

A VIDEO RECORDING OF THE MEETING IN ITS ENTIRETY IS AVAILABLE THROUGH VERMONTCAM.ORG. THE WRITTEN MINUTES ARE A SYNOPSIS OF THE DISCUSSION AT THE MEETING. MOTIONS ARE AS STATED BY THE MOTION MAKER. MINUTES SUBJECT TO CORRECTION BY THE SHELBURNE SELECTBOARD. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE BOARD.

**TOWN OF SHELBURNE  
SELECTBOARD  
MINUTES OF MEETING  
January 26, 2016**

**MEMBERS PRESENT:** Gary von Stange (Chairman); Tim Pudvar, Toni Supple, John Kerr. (Colleen Parker was absent.)  
**ADMINISTRATION:** Joe Colangelo, Town Manager; Peter Frankenburg, Finance Director; Dean Pierce, Planning Director; Lara Keenan, Library Director.  
**OTHERS PRESENT:** Heather McKim (Shelburne News). Sign-in sheet for 1/26/16 meeting attendees on file at town office.

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**1. CALL TO ORDER**

Chairman Gary von Stange announced prior to the regular meeting the Selectboard met in Executive Session to discuss the railroad intermodal facility, a DRB appeal, and union negotiations with the Police Department. The regular meeting began at 7:12 PM.

**2. APPROVAL OF AGENDA**

There were no changes to the agenda.

**3. APPROVAL OF MINUTES**

*January 5, 2016*

**MOTION** by Tim Pudvar, **SECOND** by John Kerr, to approve the January 5, 2016 minutes with the notation that during the budget discussion Toni Supple proposed decreasing the amount of revenue from the cell tower in the General Fund by \$25,000, decreasing the police budget by \$10,000, and spreading the increase in the Library Director salary over three years rather than two years. **VOTING:** unanimous (4-0); motion carried.

*January 12, 2016*

**MOTION** by Tim Pudvar, **SECOND** by Toni Supple to approve the January 12, 2016 minutes as written. **VOTING:** unanimous (4-0); motion carried.

**4. CITIZEN PARTICIPATION & PUBLIC COMMENT**

None.

**5. SELECTBOARD COMMENTS & QUESTIONS**

None.

**6. TOWN MANAGER'S REPORT**

No report.

**7. PROPOSED CHARTER CHANGE: Appoint Town Treasurer Position**

The public hearing was opened at 7:16 PM. Gary von Stange explained the charter change to Section 147-3.5 to appoint the Town Treasurer. Joe Colangelo stated towns across the state are moving in this direction due to the complexity of managing town

finances. Shelburne will be better positioned in the future with appointment of someone with proper financial knowhow.

#### *COMMENTS*

Lisa McCullough, Stokes Lane, said it is important for the voters to elect the town treasurer position and not give too much power to the Selectboard with appointments.

There were no further comments.

**MOTION by Tim Pudvar, SECOND by Toni Supple, to close the public hearing.  
VOTING: unanimous (4-0); motion carried.**

The public hearing was closed at 7:20 PM.

### **8. PREVIEW 2016 LEGISLATIVE SESSION**

#### *Legislative Update*

Legislators in attendance provided an update on current activities/discussions by the legislature. The following was noted:

- Senator Mike Sirotkin mentioned the bill introduced to address opiate addiction in the state.
- Representative Kate Webb reported House Appropriations is reviewing the Governor's budget. The education threshold bill has been under review, and there is discussion to include representatives from municipalities on the Clean Water Fund board. Rail cars carrying crude oil that travel down the edge of the lake are not designed to handle the material which presents an unsafe situation. The cars are being retired and removed from the system.
- Senator Ginny Lyons reported Senate Health & Welfare is addressing opiate addiction, prevention, intervention, and treatment as well as a system of care that is connected in the state. The state is looking at how to better provide supplies to EMS agencies. Agri-tourism bill has been introduced to reduce civil liability costs. A bill requiring blue lights on First Response vehicles has been introduced. The growth cap on education spending is being reviewed to meet the reality of budgeting by schools. Expanding board membership for the Clean Water Fund is supported.
- Senator Ashe said work is being done on breaking up the Chittenden Senate District to better serve the people. Presently each senator represents 150,000 people. Judiciary Committee is dealing with legalization of marijuana and discussing having a controlled environment or no change to existing law. Maine, Massachusetts, and Canada are talking about legalization. Finance Committee is discussing the need to control health care spending to avoid raising taxes. Six billion dollars is spent each year on health care.
- Senator Baruth reported the Economic Development Committee is discussing the explosion of craft brews, wines, and spirits in the state and finding a balance between making it easier for producers while protecting public health. Some of the world's best beers and cheeses come from Vermont attracting tourists from all around the world.

