brenner said he wanted to start off highlighting for the Board the review standards that would apply to this and the attorney can correct me if he disagrees. With respect to the rate increase itself, what we are really targeting this evening and what we are looking for the Town Board to determine is whether what we are asking for is supported by financial evidence that we are going to provide you; and that it is adequate and reasonable to allow the corporation to successfully proceed and provide the important service to the folks in the Town it currently does. With respect to the district remapping, we are pulling in some properties that are currently served by the district that are outside the service territory. We are also including in the remapping request, the site across Seneca Point Road, the former Ketmar subdivision that is currently the Everwilde proposed site location. To be clear, our request this evening is not related to any approval or perception that a project is being approved at that site. Irrespective of that project, we would be here this evening, for the remapping request. That property was discussed to be included in the district for about 10 years now and the discussions went back to when Ketmar was attempting to subdivide that property and there were agreements in place between Ketmar and the sewer corp. relative to that area being served. Mr. Brenner introduced Mark Costitch and then Mr. Reidy will include the financials and will address any questions you may have. Mr. Brenner noted that Supr. Marshall did indicate that you will be taking written comments and we would be pleased to respond to any written comments in writing as well as Town Board comments this evening as well as in writing after the meeting.

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Mark Costitch, of Costitch Engineering, introduced the proposed map, showing the future district extension. The map shows the Bristol Harbour property with the golf course and the proposed Everwilde property. Basically the extension of the district, is the actual Lodge, the 5 cottages, an existing home and the proposed Everwilde property. The map also shows the existing district; the map is very straight-forward.

Supr. Marshall noted that there is a portion of Bristol Harbour that is actually within the Town of Canandaigua and that is not a part of this application.

Mr. Costitch agreed, the mapping has been done. The Lodge has been serviced for years and just bringing this into conformance. We have worked with the NYSDEC for permitting and close to being done with permitting with them. They have asked us to look at multiple scenarios with future flows and we have done that.

Supr. Marshall asked if the Board had questions?

Tim Reidy, introduced himself, the CFO for Bristol Harbour. Mr. Reidy wanted to go over a couple of documents that were submitted as part of the application. The schedule is the calculation for the commercial units, referring to Bristol Harbour Resort, the Lodge, the hotel and the golf course. The schedule lays out exactly how the sewer rates are set for the restaurant and the hotel and those rates are based on the Ontario County Local Law #5-2008. That law goes through all commercial type businesses and assigns it a number of units. One unit represents a residential home so everybody in Bristol Harbour pays one unit. What they do to calculate for a restaurant, they take the number of seats in that restaurant and apply the formula, and comes out to 12 units is charged for the Lodge. When it comes to the hotel, there is another formula that says that you have a number of hotel rooms and what that equates to in a number of units; the hotel comes out to 10.3 units. The golf course has 2 restrooms and that is 2 units. That is exactly what we charge the commercial businesses.

Mr. Reidy continued, noting there was a Special Meeting held by the Town in 2011 and it was voted on and approved that the exact rates he just stated, be used. Basically the Town Board was following the Ontario County law and setting those rates. That is exactly how we come up with the calculations for the commercial units. Mr. Reidy asked for any questions.

Councilwoman Goodwin ask about the rate analysis, currently under the monthly rate of \$39.14, is it the golf course not paying?

Mr. Reidy answered no, in the Special Meeting held by the Town, they didn't even identify the golf course, just referred to the Lodge and Hotel.

Supr. Marshall noted that this is not a public hearing, but allowed some questions.

Someone asked how the cottages are treated?

Mr. Reidy answered, the same as a residential unit, one unit. They are individually owned.

Mr. Brenner said we are talking about the use of the property; those are residential units while they might be rented out on a short term basis or long term basis for the purposes of their occupancy. They are not hotel or motel units; they are single family dwellings.

Ralph Endres, Lochcrest Circle, noted that in 2011 there wasn't an extra dining room that accommodates 300 people and now there is another kitchen. Those figures are not even close to being accurate; you have to add the kitchen that would supply 2 wedding facilities.

Mr. Brenner said, just to clarify, the point Mr. Reidy was making, Ontario County Local Law talks about the setting of rates based on the number of seats in the restaurant or the way the facility is being utilized. What we are saying is those unit calculations based on the number of seats are what we control; those are being adjusted based on the current use. For example, if it

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says one unit for every 12 seats in the restaurant we would apply the unit calculation to the number of seats that exist there currently. Under the new ownership, it is the intent to include the golf course, the Lodge and re-do all the calculations so the appropriate number of units are in the system that exist currently because before the current owners acquired it there are some units that are being missed.

Supr. Marshall noted that if he understands what Mr. Endres is trying to point out, is since 2011 there has been an additional building built and a kitchen.

Mr. Brenner noted that what we are saying would apply to the framework to determine the number of units; it would then need to be applied to this scenario as it exists on the ground right now. We are just talking about the framework and the methodology which this methodology can be applied elsewhere in Ontario County to an entirely different facility. We are just talking about the unit methodology.

Mr. Reidy noted that for reference we are using 549 seats for the Lodge.

Supr. Marshall asked, the formula in the Ontario County Law includes a base number that is subtracted in their formula?

Mr. Reidy agreed, up to 100 seats gets 3 units, and then the formula goes in increments of 50 seats above that; for every 50 seats above 100 seats, is an extra unit.

Mr. Reidy continued, as you know the Cook's acquired this utility about 18 months ago and since they took over they have lost upwards of \$90,000.00. Obviously a business can't survive that way. One of the things we did when we were investigating the large losses was to take a look at the history of the sewer rates and we found out that the last sewer increase was in 1987. The rates you see today of \$39.14 was the same rate back in 1987. If you simply took an inflation factor over the last 30 years, today's rate would be \$84.00 and that is not what we are looking for; that is not what we are doing. What we are doing is going back and taking a look at what it really costs to operate the utility. What does it cost in labor, maintenance and fees, everything; and rolling that up into the sheet you have in front of you. To that we wanted to add a small profit; it is not a non-for-profit business and we don't want to gouge anybody, but we felt a \$25,000 return on this business was reasonable. When you take a look at the total operating expenses of \$295,000 and add the \$25,000 it comes up to \$320,000. We took that number and divided it over the residential units, the number of commercial units and that rate comes out to \$69.12; a \$29.98 increase. Far less that it would have been just under inflation over the last 30 years; but that is what we need to make this operation feasible; both operationally and financially. Mr. Reidy asked the Board if they had any questions on the details that was provided?

Councilwoman Goodwin asked for a rate analysis for the current rate, \$39.14, and was wondering for the revenue and expenses where are the targeted areas going up?

Mr. Reidy answered, if you look at it, you have a very large loss and this year will probably be in the range of \$65,000-70,000. We want to eliminate the loss and we want to add \$25,000 profit to it; right there you are in the range of \$90,000-95,000 of the increase. The balance of the increase, some of it is in payroll, we have a full-time plant manager and we have 2 technicians. The technicians get certified and what happens is they get certified and then they leave because we can't pay them enough because we don't have enough money. What we want to do is set their salaries enough where they are compensated fairly and stay to help the operation.

Councilman Cowley asked if the salary line includes all 3 employees?

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Mr. Reidy noted that the salary number includes the plant manager, which half of his salary is charged to the water dept. and half to the sewer dept. There is one individual full time employee for water and one full time individual for sewer. A 7-day operation.

Councilman Wohlschlegel asked about the \$60,000 management fee?

Mr. Reidy said the management fee is \$60,000.00. We have a controller that does all the accounting for both water and sewer. That individual's salary and benefits is close to \$70,000; divide that by 2; so \$35,000 out of that \$60,000 is for the controller. The other \$25,000 is my time and the CEO's time managing the businesses; \$12,500 each.

