

**TOWN OF SHELBURNE  
SELECTBOARD  
MINUTES OF MEETING  
May 24, 2016**

**MEMBERS PRESENT:** Gary von Stange (Chairman); Colleen Parker, John Kerr<sup>[arrived 7:40 PM]</sup>, Jerry Storey, Josh Dein.

**ADMINISTRATION:** Joe Colangelo, Town Manager; Peter Frankenburg, Finance Director; Chris Robinson, Water Quality Superintendent; Brian Monahan, Town Attorney.

**OTHERS PRESENT:** Gail Albert, Norm Silcox, Roger Price, David Connery, Carol Geske, Maryanne Hamilton, Jessica Brunsted, Jane Zenaty, Tom Zenaty, Nicole DeSwet, Michael Abrams, Heather McKim (Shelburne News).

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**1. CALL TO ORDER**

Chairman Gary von Stange called the meeting to order at 7 PM.

**2. APPROVAL OF AGENDA**

Add:

- Champlain Drive Rail Crossing Agreement under Executive Session

**MOTION by Colleen Parker, SECOND by Jerry Storey, to approve the agenda as amended. VOTING: unanimous (4-0)[John Kerr not present for vote]; motion carried.**

**3. APPROVAL OF MINUTES**

*May 1, 2016*

Postponed.

*May 10, 2016*

**MOTION by Colleen Parker, SECOND by Jerry Storey, to approve the 5/10/16 minutes as written. VOTING: unanimous (4-0)[John Kerr not present for vote]; motion carried.**

**4. CITIZEN PARTICIPATION & PUBLIC COMMENT**

Norm Silcox mentioned the ballot item for the school governance consolidation is not straightforward and is very confusing. Gary von Stange suggested Mr. Silcox discuss the matter during the presentation later in the meeting.

**5. SELECTBOARD COMMENTS**

- Josh Dein read a statement regarding events at the last Selectboard meeting and his experience for the first three months on the Selectboard. Mr. Dein noted the following:
  - His questions and desire for discussion played a role in the meeting going beyond the 9 PM adjournment.

- It is important that there is an ample amount of time for discussion so it is clear to the community the Selectboard is carefully considering the issues.
  - Time should be set aside to talk about the process and how to arrange the timetable so members are at ease to raise thoughts and ask questions, but until that time he will be more mindful of the clock.
  - The Selectboard needs to be a contemplative, transparent body where different ideas and opinions are recognized and accepted. Past practices might be enhanced by perspectives and refinements from new members.
  - It is suggested the challenges inherent in transitions be recognized and that there should be work toward creating a Selectboard that functions with mutual respect for all which will only serve to enhance the quality of governance in Shelburne.
- Colleen Parker observed resistance to change could be on an individual and not necessarily on the full board. Regarding respect, Ms. Parker said she feels she has shown Mr. Dein respect, but he did not reciprocate. Moving forward with mutual respect is a good idea.
  - Colleen Parker mentioned the firefighters banquet which was phenomenal and that there is a speed monitoring system installed on the Shelburne-Hinesburg Road that will issue a ticket for five miles over the posted speed limit.
  - Jerry Storey recognized Ann Janda, Director of Administration, who just earned her MPA degree from UVM. Mr. Storey also mentioned the firefighters banquet and the number of dedicated young people serving in the fire/rescue core.
  - Gary von Stange noted this is his 8<sup>th</sup> year serving on the Selectboard and often there is vigorous debate of issues constructively and with respect to get to resolution. The last three months have been the most unproductive months of the past seven years on the board. Mr. von Stange said he hopes the Selectboard can go forward in a positive manner.

## 6. TOWN MANAGER'S REPORT

Joe Colangelo highlighted the following from the manager's report posted online:

- South tank maintenance is nearly complete. Work will begin on the north tank and once complete will be transferred to CWD.
- Bid for paving is \$54/ton (very low). The town also received a \$91,000 paving grant from the state.
- Request will be made at the next Rail Advisory Council meeting for a rail stop in Shelburne along with Burlington, Vergennes, Middlebury and Rutland. [Gary von Stange acknowledged the effort by Toni Supple and Dean Pierce in suggesting a stop in Shelburne as well as addressing the speed of the train and financing issues.]
- Website traffic is increasing and is at least twice as great as the old website. The vast majority of hits are for the Rec Dept. [Gary von Stange gave kudos to Joe Colangelo and Betty Marcher for their work on the website.]
- The town charter change to appoint a town treasurer was signed into law. At the next meeting the Selectboard should officially appoint Colleen Haag as Town Treasurer.