- Representative Joan Lenes spoke of getting results by working together to find solutions on property tax increases and quality education. The Corrections Committee is discussing opiates and mental health issues. The upcoming dedication of the state office complex in Waterbury will be to Senator Sally Fox posthumously. Work with VLCT on solar and telecommunication facilities sitings is being done to say the state wants renewables, but towns want a say in the location of the facilities.

Karen Horn, VLCT, handed out a copy of the policy priority brochure from VLCT. The following was noted:

- Federal Transportation Bill passed and will provide five years of reliable funding to the state. There is \$1.075 billion for state and federal highway projects. Local highway has been level funded for the past five to seven years, but there is now the requirement for storm water permits prior to doing highway work and it is hoped some of the federal transportation money can be used for this.
- Clean Water Bill was passed by the state, but the EPA has not yet adopted the TMDL. Reliable estimate of cost to towns is needed on this matter.
- Ten bills have been introduced on the House side in the last two weeks on solar and telecommunications sitings. The Senate has a bill as well. Shelburne representatives provided testimony before the Public Service Board on the need for a local government voice in the solar and telecommunication siting process. [Ron Bouchard, Shelburne Planning Commission, confirmed the Planning Commission is working diligently to have a greater voice before the Public Service Board in siting facilities.]
- The legislative website contains information on committee activities.
- The House and Senate are addressing allowable growth limits on education funding.

#### *Local Library Funding*

Lara Keenan, Shelburne Library Director, mentioned the usage and support by local residents of the library (over 60% of residents have library cards and are active users). The local library is supported by local tax dollars. No state funds are received, but consulting support is received from the state Department of Libraries so any cuts in funding at the state level do have an impact. Resource sharing through a carrier system (rather than mailing) is in a pilot program. Funding at the state level will help improve the inter-library loan system.

#### *Storm Water Management*

The following was noted:

- Karen Horn stated the cost estimate in 2013 to clean up the lake and fund waste water and storm water improvements was \$100 million in each of the next 10 years for towns and \$150 million per year with the inclusion of agriculture, forestry, and other activities. VLCT is trying to compile cost estimates. The Clean Water Fund has only \$10 million to allocate for the next two years. It is hoped the programs can be phased over time.

- Gary von Stange pointed out Shelburne could see a sizable tax increase if the state does not help with storm water costs.
- Ginny Lyons said towns want payment of storm water fees from the state for state roads, but VTrans is resisting. The Senate is trying to figure out how to fund payment by VTrans without further burdening towns trying to pay for their own storm water management.
- Thomas Newcomb, Shelburne Conservation Committee and Lewis Creek/LaPlatte River Watershed, asked how to help find creative solutions to the storm water runoff problem.
- Kate Webb mentioned the Blue Program that will help determine if a property is “water friendly”. Funding for water quality is dedicated and not part of the General Fund. The funding for the program comes from property transfer taxes. The legislature is looking at a statewide funding program for ongoing funding support of the Water Quality Fund.
- Marty Illick stated storm water permits from the state need to be improved so there is less mitigation work to be done, and the user should pay for the expense, not a taxpayer supported fund.

*Vermont Railways Intermodal Facility in Shelburne*

Joe Colangelo noted the following;

- All documents are posted on the town website and can be accessed by the public.
- Vermont Railways purchased the property off Route 7 and contends the land development is pre-empted from local land use review and regulations.
- The proposed intermodal facility was discussed at the January 5<sup>th</sup> and 12<sup>th</sup> Selectboard meetings and concerns were communicated to Vermont Railways.
- Increased truck traffic, public safety, impact on natural resources, noise, archeological impacts, and loss of a recreational trail easement are just some of the concerns.