Supr. Marshall said he discussed this with the CFO of the County and she was okay with it and asked if you wouldn't be better off as a 501C corporation, a non-profit. Whether or not you might be able to gain tax advantages and be eligible for grant money.

Mr. Brenner said we can look into that and will respond, but initially my response would be, we are organized under the Transportation Corporations Law and there are certain privileges and protections that law provides. The law allows the corporation to operate the way it needs to and we would lose some of those protections if we were to incorporate as a 501c3.

Supr. Marshall noted that you might have more liability protection as a 501c3.

Mr. Sarkis asked if you had read the minutes from the last board meeting; that would address your 1987 evaluation. Mr. Sarkis said he wanted to go on record disagreeing of the evaluation; it doesn't take into consideration everything that he has all ready written into the record.

Supr. Marshall noted that Mengel, Metzger & Barr came to that conclusion.

Alan Braun said he has been a resident at Bristol Harbour since 1982; from 1987 to today the number of units has more than doubled, the income has more than doubled, and would like to know how much is in the capital reserves?

Mr. Reidy said that is a very good question; there is around \$2,500 in the capital reserves.

Supr. Marshall noted that the capital reserves needs to be addressed. The Town Board took a tour of the sewer facility last Saturday and if the corporation fails a lot of people are in trouble. The Town Board is responsible for making sure what we do come up with a rate suggestion, making sure that it is fair and adequate.

Councilwoman Goodwin asked about new buildings is there a tie-in fee? Mr. Reidy said yes there is, \$2,500. We would recommend that the fee go into a capital reserve and building up the account.

Councilman Wohlschlegel asked about the \$41,000 for Capital/Infrastructure Renovation on the 2017 Rate Analysis.

Mr. Reidy answered, the money is for a SKATA system which is computerized system to monitor the facility and for cameras, replacing the sand filters and also legal expenses associated with the remapping.

Mr. Endres wanted to know if we could have some reassurance that the capital reserve fund doesn't disappear the next time the sewer company is sold; that is what happened the last time; \$350,000-\$400,000 just disappeared and nobody knows anything. Mr. Endres noted that he is a Planning Board member and when Everwilde came before the Planning Board, I asked how many units of the existing sewer plant will Everwilde use and their engineer between 31-35 units. Considerably more than what you are paying right now. How many units are you paying now?

Supr. Marshall answered that they (Bristol Harbour) are paying 24 units.

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Mr. Endres noted that is 31-35 units for Everwilde, which includes parties for 300, a hotel with 50 rooms, a bakery. A friend of mine owns a bakery in the Town of Henrietta when they went to sewer and water, there is an algorithm between the amount of water you use and the amount of sewers you use and they charge you so much for the bakery and my friend fought it. He fought it on this premise, there is only one other thing that uses more water than a bakery and that is a car wash. Bakeries use a lot of water. Mr. Endress said, he wants, as a resident, that sewer plant run properly, if there hasn't been a rate increase since 1987, that is before he moved there, I feel that one is warranted, but want to make sure that the money isn't pissed away the way the rest of the money we spent over the last 15 years.

Mr. Brenner wanted to wrap up what we are asking for and maybe it will address some of the concerns. Section 121 of the Transportation Corporation Law requires us to maintain the facility in a manor it be operational on a going forward basis to make sure all the folks being serviced by it have reliable service. We are not seeking an unduly profit or anything like that; the financial statement you have in front of you relate to very modest increases to recoup what hasn't been increased in 30 years. What Mr. Reidy was mentioning wasn't recouping any losses associated with the system failure or operational deficiencies. What we are trying to do is to move forward on a going forward basis, the Cook's have acknowledged their losses and absorbed those losses. We are moving forward and here tonight to do that. The question about the \$40,000 and that figure is intended to address known deficiencies that need to be upgraded. That is separate and apart and that's why it is budgeted separate and apart as a separate line item so we can address those things. What we also need to do is build up the capital reserve account, because if there is a break we need to be able to respond to it. As Mr. Reidy mentioned, we feel like that account is underfunded and we need to get out in front of that and we need to make sure this system has behind it the money it needs. Mr. Brenner noted there has been some grumbling in the audience about the rate increase going from \$39 up into the \$60's but again there hasn't been an increase in 30 years and we are just trying to make sure the system is financially viable.

Supr. Marshall asked the Town Attorney, Jeff Graff, to explain under the Transportation Corporation Law what are the requirements are, what we are supposed to be doing as a Town Board from this point forward.

Mr. Graff said it is short and to the point, you are simply looking to make sure that the rates are fair, adequate and reasonable. That is the limit that it goes into in Section 121, what it takes for your Board to be comfortable that the rates that they are asking for are fair, adequate and reasonable which is open up for interpretation so you can get to that comfort level and to make that finding. You don't have to agree with their rates, you can suggest a lower increase, you could deny them all together. It is really up to you but you are charged with those 3 criteria, fair, adequate and reasonable.

Someone in the audience requested that the number of years that there hasn't been a rate increase be taken off the table; to me that states perhaps for 25 years, we have been overcharged; that doesn't mean anything.

Supr. Marshall noted that what we will be making our decision on is the numbers on paper in front of us; what they are showing for costs to operate the facility today.

Bernice Caprini mentioned that nothing has been said about the number of additional, new homes and since 2006 there has been 35 new homes built at Bristol Harbor.

Supr. Marshall noted that more homes you have on the system the better off we all are. It was pointed out at the County that with 350 units, that is a very small sewer district. To be able to spread it over 400 people is much more painful than if it was a municipal system throughout

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several neighborhoods. Honeoye Lakes has 1,500 units and 162 pumps. That is something you have to consider as well. The plan is to have Councilman Cowley and Councilman Strickland look into the physical plant and to review what has been provided to us. Councilwoman Goodwin and I are going to take responsibility for the financial aspect of this and review that very carefully. In the process of doing that, we will go back to Mengel, Metzger and Barr and the EFPR Group for their opinion and also someone at the County that has a background being the finance director for Public Works and has experience doing rate increases. Councilman Wohlschlegel will be in charge of the SEQR review. The Town Board should come back in July and have something more definitive to give to everybody. Supr. Marshall thanked Mr. Brenner and Mr. Reidy for their time.

### **V. COMMITTEE REPORTS:**

Councilman Cowley read the Highway Supt. report: We are roadside mowing and trimming trees. We have paved Bills Road with Suit Kote and have also hauled gravel in for Stemple Hill Road and leveled up the sag. We then put a binder mat 4" deep over that and Suite Kote will be back in July to topcoat Stemple Hill and Hicks Road. Also our equipment trailer is in at Tracey Equipment in Henrietta. Several repairs were made to the overhead doors at the shop and transfer station.

### **VI. OLD BUSINESS:**

#### **A. PROPOSED ONSITE WASTEWATER TREATMENT LAW**

Supr. Marshall noted that the Onsite Wastewater Treatment Law is something all the municipalities around Canandaigua Lake have been working on. Unlike the Uniform Docking & Mooring Law, this is an individual law for each town. Attorney Jeff Graff is the Town Attorney for three of the Towns around the Lake; Middlesex, Gorham and South Bristol. As a result of that Attorney Graff got very involved with fine-tuning the law. This is the law that relates to inspections of onsite waste water plants within X number of feet of Canandaigua Lake. We think it is a good law and a good idea. Protecting Canandaigua Lake is essential. The Watershed Council found the grant money available to pay the Towns for the money that was spent for Mr. Graff's time. The law has been presented, and a SEQR review of the law and asked Councilman Wohlschlegel to comment.

Councilman Wohlschlegel noted that because it is a law there is no definitive action yet, but if someone is having a commercial operation or expanding in a large fashion you'd have to conduct a SEQR, Type I or Type II, usually on private property there is not that much involved. When it is all said and done, there is no action for the Town with SEQR.