- Anne Janda begins in the full time position of Director of Administration. To date, Ms. Janda has played a key role in several large town projects.

**7. PUBLIC HEARING: Amendments to Shelburne Parking Ordinance  
MOTION by Colleen Parker, SECOND by Jerry Storey, to read the ordinance by title. VOTING: unanimous (4-0)[John Kerr not present for vote]; motion carried.**

The public hearing was opened at 7:20 PM. Joe Colangelo explained the amendment to the parking ordinance to add language prohibiting parking on the north side of Harbor Road from Turtle Lane to 687 Harbor Road. There were no comments.

**MOTION by Colleen Parker, SECOND by Jerry Storey, to close the public hearing. VOTING: unanimous (4-0)[John Kerr not present for vote]; motion carried.**

**MOTION by Colleen Parker, SECOND by Josh Dein, pursuant to Section 147-1.6 of the town charter to adopt the amendment to the Shelburne Parking Ordinance to prohibit parking on the north side of Harbor Road from Turtle Lane to 687 Harbor Road as presented. VOTING: unanimous (4-0)[John Kerr not present for vote]; motion carried.**

**8. TRAINING WITH TOWN ATTORNEY re: TOWN MANAGER FORM OF GOVERNMENT**

Town Attorney, Brian Monahan, reviewed the selectboard/town manager form of government and the relative enabling legislation (24VSA872 and Chapter 37 annotated). Attorney Monahan noted the following:

- Section 872 of Title 24 says the selectboard is the entity that will run the town. Once the voters approve the town manager form of government the selectboard must hire a town manager. Delegation of power from the selectboard to the town manager occurs.
- Charter language covers the powers and duties of the selectboard and town manager. The selectboard is the legislative body of the town and must act through a majority of its member (each member is 20% of the board). The selectboard must appoint a town manager and supervise and discharge if necessary. The selectboard also assigns additional duties to offices and departments, appoints boards and committees, drafts/amends/appeals ordinances, provides for an independent audit of the town, and authorizes grant applications. The selectboard can inquire into conduct of officers, commissions and departments.
- The town manager per the charter is the CEO and head of the administrative branch of the town government. The town manager is responsible to the selectboard for proper administration of town affairs. State statute 24VSA37 notes the powers and duties of the town manager. Per the statute any inconsistency is resolved in favor of the town manager. The town manager is an absolute grant of power. The town manager has to keep the selectboard apprised of the financial position and future needs of the town, and make reports as required by law or the selectboard. The town manager is an ex officio (“by the office”) member of all boards and commissions appointed by the selectboard except the development

- review board. The town manager does an annual budget, enforcement of the town laws and ordinances, and has exclusive authority to appoint employees, fix salaries, and suspend or remove individuals with the consent of the selectboard. The town manager is responsible for the operation of all departments of the town.
- The selectboard as a whole has the authority per statute to the examination of departments and to adopt policy issues, ordinances, and strategies for running the local government and moving into the future. The selectboard hires the town manager who hires the town employees. Town employees report to the department heads who report to the town manager. The town manager reports to the selectboard.
  - The municipality is a municipal corporation and the selectboard is the Board of Directors running the corporation. The town manager is the CEO or COO.
  - VLCT has a selectboard handbook that discusses the selectboard-town manager relationship. There is other material on CEO and Board of Director relationships. The role of the Board of Directors is advisory to the CEO and overseeing the municipality. The official relationship between the selectboard and the town manager is employer-employee. The selectboard has advisory and oversight responsibility. The town manager is entitled to just cause discipline.
  - Government employees in Vermont have a constitutionally protected property interest in their job per the 14<sup>th</sup> Amendment of the U.S. Constitution. Property interest cannot be taken away without a proper hearing.
  - The town attorney has an ethical obligation to the selectboard. The town attorney interfaces with the town manager mainly for time and cost considerations (working with one person rather than five saves time and money). There are occasions when a board member interfaces with the town attorney with authorization by the full board.
  - The chair of the selectboard is 20% of the full board, but does more and has implied rights to talk to the town manager and town attorney. The chair signs written decisions and orders approved by the full board, keeps records of all orders drawn by the board, is involved in ceremonial functions, and facilitates meetings.
  - It is possible for the town manager to have a direct relationship with each board member. Members of the selectboard have the moral obligation to behave or risk not being re-elected or being removed from office. The selectboard can be sued, but if actions are within the scope of duty of the position then PACIF will defend.