Gary von Stange read a statement about the facility for storage of salt and potential storage of fuel and chemicals including sale of gas. Mr. von Stange noted:

- Pre-emption from local regulations means the project will not be vetted before the DRB for permits and pertinent information.
- Vermont Railways has not supplied substantive details on the project and denied a site visit by the town.
- Vermont Railways has filed opposition papers before the Act 250 Panel.
- Trees have been cut on the property to the water’s edge.
- There is rumor of railroad negotiations for purchase of property on Bay Road to provide a cut-through from Route 7 to Bay Road.
- The proposed facility may be at least twice the size or larger of the former salt facility in Burlington.
- Contamination is an issue for the town.
- Shelburne Town Manager issued a zoning violation. In response Vermont Railways closed the parking lot by the train station off Harbor Road which directly impacts response time by fire, police, and emergency vehicles to Harbor

Road and has a negative impact on the safety of the area. The town has never experienced this kind of behavior from an entity in town.

- The intermodal facility will change the character of the downtown and negatively impact traffic, pedestrian safety, noise, the environment, storm water runoff, and void the recreation easement. The full extent of impacts will not be known until the project is built because the project will not be vetted by the town. Traffic study, environmental impact study, safety study, study to determine impact on the village center will not be done.
- The town filed a complaint and Motion for Preliminary Injunction in Environmental Court. The response by Vermont Railways was to file a complaint and Declaratory Relief in Federal Court.
- All complaints and motions are posted on the town website and available for review.
- Many calls from citizens have been received. The citizens want the legislators to hear the concerns. The Selectboard meeting on February 9, 2016 will be dedicated to the intermodal facility issue.

John Kerr stressed the need to have discussion between parties to avoid outrageous actions like closing the parking lot.

Toni Supple said the railroad closing the parking lot was mean spirited and small minded. The owner of Vermont Railways is a Shelburne resident and is asked to reconsider and open the parking lot because the safety of residents is impacted. The state needs to get involved with Act 64 due to the clearing of trees on the property.

Tim Pudvar echoed the call for not reacting emotionally and trying to work out a solution together. The town has limited funds for legal fees (\$35,000) so it is better to find a solution rather than have both parties spend a lot of money on legal expenses.

There was mention of involving the Secretary of Transportation and Department of Conservation as well as getting insight from the Attorney General on understanding the town's authority with federal funding and permitting at the state/local level. Representative Webb confirmed VTrans and DEC have been contacted. Vermont Railways applied for a general permit and DEC visited the site and is evaluating the pre-emption issue. Federal pre-emption limits the role of state legislators. Shelburne is encouraged to find a way to continue the conversation with Vermont Railways. Representative Lenos said the Chair of the House Transportation Committee offered to hold a hearing with all parties present to share information and get what can for mitigation.

#### *PUBLIC COMMENTS*

Kate Lalley mentioned resilience and observed the project seems to be at odds with all the federal and state policy of the past 50 years. The location for the facility does not seem ideal. The town needs to try to come to a better understanding of how to use the property without potential impacts.

Crea Lintilhac stated there is no storm water management for the project and the trees have been cut without leaving the 50' buffer as required. It is clear the matter is heading for federal court. Thanks are extended to the Selectboard and Town Manager for attention to the issues.

Dorothea Penar said the site is in the National Register historic district and there are federal reviews if federal money is used for the project. An impact study on historic resources needs to be done. State Historic Preservation Office may be able to put a halt on the project.

Thomas Newcomb stated there is no federal money or NEPA review for the project. The railroad avoided all federal reviews. Gary von Stange noted there are exception to the federal pre-emption law particularly for safety and police power (safety, health & welfare).

Kevin Clayton asked how information can be sent or received on the project. Gary von Stange said he or the Town Manager can be contacted.

Melissa Fletcher asked about the community buying the land around the project. Gary von Stange said the town does not know the railroad's plans because the railroad has not provided any information. Town funds for purchase of the land are limited.

David Connery expressed concern about the traffic impact and extra trains on the safety of children going to the schools on Harbor Road as well as the impact of the extra emergency response time because the access to Harbor Road through the parking lot is closed. Another concern is protecting the river. ANR River Division is seeing what can be done. Mr. Connery said he is proud of how the town has been working together and sharing information trying to resolve the problem.