Supr. Marshall asked Attorney Graff about the SEQR process.

Attorney Graff asked if Part I of the SEQR long form prepared and was it determined which type it was on the Part I?

Councilman Wohlschlegel agreed, noting that there are three parts to the form. It is the full environmental assessment form, Part I, Project & Setting.

Attorney Graff agreed, you would only use the long form for a Type I and proceed with that and go through the Part II questions.

Supr. Marshall said we have all ready done that.

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On a motion made by Councilman Wohlschlegel and seconded by Councilman Cowley, Resolution No. 32-2017 was ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Wohlschlegel, Cowley and Strickland.

**RESOLUTION #32-2017 OF THE TOWN BOARD OF THE TOWN OF SOUTH BRISTOL, ONTARIO COUNTY, NEW YORK, DETERMINATION OF SIGNIFICANCE – LOCAL LAW NO. 3 OF 2017**

**WHEREAS**, the Town of South Bristol Town Board, hereinafter referred to as Town Board, has determined proposed Local Law No. 3 of 2017 to be a Type 1 Action under the State Environmental Quality Review (SEQR) Regulations, and,

**WHEREAS**, the Town Board has reviewed and accepted the Environmental Record prepared on said action, and

**WHEREAS**, the Town Board has considered the potential impacts associated with said action.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Town Board makes this Determination of Non-Significance based upon: the Long Environmental Assessment Form prepared for this action, Town Board Public Hearing Record on said action; and, the Environmental Record prepared on said action.

**BE IT FURTHER RESOLVED THAT**, the Town Board makes this Determination of Non-Significance based on the following reasons supporting this determination:

1. The Town Board considered the action as defined in subdivisions 617.2(b) and 617.3(g) of Part 617 of the SEQR Regulations; and,
2. The Town Board did review the EAF, the criteria contained in subdivision (c) of 617.7 and other supporting information to identify the relevant areas of environmental concern; and,
3. The Town Board did thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have significant adverse impact on the environment; and
4. The Town Board did set forth its determination of significance in written form containing a reasoned elaboration and providing reference to all supporting documentation.

I, Judy Voss, Town Clerk of the Town of South Bristol do hereby certify that the aforementioned resolution was adopted by the Town Board of the Town of South Bristol on June 12, 2017, by the following vote:

	<u>Aye</u>	<u>Nay</u>
Daniel Q. Marshall	x _____	_____
Scott Wohlschlegel	x _____	_____
Donna Goodwin	x _____	_____
Stephen Cowley	x _____	_____
James Strickland	x _____	_____

Dated: June 12, 2017

\_\_\_\_\_  
Judy Voss, Town Clerk

SEAL

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On a motion made by Councilman Cowley and seconded by Councilman Strickland, Resolution No. 33-2017 was ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Wohlschlegel, Cowley and Strickland.

**RESOLUTION #33-2017 AUTHORIZING ADOPTION OF LOCAL LAW NO. 3 OF 2017**

**WHEREAS**, a resolution was duly adopted by the Town Board of the Town of South Bristol for a public hearing to be held by said Town Board on April 10, 2017, at 7:00 p.m. at South Bristol Town Hall, 6500 Gannett Hill Road - West, Town of South Bristol, New York, to hear all interested parties on a proposed Local Law entitled, "A Local Law Adopting an On-Site Wastewater Treatment System Law" and

**WHEREAS**, notice of said public hearing was duly advertised in the official newspaper of the Town of South Bristol, on April 5, 2017 and other notices required to be given by law were properly served, posted or given; and

**WHEREAS**, said public hearing was duly held on April 10, 2017, at 7:00 p.m. at the South Bristol Town Hall, 6500 Gannett Hill Road - West, Town of South Bristol, New York, and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said Proposed Local Law, or any part thereof; and

**WHEREAS**, pursuant to part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law it has been determined by the Town Board that adoption of said Local Law would not have a significant effect upon the environment and could be processed by other applicable governmental agencies without further regard to SEQRA; and

**WHEREAS**, the Town Board of the Town of South Bristol, after due deliberation, finds it in the best interest of the Town of South Bristol to adopt said Local Law.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board of the Town of South Bristol hereby adopts said Local Law No. 3 of 2017, entitled "A Local Law Adopting an On-Site Wastewater Treatment System Law", a copy of which is attached hereto and made a part of this resolution, and be it further

**RESOLVED**, that the Town Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of South Bristol, to publish an abstract of this local law in the Town's official newspaper and to give due notice of the adoption of said local law to the Secretary of State of New York.

I, Judy Voss, Town Clerk of the Town of South Bristol do hereby certify that the aforementioned resolution was adopted by the Town Board of the Town of South Bristol on June 12, 2017, by the following vote:

	<u>Aye</u>	<u>Nay</u>
Daniel Q. Marshall	<u>x</u>	_____
Scott Wohlschlegel	<u>x</u>	_____
Donna Goodwin	<u>x</u>	_____
Stephen Cowley	<u>x</u>	_____
James Strickland	<u>x</u>	_____

Dated: June 13, 2017

\_\_\_\_\_  
Judy Voss, Town Clerk

SEAL

**LOCAL LAW FILING**

New York State Department of State

Division of Corporations, State Records and Uniform Commercial Code

One Commerce Plaza, 99 Washington Avenue

Albany, NY 12231-0001

**(Use this form to file a local law with the Secretary of State)**

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City

**Town of South Bristol**

Village

Local Law No. **3** of the year **2017**

A local law **"Adopting an On-Site Wastewater Treatment System Law"**

(Insert Title)

Be it enacted by the **Town Board** (Name of Legislative Body)

County

City

**Town of South Bristol**

as follows:

Village

**Section 1.** The Code of the Town of South Bristol is hereby amended with the adoption of a new Chapter 120 to read as follows:

**Chapter 120**

**On-Site Individual Wastewater Treatment System Law**

ARTICLE 1

Introductory Provisions

§ 120-1 Title

§ 120-2 Applicability

§ 120-3 Purpose

§ 120-4 Authority

ARTICLE 2

Definitions

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Introductory Provisions

**§ 120-1. Title**

This Chapter shall be known as the “On-Site Individual Wastewater Treatment System Law of the Town of South Bristol”.

**§ 120-2. Applicability.**

This Chapter shall govern the treatment of sewage by regulating all on-site individual wastewater treatment systems (hereinafter referred to as an on-site wastewater treatment system).

**§ 120-3. Purpose**

The purpose of this law is to preserve and protect public health and the quality of surface and groundwater in the Town of South Bristol by mandating the adequate performance of on-site wastewater treatment systems to prevent health hazards and adverse impacts to the environment. Specifically, this law will ensure wastes disposed of by on-site wastewater treatment systems:

- a. Do not pollute or contaminate any surface water or groundwater source utilized for domestic drinking water supply or recreational purposes
- b. Are not accessible to any carriers of disease
- c. Do not give rise to a nuisance due to odor or unsightly appearance
- d. Are not a source of nutrient pollution and do not contribute to excessive aquatic weed growth or harmful algal blooms in streams, lakes, and other bodies of water

**§ 120-4. Authority**

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Enactment of this law is pursuant to Article 2 of the New York State Municipal Home Rule Law and Article 3 of the New York State Public Health Law.

**ARTICLE 2**

**Definitions**

**§ 120-5. Words and Terms**

In addition to the definitions contained in the New York State Public Health Law and Uniform Fire Prevention and Building Code, which are incorporated herein by reference, the following words and terms shall be defined as follows:

**ADEQUATELY FUNCTIONING** - An on-site wastewater treatment system that meets the design standards specified in § 120-7 of this Chapter and shows no evidence of failure.