Colleen Parker clarified the selectboard supervises, evaluates, and provides guidance to the town manager in decision making, but does not provide unsolicited guidance. Brian Monahan stated providing insight is fine, but not dictating. Gary von Stange mentioned the situation of having one individual member asking the town manager to provide information. Mr. Monahan said this could be difficult for the relationship if it happens on a regular basis. Any member of the board can make a public records request though no manager wants this and this will break down the relationship.

Josh Dein asked how the town manager communicates information between the town manager and town attorney. Brian Monahan said the town manager reports to the

selectboard on matters the town attorney is engaged in, and should inform the selectboard of any lawsuits. The town manager has the statutory obligation to enforce the ordinances.

Roger Price, resident, asked if the town manager as the CEO ultimately reports to five separate people and must satisfy five different people. Gary von Stange stated the town manager reports to the selectboard as a whole. Brian Monahan added the town manager's supervisor is the full selectboard, not any one member. Each member is only 20% of the whole. The selectboard members have to be well functioning and have a good working relationship with the town manager to the extent possible.

**9. EVIDENTIARY HEARING REPORT – Vermont Railways v Town of Shelburne**

Gary von Stange reported six days of hearings over the past three weeks have concluded. The motion pending before the court is a Motion for Preliminary Injunction. Evidence was heard from fact witnesses and expert witnesses on both sides. A decision has not been rendered as yet. The judge told the attorneys to submit post-trial memorandums within 10 days. After that time period the court will issue a decision quickly. The court did not define "quickly". Gary von Stange speculated a decision could be rendered in the mid-June timeframe.

**10. PRESENTATION: Act 46 School Governance Consolidation**

David Connery reviewed the Act 46 mandate to consolidate school districts to ensure equity, efficiency, and flexibility. There are also tax incentives with merger. Charlotte, Hinesburg, Shelburne, Williston and CVU (St. George has the option to join or not) will combine into one school district for Pre-K through Grade 12 with one budget adjusted to local property values. All property assets and debt will be transferred to the new district. There will still be a local voice. Communications across CSSU will be coordinated. There will be "budget buddies" for the budget process. Two-thirds of the existing \$70 million school budget is already combined (i.e. transportation, special education, curriculum) so there is already much shared governance in place. One-third of students in the district attend the union high school (CVU). A savings of \$1.5 million over five years is anticipated with the consolidation and all towns are expected to benefit tax-wise. Consolidation will reduce redundancies, share resources, provide flexibility, allow Principals to focus on instructional leadership and not just budgets, allow buildings and programs to be shared across towns. The vote on the consolidation is June 7<sup>th</sup> and if passed the new district will be operational by July 1<sup>st</sup>.

Gail Albert, resident, asked when the board for the consolidated district will be formed. David Connery said transfer of responsibilities and work on policy will begin after July 1<sup>st</sup>.

Norm Silcox, resident, asked if there will be public forums to explain the ballot item which is a multiplicity of questions and very confusing. David Connery said there have been informational meetings. Another public forum is scheduled on June 6<sup>th</sup>. The Agency of Education developed the ballot which is confusing.

**11. DRAFT FY17 WASTE WATER BUDGET**

Peter Frankenburg highlighted the following;

- Waste Water Department is an enterprise fund with five employees and a manager operating two treatment plants, 19 pump stations, 35 miles of mains, and 900 manholes.
- There are 2200 users, mainly residential, with 2/3 of the revenue from the residential class and 1/3 from the commercial class.
- Infiltration is an ongoing challenge.
- Cost per 1,000 gallons is \$12.64 which equates to approximately \$885 per year for a four person household and \$253 per year for a one to two person household.
- The FY17 budget is \$1.85 million (increase of .2%) with a projected 133 million gallons to be billed. The rate will increase 1.6% which will add approximately \$14 to the annual bill for a four person household and \$4 to a one to two person household.
- Cost increases include chemicals, insurance, SCADA system, computer hardware and software, pump station maintenance, and asset management system. Cost decreases include centrifuge maintenance and health insurance.
- Capital projects include the sewer line along Route 7 from the town center to the museum (\$50,000), pump station rehab Bostwick Road (\$30,000), replacement of the utility truck (\$50,000) and skid steer (\$50,000), and the \$3 million sewer improvement bond issue.