Gail Albert said Shelburne Natural Resources submitted a letter to the Selectboard on the facility. Ms. Albert read suggestions from Percy Whorl outlined in a letter that stressed the purpose of federal exemption is not exclusion, but to avoid conflict of law. The letter suggested the following:

- Getting proof of the status of federal exemption because the town and public have a right to know what is happening within its borders;
- Determining the impact and potential liability for the town if an 'event' occurred;
- Environmental Assessment and Environmental Impact Statement are mandated for every federal project and the public has the right to comment;
- Filing an injunction to stop activity;
- Requesting disclosure of property ownership and the federal right-of-way into the property;
- Requesting disclosure of the funding for the project and assurance to the town that federal regulations are being followed and federal standards are being met (CWA and SDWA compliance relative to the runoff pond and flood protection).

Josh Simon urged sharing the letter from the Nature Conservancy, noting the ecosystem on the conserved land is a heritage site for the state. Judges are the third branch of government and the actions by the railroad look like bullying. Resolution of the matter can be civil. The town exercising its legal rights is critical. The facility will change the character of the town radically. The town can be diplomatic, but insist on full explanation of what is happening on the site.

Gary von Stange read the letter from The Nature Conservancy that concludes the development will be a threat to the river and wildlife habitat of the state significant area and its rare species. The site is not an appropriate location for such an industrial facility which will have irreversible and undue adverse impacts on natural resources and the environment.

Chuck Bunting requested more information on the pre-emption. Gary von Stange reiterated the February 9, 2016 Selectboard meeting will be dedicated to the issue. A summary of pre-emption will be provided. Complaint forms and motions for the preliminary injunction are on the town website. Chairman von Stange said he can be contacted as well for more information.

Elise Seraus, Preservation Trust of Vermont, offered to do fundraising for legal defense against the project which could adversely impact the historic district in Shelburne. Gary von Stange said the town is in favor of resolving the matter without extensive litigation to come to a reasonable solution.

Doug Merrill asked about research into the former site in Burlington with regard to environmental concerns. Joe Colangelo said information has been collected on traffic, but not on environmental concerns.

Tom Zenady stated the town has to be assertive legally and suggested asking for volunteer time from attorneys with expertise in federal law. Mr. Zenady asked about a timeframe for resolution in the court. Gary von Stange assured the town is meeting the situation head on and can pursue both negotiations and litigation. If there is a way to resolve the situation in a way acceptable to the town without the town and the railroad spending lots of money that should be explored. To date cooperation has not been forthcoming from the railroad which is why the town filed an injunction in Environmental Court. The town is exploring setting up a fund to receive donations for legal services.

Lisa Espenshade asked about both the railroad project and the trucking business on the site. Gary von Stange said a factual assessment is needed and that could be part of the litigation.

Marty Illick stated the trucking business is along the track. The town needs more information on this enterprise and to find another location if necessary.

Kathy Phillips offered to help in any way. Gary von Stange urged those wishing to help to contact the Town Manager.

Sarah Ahrens, Shelburne Craft School, stated the loss of the parking lot has impacted the school. Neighbors have been very helpful.

Patricia Ireland asked why the salt shed is being relocated from Burlington. Gary von Stange said City Market may be building a new store on the site in Burlington.

There were no further comments.

**9. SIGN WARNING FOR 2016 TOWN MEETING ON FEBRUARY 29, 2016 AND MARCH 1, 2016**

**MOTION by Tim Pudvar, SECOND by John Kerr, to sign the warning for the 2016 Town Meeting to be held on February 29, 2016 and March 1, 2016. VOTING: unanimous (4-0); motion carried.**

**10. APPROVE ONE YEAR LOAN WITH NATIONAL BANK OF MIDDLEBURY FOR 2015 HIGHWAY TRUCK**

**MOTION by Tim Pudvar, SECOND by Toni Supple, to approve the one year loan with National Bank of Middlebury for \$80,000 at 1.17% interest for replacement of the highway truck. VOTING: unanimous (4-0); motion carried.**

**11. POSSIBLE ACTION ON EXECUTIVE SESSION ITEMS**

None.

**12. ADJOURNMENT**

**MOTION by Tim Pudvar, SECOND by Toni Supple, to adjourn the meeting. VOTING: unanimous (4-0); motion carried.**

The meeting was adjourned at 9:32 PM.

Accepted,



On Behalf of the Shelburne Selectboard