**AUTHORITY HAVING JURISDICTION** - Shall be the Code Enforcement Officer, Health Officer, or other official(s) designated by the Town of South Bristol or other regulatory agency, having the responsibility to implement and enforce the provisions of this law. Within the Canandaigua Lake Watershed, the authority having jurisdiction shall also include the Canandaigua Lake Watershed Inspector, who is designated by the Canandaigua Lake Watershed Commission and who shall have the joint responsibility to implement the provisions of this law. The Canandaigua Lake Watershed Inspector will work in partnership with the Town of South Bristol. Final determinations and enforcement authority of this law shall reside with the Town of South Bristol.

**BEDROOM AND/OR BEDROOM EQUIVALENT**– For the purpose of determining the size of an individual on-site wastewater treatment system, “bedroom and/or bedroom equivalent” shall mean a room with certain features characteristic of bedrooms, generally which include, but not limited to the following:

1. Reasonable access to a full bathroom on the same floor (or within a half floor if the house is a split level); or,
2. Adequate means to close off the room for privacy; and / or,
3. A minimum of seventy (70)-square feet in size.

**BUILDING** - Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals, property or business activity. See also "dwelling" and "structure."

**CANANDAIGUA LAKE** – The location where the mean high water level of Canandaigua Lake of 689.40 feet above sea level intersects the adjoining parcel. Distance measurements from Canandaigua Lake shall be a horizontal distance and shall be measured from the closest location.

**CERTIFIED INSPECTOR** – Shall include a registered OTN Inspector, or licensed Professional Engineer.

**CHANGE OF USE** - A use of land with an associated building and on-site wastewater treatment system that is modified so as to likely cause an increase in hydraulic loading (e.g. – change from an existing commercial use to residential use; change of an existing residential use to commercial use; change of a commercial use to a different type of commercial use).

**CONVEYANCE OF REAL PROPERTY** - The transfer of the title of real estate, in the form of a deed or other legal instrument, filed in the Office of the Ontario County Clerk, which involves none of the transferors of such deed or other legal instrument remaining in possession of such real estate. Non-arm’s-length transfers of title, transfers of an interest in title where one or more of the transferors remain in possession of such real estate and transfers of title to a spouse and/or one or more children, including transfers from a transferor’s estate, shall not be considered a conveyance of real property under this law.

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**DESIGN PROFESSIONAL** - A person licensed or registered in the State of New York and authorized by the New York State Education Law to design the systems described in 10 NYCRR Appendix 75-A per NYSDOH Fact Sheet "Need for Licensed Design Professionals – Residential Onsite Wastewater Treatment Systems" dated January 2004, as amended.

**ENHANCED TREATMENT** - The biological and physical treatment of wastewater to reduce the amount of biochemical oxygen demand (BOD) and total suspended solids (TSS) of wastewater effluent prior to distribution to an absorption area.

**ENHANCED TREATMENT UNIT** - Pre-manufactured structures that provide enhanced treatment of wastewater prior to discharge to a subsurface soil absorption area.

**FAILURE** – A condition existing within an on-site wastewater treatment system, which causes the system to function in an unsanitary manner and which results in the discharge of untreated or partially treated wastewater onto ground surface, into surface water, into the groundwater, or which results in failure of building plumbing to discharge properly. Meeting any of the following criteria shall be defined as a failure:

1. Lack of a watertight pre-treatment vessel (i.e. septic or holding tank, aerobic treatment unit etc.) prior to any subsurface treatment / absorption system.
2. There is a discharge of effluent directly or indirectly to the ground surface and ponding, surface outbreaks or saturated soils over the absorption area.
3. "Cheater" or direct pipe surface discharge (over an embankment, into a roadside ditch, or stream etc.) to include surface discharge of grey water.
4. A dye test results in the presence of dye on the ground surface.
5. There is a back-up of sewage into the home, building or facility as a result of an overloaded or clogged absorption area.
6. The septic tank requires pumping more than four times per year and/or sewage is observed running back into the septic tank from the absorption area during pumping.
7. The absorption area is located within 100 feet of Canandaigua Lake and the bottom of the leach line invert is at or below the ten-year flood elevation (690.00 feet).
8. The access lid of a holding tank, Enhanced Treatment Unit or Pump Tank is located within 100 feet of Canandaigua Lake and is at or below the ten year flood elevation (690.00 feet)

**GREY WATER** - All wastewater from a building except from flush toilets and urinals.

**HOLDING TANK** – A water-tight tank that holds raw sewage and untreated effluent without an outflow

**LOCAL GOVERNING BODY** - The municipal board charged with authority to act as the Local Board of Health as defined by New York State Public Health Law.

**MINOR ALTERATIONS** - Routine maintenance and repairs to the on-site wastewater treatment system, including but not limited to the following: replacement of septic tank covers or baffles, replacement of distribution box covers, replacement of cracked pipes, pumping of the septic tank, and replacement of mechanical pumps and devices. "Minor alterations" shall not include replacement of a septic tank, distribution box, or any addition, alteration or rearrangement of water distribution or drainage piping.

**NEW CONSTRUCTION** - Any building constructed or placed on an undeveloped site requiring the installation of an on-site wastewater treatment system and currently not utilizing the same, and/or substantial tear down and rebuild of an existing building such that the work area exceeds 50 percent of the aggregate area of the existing building (level 3 alterations– 2010 Building Code of New York State).

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**ON-SITE WASTEWATER TREATMENT SYSTEM PERMIT** - A written permit issued by the authority having jurisdiction.

**ON-SITE WASTEWATER TREATMENT SYSTEM** - A complete system of piping, watertight vessels or other facilities for the on-site collection, transport and treatment of sewage.

**OTN INSPECTOR** – Industry professional who has been trained and has successfully completed the 7.50 hour course for inspecting existing residential on-site wastewater treatment systems and has received a Registration Number from the New York Onsite Wastewater Treatment Training Network (OTN) indicating such. In the event that the OTN stops registering inspectors, the authority having jurisdiction will work with the Watershed Inspector to administer a training program and publish a list of approved inspectors for the public.

**SEWAGE** - The combination of human and household waste with water, which is discharged to the plumbing system, including the waste from a flush toilet, bath, shower, sink, lavatory, dishwashing or laundry machine, or the water-carried waste from any fixture, equipment or machine.

**SUBSTANDARD SYSTEM** – On-site wastewater treatment system that does not meet the design standards specified in § 170-106 but shows no evidence of failure.

**TEN-YEAR FLOOD ELEVATION** – An elevation of 690.00 feet above sea level.

**WORK AREA** - That portion or portions of a building consisting of all reconfigured spaces as indicated on the construction documents. Work area excludes other portions of the building where incidental work entailed by the intended work must be performed and portions of the building where work not initially intended by the owner is specifically required by this code.

### **ARTICLE 3**

#### **General Regulations, Design Standards and Requirements**

##### **§ 120-6. General Regulations**

A. It shall be unlawful to install, construct, alter, replace, enlarge, extend, or otherwise modify any on-site wastewater treatment system unless an on-site wastewater treatment system permit is issued by the authority having jurisdiction, except as specifically exempted in § 120-8.

B. It shall be unlawful to change the use of real property or any building thereon, convey real property, expand a building or dwelling by increasing the number of bedrooms and/or bedroom equivalents, or increase the building or dwelling square footage by greater than twenty-five (25) percent of the square footage, or alter a building or dwelling such that the work area exceeds 50 percent of the aggregate area of the existing building without an inspection of the existing on-site wastewater treatment system by a Certified Inspector, pursuant to Article 4 of this law.

C. It shall be a violation of this law to use any on-site wastewater treatment system that is in failure.

D. On-site wastewater treatment systems with the absorption area located within 200 feet of Canandaigua Lake shall also comply with § 120-9 - Requirements of Substandard Systems.