**12. LIQUOR LICENSE REQUEST**

**MOTION by Jerry Storey, SECOND by Colleen Parker, to approve the 2<sup>nd</sup> Class liquor and tobacco license for Route 7 Liquor & Deli. VOTING: unanimous (5-0); motion carried.**

**13. LEASE AGREEMENTS**

Peter Frankenburg explained the lease of space in the Pierson Building to Jamie Two Coats Toy Store since 2009. The tenant would like to continue to lease the space. There have been no delinquencies with the previous three year lease. Currently, the rate is \$12.36 per square foot. The proposed rate for the new lease is to maintain the same rate for the first year and increase the rate by 1% in Year 2 and Year 3.

**MOTION by Colleen Parker, SECOND by Jerry Storey, to approve the lease agreement with Jamie Two Coats for a three year lease with the current rate remaining the same in Year 1 and increasing 1% in Year 2 and Year 3. VOTING: unanimous (5-0); motion carried.**

Joe Colangelo explained the five year lease arrangement with CSSU for the third floor space in the town center building. Current rate is \$8 per square foot. The new agreement maintains the current rate for the next fiscal year then increases to \$9 per square foot in FY18, FY19, and FY20, and to \$10 per square foot in FY21.

**MOTION by Colleen Parker, SECOND by Jerry Storey, to approve the five year lease with CSSU for the third floor of the municipal building with the following terms:**

- \$8 per square foot for FY17
- \$9 per square foot for FY18, FY19, FY20
- \$10 per square foot for FY21

**VOTING: unanimous (5-0); motion carried.**

#### **14. APPROVE LOANS**

**MOTION by Colleen Parker, SECOND by Jerry Storey, to approve two capital equipment notes for the purpose of financing the Waste Water Department utility truck in the amount of \$12,000 and financing the purchase of a Highway Department truck in the amount of \$12,000 both for a term of one year and an interest rate of 1% with the National Bank of Middlebury. VOTING: unanimous (5-0); motion carried.**

**MOTION by Colleen Parker, SECOND by Jerry Storey, to execute a loan agreement with the Vermont Municipal Bond Bank to borrow \$37,800 for the purpose of financing engineering services associated with the Shelburne sewer capital improvement bond approved by voters November 3, 2015. VOTING: unanimous (5-0); motion carried.**

#### **15. EXECUTIVE SESSION**

Gary von Stange announced Executive Session will be held pursuant to 1VSA1313(7) to discuss litigation between Town of Shelburne v Vermont Rail Systems, securing a real estate purchase or lease with the Natural Resources and Conservation Commission, review of the private rail crossing agreement for Champlain Drive, and securing a real estate purchase or lease option for the south water tank. Joe Colangelo noted the south water tank issue should be removed from the discussion.

**MOTION by Jerry Storey, SECOND by Colleen Parker, to find that premature general knowledge of the Selectboard strategy relative to ongoing litigation with Vermont Rail Systems would place the Town of Shelburne and the Selectboard at substantial disadvantage. VOTING: unanimous (5-0); motion carried.**

**MOTION by Colleen Parker, SECOND by Jerry Storey, based on the above finding to go into Executive Session to discuss litigation between Town of Shelburne and Vermont Rail Systems, and invite the Town Manager and Town Attorney via telephone to attend. VOTING: unanimous (5-0); motion carried.**

**MOTION by Colleen Parker, SECOND by Jerry Story, to go into Executive Session to discuss negotiating or securing a real estate purchase or lease option for (1) use of a certain portion of the Open Space Fund and invite Gail Albert, Chair of Shelburne Natural Resources and Conservation Commission, and Michael Abrams, member of SNRCC, to attend, and (2) to review the private rail crossing agreement**

for Champlain Drive, and (3) to discuss securing a real estate purchase or lease option for the south water tank and to invite the Town Manager to attend.

**DISCUSSION:** It was noted discussion of the south water tank is not needed in Executive Session.

**VOTING:** 0 ayes, 5 nays (Gary von Stange, Colleen Parker, John Kerr, Josh Dein, Jerry Storey); motion did not carry.

**MOTION** by Colleen Parker, **SECOND** by Jerry Story, based on the above finding to go into Executive Session to discuss negotiating or securing a real estate purchase or lease option for (1) use of a certain portion of the Open Space Fund and invite Gail Albert, Chair of Shelburne Natural Resources and Conservation Commission, and Michael Abrams, member of SNRCC, to attend, and (2) to review the private rail crossing agreement for Champlain Drive, and to invite the Town Manager to attend. **VOTING:** unanimous (5-0); motion carried.

The regular meeting was adjourned and Executive Session convened at 9:03 PM.

*RecScty: MERiordan*