E. There shall be no activities or conditions permitted which would interfere with the proper operation of on-site wastewater treatment systems. It is specifically prohibited to construct or place anything that would impact the absorption area including but not limited to: buildings, structures, paving, trees or shrubs, fill, the parking or crossing by vehicles, above ground pools, driveways or parking areas.

F. It shall be unlawful to discharge anything but sewage into an on-site wastewater treatment system. Surface and subsurface water including roof, cellar, foundation and storm

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drainage shall not be discharged into the on-site wastewater treatment system and shall be disposed of so as to in no way affect the proper functioning of the system.

G. All new on-site wastewater treatment systems or modifications to existing on-site wastewater treatment systems shall be designed by a Design Professional. The Design Professional shall have the right to contract with the Ontario County Soil and Water Conservation District through its Uniform Inspection Procedures Program for site and soil appraisals.

### **§ 120-7. Design Standards to Meet the Requirements of this Law**

A. New York State Department of Health's Appendix 75-A of Part 75 of Title 10 of the New York Code of Rules and Regulations (10 NYCRR) for systems with a design load of less than 1,000 gallons per day

B. New York State Department of Environmental Conservation's "*New York State Design Standards for Intermediate Sized Wastewater Treatment Systems - March 5, 2014*" for systems with a design load equal to or greater than 1000 gallons per day.

C. In addition to the New York State design standards, the following standards shall also be met for all dwellings:

1. The minimum design of the system shall be based on 130 gallons/day/bedroom and/or bedroom equivalent for all on-site wastewater treatment systems greater than 200 feet from Canandaigua Lake.
2. The minimum design of the system shall be based on 150 gallons/day/bedroom and/or bedroom equivalent for all on-site wastewater treatment systems located wholly or partially within 200 feet of Canandaigua Lake.
3. The size of the house shall be considered along with the number of bedrooms and/or bedroom equivalent for design loading purposes, as follows:
  - a. Minimum design: 2 bedrooms (Appendix 75-A)
  - b. 2 bedrooms and/or bedroom equivalents or up to 1,200 square feet of heated living space shall be designed as a 2 bedroom design load
  - c. 3 bedrooms and/or bedroom equivalents or 1,201-2,250 square feet of heated living space shall be designed as a 3 bedroom design load
  - d. 4 bedrooms and/or bedroom equivalents or 2,251-3,300 square feet of heated living space shall be designed as a 4 bedroom design load
  - e. 5 bedrooms and/or bedroom equivalents or 3,301-4,050 square feet of heated living space shall be designed as a 5 bedroom design load
  - f. More than 5 bedrooms and/or bedroom equivalents or greater than 4,050 square feet of heated living space – 110 gpd per additional bedrooms and/or bedroom equivalents shall be added to the design load
  - g. Final determination of design loading shall be by the authority having jurisdiction.

### **§ 120-8. Exemptions**

A. Minor alterations to on-site wastewater treatment systems shall not require an on-site wastewater treatment system permit provided such repairs are made to replace existing conditions in need of repair, and are done in a safe and sanitary manner.

B. Replacement of septic tanks and distribution boxes shall require an on-site wastewater treatment system permit but do not need to be designed by a Design Professional provided such repairs are made to replace existing conditions. All alterations to the absorption field shall

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require an on-site wastewater treatment system permit and a design completed by a Design Professional.

### **§ 120-9. Requirements for Substandard Systems**

A. Substandard systems with the absorption area located within 200 feet of Canandaigua Lake.

1. Substandard systems with the absorption area located within 200 feet of Canandaigua Lake shall be brought into compliance with the design standards of § 120-7 within twelve months of the conveyance of real property and shall follow the procedures in Article 5 of this law.

B. Substandard Systems with the absorption area located within 200 feet of Canandaigua Lake with lot limitations: On parcels with existing substandard on-site wastewater treatment systems that have topographic, physiographic, lot size or other limitations that do not allow for meeting the design standards of § 120-7, the authority having jurisdiction shall require the parcel owner to meet the design standards of § 120-7 to the greatest extent possible.

1. The parcel owner shall follow the procedures in Article 5 of this law to bring their on-site wastewater treatment system into compliance to the greatest extent possible. The authority having jurisdiction shall have the ability to grant a local waiver to the requirements of the regulations on substandard lots if the applicant can prove that they have met the requirements to the greatest extent possible. The authority having jurisdiction shall take the following into consideration when determining if the on-site wastewater treatment system meets the design standards of § 120-7 to the greatest extent possible:
  - a. Previous approvals and/or specific waivers granted by NYS-DOH, or the Watershed Inspector
  - b. Distance separations to surface water and groundwater wells in order to minimize pathogen, nutrient and/or other pollutant loading;
  - c. The ability to utilize the latest technology and the ability to maintain that technology
  - d. Existing lot line setbacks and area requirements as related to individual properties; and
  - e. The extent to which the limitations are self-created.

2. On previously developed sites with a substandard system, holding tanks may be utilized if the authority having jurisdiction deems it is the best available technology for the existing site conditions and limitations.

3. Once the authority having jurisdiction has determined that the substandard system meets the design standards of § 120-7 to the greatest extent possible, the authority having jurisdiction shall provide the parcel owner with an on-site wastewater treatment system permit and a letter of acknowledgement stating that the parcel owner is meeting the design standards of § 120-7 to the greatest extent possible.

C. Substandard systems with absorption areas greater than 200 feet from Canandaigua Lake.

1. Based on the system inspection, the authority having jurisdiction shall notify parcel owners in a written letter that their system is substandard. The letter will list all components of the system that are substandard. The property owner will not be required to upgrade the system unless it is in failure.

**§ 120-10. Maintenance of Enhanced Treatment Units and Holding Tanks**

A. All Enhanced Treatment Units (ETUs) are required to have a service contract with a certified manufacturer's representative, which provides for annual inspections or inspections at intervals specified by the manufacturer, whichever is stricter, as well as subsequent necessary adjustments by a certified manufacturer's representative for the life of the unit. Within 10 days of an inspection, a written report, which documents the results of the inspection and provides a written certification from the certified manufacturer's representative that the unit is fully functional and operating properly and is under a service contract, shall be sent to the authority having jurisdiction. Failure to hold a service contract, complete the required inspections, send the inspection reports to the authority having jurisdiction, and/or complete the certified manufacturer's representative's maintenance schedule is a violation of this law and is punishable according to this Chapter.

B. Holding Tanks – All holding tanks shall be equipped with a float switch and high level alarm (audible and visual) located in a conspicuous place to indicate when pump out is necessary, which will be maintained in good working order at all times. The owner shall have a contract for service with a NYSDEC permitted septage waste transporter to pump the holding tank as needed. A copy of all pump-out records shall be submitted to the authority having jurisdiction. At no time will sewage discharge from the tank be allowed.

**ARTICLE 4**

**Requirements for New and Existing On-Site Wastewater Treatment System Inspections**

**§ 120-11. Inspections of New On-Site Wastewater Treatment Systems**

A. Installation of the on-site wastewater treatment system shall be under the direct supervision of a Design Professional. The authority having jurisdiction shall have the right to observe any portion of the installation of the system.

B. The applicant shall be prohibited from covering any component of the system without proper authorization. Any change of construction approved by the authority having jurisdiction shall be noted on the original drawings before the system is back filled. An additional review and approval shall not be required for any minor alterations to the designs already approved by the authority having jurisdiction. Major alterations to the designs approved by the authority having jurisdiction shall require review and approval by the authority having jurisdiction. Major alterations shall include any changes to the absorption field and/or changes to the size or type of pretreatment tank.

C. As built plans and construction certification by a Design Professional shall be provided to the authority having jurisdiction after installation is completed.

**§ 120-12. Inspections of Systems with the Absorption Area or Holding Tank Located within 200 Feet of Canandaigua Lake**

A. All on-site wastewater treatment systems with an absorption area located wholly or partially within 200 feet of Canandaigua Lake or a holding tank located wholly or partially within 200 feet of Canandaigua Lake shall be required to have an on-site wastewater treatment system inspection completed every five years after the adoption of this law by a Certified Inspector.

B. If a parcel is located within 200 feet of Canandaigua Lake and the authority having jurisdiction does not have a stamped as-built drawing showing the location of the absorption area or holding tank, then an on-site wastewater treatment system inspection shall be required during the first 5-year inspection cycle. This first inspection shall be completed by the Watershed Inspector. Parcel owners will be exempt from future five-year inspection cycles if the absorption

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area or holding tank has been determined to be greater than 200 feet from Canandaigua Lake. The authority having jurisdiction will provide written documentation to the parcel owner that the absorption area or holding tank is greater than 200 feet from Canandaigua Lake.

C. The Watershed Inspector shall complete the first inspection for systems requiring inspections according to this section that have not been inspected by the authority having jurisdiction since 1990 or do not have a stamped as-built drawing dated on/after 1990. The inspection or stamped as built drawing must have documented the length, type and location of absorption areas; the size, type, location and structural integrity of the pretreatment tank; and the tie dimensions. Parcel owners shall receive written notification by the Watershed Inspector regarding this requirement and will work with the Watershed Inspector to complete the inspection.

D. The Town and the Watershed Inspector shall determine a schedule for the 5-year inspection cycle, with inspections due on or before December 31 of each inspection cycle year. The Watershed Inspector shall be responsible for notifying parcel owners of the upcoming required inspection by January 15th of the inspection cycle year. The Watershed Inspector shall send a list of parcels requiring inspection to the Town for each inspection cycle year and will copy them on correspondence to those parcel owners.

E. Once the parcel owner is notified of the required inspection, the parcel owner will be responsible for arranging the inspection with a Certified Inspector.

F. If a system is inspected between 5-year inspection cycles, then the 5-year inspection cycle shall be reset for 5 years from the date of the most recent inspection.

### **§ 120-13. Inspections of Existing On-Site Wastewater Treatment Systems Throughout the Town**

A. The authority having jurisdiction shall require an on-site inspection of an existing on-site wastewater treatment system as follows:

1. Prior to a change of use – The owner of the parcel shall arrange for an on-site wastewater treatment system inspection before any change of use is undertaken. The authority having jurisdiction shall determine whether the change represents an increased hydraulic loading to the system. In instances where a site plan approval, special use permit, or variance is required, the authority having jurisdiction shall incorporate the on-site wastewater treatment system inspection report into the review process of the appropriate Planning Board or Zoning Board of Appeals.
2. Prior to a conveyance of real property – The owner of the parcel shall arrange for an on-site wastewater treatment system inspection prior to the conveyance of real property. For conveyance of real property, the inspection must be completed at least 10 days prior to the transfer of property. The inspection report must be filed with the authority having jurisdiction, the current owner, and the proposed new owner prior to the transfer of property. It shall be a violation of this law to not have the property inspected prior to the conveyance of real property. If the required inspection does not occur prior to the conveyance of real property, then the authority having jurisdiction will inspect the system following the access procedures defined in § 120-20.
3. Prior to the expansion of a building or dwelling that will increase the number of bedrooms and/or bedroom equivalents, or increase the building or dwelling square footage by greater than twenty-five (25) percent, or alter a building or dwelling such that the work area exceeds 50 percent of the aggregate area of the existing building.

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4. Prior to any alterations made to the absorption field or any change in the treatment system type.

### **§ 120-14. Inspection Procedure**

A. All existing on-site wastewater treatment systems requiring an inspection pursuant to this law shall be performed by a Certified Inspector in accordance with and utilizing the OTN System Inspection Findings Worksheet (Rev 01/13 or as updated).

B. The authority having jurisdiction reserves the right to observe any on-site wastewater treatment system inspection completed by a Certified Inspector following the procedures identified in Article 6 of this law.

C. The authority having jurisdiction will review all inspection reports within 30 days from when they are received. If the authority having jurisdiction deems the inspection or the associated report to be inadequate or incomplete, the authority having jurisdiction will notify the parcel owner by a letter within 30 days from when the report was received. The system shall be re-inspected and an inspection report shall be sent to the authority having jurisdiction. The system shall be considered uninspected until an adequate inspection report is sent to the authority having jurisdiction.

### **§ 120-15. Report of Findings**

A. Upon completion of the inspection, the Certified Inspector shall document all procedures and furnish the owner with a report of findings. The report of findings must be the OTN System Inspection Findings Worksheet (Rev. 01/13 or as updated).

B. All inspection reports must be filed with the authority having jurisdiction within 30 days of the inspection's completion, or by December 31 of the inspection cycle year as required by § 120-12. Failure to submit the report to the authority having jurisdiction is considered a violation of this law and is punishable according to Article 9 of this law. The system shall be considered uninspected until an adequate inspection report is sent to the authority having jurisdiction.

C. The authority having jurisdiction shall have 30 days to review the inspection report and notify the parcel owner of their findings. If the authority having jurisdiction deems the inspection report adequate, the authority of jurisdiction shall notify the parcel owner by letter, stating that the inspected on-site wastewater treatment system is determined to be either adequately functioning, a substandard system, or in failure. The report of findings by the Certified Inspector shall be attached and maybe used to support the determination. (See § 120-21 Deficiencies and Corrections)

## **ARTICLE 5**

### **On-Site Wastewater Treatment System Permitting Procedures**

#### **§ 120-16. Application Material**

A. Applications for on-site wastewater treatment system permits shall be made by the parcel owner or a duly authorized agent, accompanied by the appropriate fee, to the authority having jurisdiction. Applications shall include the following information:

1. The name, address and telephone number of the applicant;
2. Specific location of the parcel on which the on-site wastewater treatment system is located or proposed, including the tax map number for said parcel;
3. The number of bedroom and/or bedroom equivalents and the square footage of the building
4. All plans shall be designed by a Design Professional showing the location of the proposed on-site wastewater treatment system and all wells, springs, other water

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supplies, buildings and watercourses within 200 feet of the proposed on-site wastewater treatment system, even if located on adjacent properties.

5. Evidence to demonstrate that there is no public sewer available into which the sewage can be discharged or that it is impractical to discharge sewage into a community sewerage system;
6. Evidence to demonstrate that the design complies with Article 3 of this law
7. Documentation of substantiating data relating to site conditions, percolation tests, deep hole data, and topography of land; and
8. The authority having jurisdiction may conduct such investigations, examinations, tests and site evaluations to verify information contained in the application following the procedures identified in Article 6 of this law.

### **§ 120-17. Administrative Review**

A. The authority having jurisdiction shall not issue an on-site wastewater treatment system permit unless:

1. A plan is submitted by a Design Professional as required by this law; all permit fees have been paid; that the plan complies with all specifications of state and local laws; and within the Canandaigua Lake Watershed, a letter of approval has been obtained from the Watershed Inspector.

B. When the authority having jurisdiction shall deny the application for an on-site wastewater treatment system permit, within seven (7) working days after taking such action, the authority having jurisdiction shall furnish the applicant with a written notice of denial setting forth in detail the reason for such action.

### **§ 120-18. Fees**

The fees for any permit or inspection performed pursuant to this law shall be determined by resolution from time to time by the authority having jurisdiction.

### **§ 120-19. State or Other Agency Approvals**

In addition to approvals required herein, a review and approval by the New York State Department of Health (NYSDOH) or the New York State Department of Environmental Conservation (NYSDEC) and the Canandaigua Lake Watershed Inspector may be required.

## **ARTICLE 6**

### **Compliance and Reporting**

#### **§ 120-20. Access**

A. On parcels for which an on-site wastewater treatment system permit or inspection has been requested by the parcel owner or parcel owner's agent, the authority having jurisdiction shall be permitted by the parcel owner to make a physical inspection of the lands and premises in order to determine that all of the requirements of this law have been complied with.

B. When an inspection is required by Article 4 of this law, the authority having jurisdiction shall request the permission of the parcel owner to make a physical inspection of the lands, premises and/or buildings in order to determine that all of the requirements of this law have been complied with. If refused, the authority having jurisdiction shall apply to a court of competent jurisdiction for a search warrant.

C. The authority having jurisdiction, upon complaint or upon show of due cause, shall request the permission of the parcel owner to make a physical inspection of the lands, premises and/or buildings for which an on-site wastewater treatment system is believed to be a cause or potential cause of pollution or a health hazard. If refused, the authority having jurisdiction shall apply to a court of competent jurisdiction for a search warrant.

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**§ 120-21. Deficiencies and Corrections**

A. Upon discovery of an on-site wastewater treatment system, which is in failure, the authority having jurisdiction shall immediately notify the parcel owner in writing of the failure through a Notice of Violation. It shall be the responsibility of the parcel owner to forward the Notice of Violation to other involved or interested parcel owners/renters. The Notice of Violation shall include the specific section of the law being violated, the components of the system that are not in compliance with the requirements of this law, the action that is necessary to correct the noncompliance, the date by which the permit must be obtained, the timeframe in which corrective actions must be completed.

B. The authority having jurisdiction shall, by written notice and/or posting, order all work stopped on any on-site wastewater treatment system, which is in violation of this law.

C. Upon receipt of a Notice of Violation of a failed system that is directly discharging to the surface and/or surface water, the authority having jurisdiction shall order that the discharge be terminated immediately and if the on-site system has a tank, the outlet shall be sealed and the tank used as a holding tank until the system is brought into compliance.

D. To correct a violation, the on-site wastewater treatment system shall be brought into compliance with the design standards identified in § 120-7.

E. Upon discovery of a substandard system with an absorption area within 200 feet of Canandaigua Lake, the authority having jurisdiction shall notify the parcel owner in writing through a Notice of Noncompliance. The Notice of Noncompliance shall include the specific section of the law being violated, the components of the system that are not in compliance with the requirements of this law, the action that is necessary to correct the noncompliance, and that the system shall be brought into compliance with this law within 12 months of the conveyance of real property as required by § 120-9.

**§ 120-22. Failure to Complete Required Inspections**

A. Failure to complete required inspections and/or send the inspection reports to the authority having jurisdiction is a violation of this law and is punishable according to Article 9 of this law. The authority having jurisdiction shall notify the parcel owner through a Notice of Violation.

B. Upon receipt of a Notice of Violation, the parcel owner shall be given thirty (30) days to complete and submit the inspection report to the authority having jurisdiction.

**ARTICLE 7**

**Complaints**

**§ 120-23. Notification**

A. Complaints by individuals shall be made to the authority having jurisdiction with supporting information that an on-site wastewater treatment system may be in failure.

B. If after further investigation, the authority having jurisdiction has due cause, the authority having jurisdiction shall notify the parcel owner and the inhabitants of said parcel in writing, within seven (7) business days of receipt of the complaint or personal observation and shall request access to the property to further investigate the potential failure. A copy of such notice shall be sent to the Town Clerk.

C. The authority having jurisdiction will follow the procedures in Article 6 of this law to gain access to the parcel and depending on the outcome of the investigation will follow the procedures established in this law to remedy any deficiencies.

**ARTICLE 8**

**Appeals**

**§ 120-24. Appeals for Failed Systems**

On-site wastewater treatment systems in failure shall follow the standard procedures with the Code Enforcement Officer, the local Board of Health, and New York State Department of Health.

**§ 120-25. Appeals for Non-Failed Systems**

A. Where practical difficulties, unnecessary hardships, and results inconsistent with the general purpose of this chapter or certain provisions thereof are encountered, the parcel owner may appeal the determination of the authority having jurisdiction to the Town Zoning Board of Appeals to request a variance from the requirements of this law.

B. The Zoning Board of Appeals may grant a variance from the requirements of this law if the Zoning Board of Appeals finds the essential purpose of these regulations, namely the protection of public health and water quality, will be accomplished even if the variance is created. The Zoning Board of Appeals shall consider the following factors and make applicable findings regarding:

1. Whether the use or activity to be authorized by the variance is in harmony with the purpose and intent of this law. The following items will be taken into consideration:
  - a. Previous approvals and/or specific waivers granted by NYS-DOH, or the Watershed Inspector
  - b. Distance separations to surface water and groundwater wells in order to minimize pathogen, nutrient and/or other pollutant loading;
  - c. The ability to utilize the latest technology and the ability to maintain that technology
  - d. Existing lot line setbacks and area requirements as related to individual properties
2. Whether a substantial change will be produced in the general condition of the water quality or a substantial risk to groundwater quality or quantity will be created because of the variance.
3. Whether the hardship or difficulty can be alleviated by some other method that is feasible for the applicant to pursue.
4. Whether the requested variance is substantial.
5. Whether the variance requested is the minimum variance necessary to afford relief. To this end, the Zoning Board of Appeals may recommend a lesser variance than applied for.
6. The extent to which the hardship or difficulty has been self-created.

**ARTICLE 9**

**Enforcement**

**§ 120-26. Violations**

A. In any instance where this Chapter is violated, the Town of South Bristol may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with the terms of this Chapter, or to enforce a violation of this Chapter or to restrain by injunction, the violation of this Chapter.

B. An application for an on-site wastewater treatment system permit shall include a section requesting consent by the parcel owner to permit the authority having jurisdiction to enter upon

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the premises without a search warrant to inspect the work which is the subject matter of the permit application.

C. If a parcel owner fails to complete an inspection required by this law, or to allow access to the parcel for the required inspection, the authority having jurisdiction shall obtain an administrative search warrant, which may be issued by a court of competent jurisdiction, to complete the required inspection.

D. The Town Board (acting as the Town Board of Health) may schedule a hearing on an on-site wastewater treatment system that the authority having jurisdiction has determined to be in failure and has not been rectified by the parcel owner. In instances where the violation is deemed by the authority having jurisdiction to pose an imminent threat to public health, the Town Board may direct that the Town take corrective action and assess all costs and expenses incurred by the Town in connection with the proceedings and correction of the violation upon the parcel. The Town Board shall ascertain the cost of such correction action and such cost shall be charged and assessed against the owner of the property. The expense so assessed shall constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other Town charges.

### **§ 120-27. Penalties**

Any person who violates any provision of this Chapter shall be subject to a fine not to exceed the sum of \$250 or by imprisonment of not more than fifteen (15) days, or both. Each week such violation continues after notification to the person in violation shall constitute a separate violation. Such violation notice shall be served by certified mail, return receipt requested, or by personal service.

**Section 2.** In any case where a provision of this local law is found to be in conflict with a provision of any ordinance or local law, or with a provision of any statute, rule, regulation, or order of the State of New York, the provision which established the higher standard for the promotion of the health, welfare and safety of the citizens of the municipality shall prevail. In any case where a provision of this local law is found to be in conflict with a provision of any other ordinance or local law existing on the effective date of this local law, which established a lower standard for the promotion of the health, welfare and safety of the citizens of the Town of South Bristol, the provisions of this local law shall be deemed to prevail.

**Section 3.** The adoption of this local law shall not affect or impair any act done, offense committed or right accrued or acquired or liability, penalty, forfeiture or punishment incurred prior to the time this local law takes effect.

**Section 4.** If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

**Section 5.** This local law shall take effect immediately upon filing with the Secretary of State.

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(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as Local Law No. 3 of 2017 of the **Town of South Bristol** was duly passed by the South Bristol Town Board on June 12, 2017, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer<sup>1</sup>.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_, 20\_\_ in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on 20\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_, 20\_\_, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, 20\_\_, in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2005 of the City of \_\_\_\_\_ of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_, 20\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_, 20\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the \_\_\_\_\_

<sup>1</sup> Elective Chief Executive Officer means or includes the chief executive officer of a county body, the mayor of a city or Village, or the supervisor of a Town where such officer is vested with the power to approve or veto local laws or ordinances.

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affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the Towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

\_\_\_\_\_  
Clerk of the Town

(Seal)

Date: \_\_\_\_\_

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF ONTARIO

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Attorney to the Town

Date: \_\_\_\_\_

**B. COUNTY WASTE REDUCTION INITIATIVE**

Supr. Marshall noted that we are continuing to be working on part of the plan of the County Waste Reduction Incentive. We are trying to come up with ways to reduce the waste-stream in the Town of South Bristol. One suggestion was an education format and has started working with the Town’s webmaster for a marketing plan implementing a survey of the users of the Town’s Transfer Station. The survey will look for suggestions on how best to improve the transfer station; all with the idea of reducing the waste stream. The waste stream needs to be reduced because the Ontario County landfill is closing in 11 years; efforts in reducing the waste stream significantly as possible. There is money available from the County to help pay for such things and would like to find something viable that works and would be helpful. The County has \$5,000 available to implement a plan for waste reduction and any ideas or thoughts would be welcome.

**C. RFP- HIGHWAY GARAGE**

Supr. Marshall noted that a sample of a Request or Proposal for a Professional design consultant services for the Highway Maintenance facility. We are looking at the possibility of removing original 1965 Highway facility and put an addition on the existing barn that was built 8-10 years ago. The Commissioner of Public Works put together a proposal that is a sample and ask Councilman Cowley and Councilman Strickland who are working on the project along with the Highway Supt. Wight meet to fine tune the project.

**VII. NEW BUSINESS:**

**B. JUSTICE AUDIT FOR 2016 – MOTION TO MAKE REQUEST TO RAY WAGER**

Supr. Marshall noted that the State has requested an audit of the Town Justice Office and is looking for a motion.

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On a motion made by Councilwoman Goodwin and seconded by Councilman Strickland, the motion to engage Ray Wager for 2016 Justice Audit was ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Wohlschlegel, Cowley and Strickland.

### **C. PLANNING BOARD REQUEST TO AMEND SECT 170-94(J) OF THE TOWN CODE**

Supr. Marshall noted that the Planning Board has requested the Town Board to consider a change to the Town Code 170-94(J) which is the section that refers to expiration of Site Plan Approval by substituting the following language: *Site Plan Approval will automatically expire 6-months after the same is granted unless a building permit has been issued and there is physical evidence that significant site preparations such as excavation or foundation work has commenced. In the event a Site Plan Approval has expired pursuant to this section, the Planning Board can grant a 6-month extension only once upon written application by the permit holder.*

Supr. Marshall said this is to tighten up the length of time a permit is issued and to when it needs to be completed. The time frame is typically a year; if nothing happens in 6 months they can request an extension and can ask for that extension only once. Supr. Marshall noted that the Planning Board is asking to approve the request so the Town Attorney can begin working on the local law.

On a motion made by Councilman Cowley and seconded by Councilman Strickland, the motion was ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Wohlschlegel, Cowley and Strickland.

### **D. RESOLUTION ESTABLISHING STANDARD WORK DAY FOR EMPLOYEES**

Supr. Marshall noted that the resolution might need to be amended and is tabled for next month.

## **VIII. REPORTS:**

### **ASSESSOR**

On a motion made by Councilman Wohlschlegel and seconded by Councilman Cowley the Assessor's Report for May 2017 was ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Wohlschlegel, Cowley and Strickland.

Supr. Marshall noted that the State has issued the Town's Equalization Rate is at 100%; which means we are theoretically at 100% of market value. As a result of finishing the Town wide re-val last year, the \$9,500 check from the State has been dropped to \$4,849.00 because the State ran out of funds.

Supr. Marshall noted that Grievance Day was on May 24<sup>th</sup> from 4pm to 8pm and the BAR did not have one grievance; Assessor Muscarella is doing a good job.

Supr. Marshall noted that the Town has also received its Mortgage Tax money from the County. The revenue budget line for mortgage tax for 2017 was set at \$60,000.00 which was supposed to be conservative. The check was for \$23,000 which is only 39% of the budgeted total.

### **CEO**

On a motion made by Councilman Strickland and seconded by Councilman Wohlschlegel, the CEO Report for May 2017 was ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Wohlschlegel, Cowley and Strickland.

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### **TOWN CLERK**

On a motion made by Councilwoman Goodwin and seconded by Councilman Strickland the Town Clerk Report for May 2017 was ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Wohlschlegel, Cowley and Strickland.

### **IX. ACCOUNTING: SUPERVISOR'S REPORT**

On a motion made by Councilwoman Goodwin and seconded by Councilman Wohlschlegel, the Supervisor's Reports for March 2017 were ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Wohlschlegel, Cowley and Strickland.

Supr. Marshall reported that the 2016 AUD Report has been completed and sent to the State last week. We are now finally up to date.

### **APPROVAL OF VOUCHERS**

On a motion made by Councilman Wohlschlegel and seconded by Councilman Cowley, Abstract No. 6, Vouchers No. 252-309 totaling \$77,279.92 was ACCEPTED. Voting AYE: 5. Voting NAY: 0. Voting AYE: Marshall, Goodwin, Wohlschlegel, Cowley and Strickland.

### **X. 2<sup>nd</sup> PRIVILEGE OF THE FLOOR**

Steve Jantos of Bristol Harbour, said he wanted to follow up on the sewer rates, and whether or not Bristol Harbor needs a sewer increase and will leave that up to the Board. Mr. Jantos said it is almost a 50% increase that they are looking for and believe that is substantial and for them to ask the community for a 50% increase. Mr. Jantos hopes that the Board looks at the fees they are requesting, tap fees, management fees and looks at other sewer companies and their situations and what they are paying and that we are not paying up on the high-end. Also the units seem awful low to him when you look at Bristol Harbour where they have a 31 bed hotel, 2 kitchens, 2 banquet rooms; one holds 300 people and the other hold 200, plus people at the bar, dining room, etc. If I am a resident and I am paying one unit and they are paying 24. The main thing is that, everybody in this room, wants it fair and equitable and that the owners and residents are paying their fair share.

Supr. Marshall agreed. The Town Board will do its due-diligence; fair, equitable and adequate.

Mr. Endres asked that the Board to have the sewer corp. submit their financials every year. It is important that they pay their fair share; they don't share that with us.

Alan Braun, noted that as Mrs. Caprini said, in the past 10 years there have been 35 new homes added at each paid the tie-in fee of \$2,500; where is that money and when they expanded their kitchen, are they paying the \$2,500 tie-in fee?

Councilman Cowley noted that they didn't tap into the mainline, they tapped into their own internal 4" lateral inside the building.

Wade Sarkis, on behalf of the Canandaigua Lake Watershed Association, thanked the Board for the time and the effort put into the OnSite Wastewater Treatment code; it's a huge process and a huge deal, a win-win for Canandaigua Lake. Mr. Sarkis noted that he was part of

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the original task force that started the conversation 4-years ago; that is how long it took. South Bristol is officially the first town on the lake to pass the law. Congratulations.

**XI. ADJOURN: 8:25PM**

Respectfully submitted:

Judy Voss

South Bristol Town Clerk