

**TOWN OF SHELBURNE
SELECTBOARD
MINUTES OF MEETING
February 9, 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.
OTHERS PRESENT: Heather McKim (Shelburne News). Sign-in sheet for 2/9/16 meeting attendees on file at town office.

1. CALL TO ORDER

Chairman Gary von Stange called the meeting to order at 7 PM and introduced the Selectboard, thanked the Shelburne School Board for use of the school for the meeting, and thanked the press and public for spreading the word about the meeting on the rail intermodal facility.

2. APPROVAL OF AGENDA

There were no changes to the agenda.

3. CITIZEN PARTICIPATION & PUBLIC COMMENT

None.

4. PROPOSED INTERMODAL FACILITY ON LAND WEST OF HARBOUR INDUSTRIES

Gary von Stange outlined the process to be followed at the meeting to provide opportunity for all to be heard. No decisions will be made by the Selectboard at the meeting and the Selectboard will not answer legal strategy questions due to ongoing litigation relative to the facility.

COMMENTS

John Kerr, Selectboard, described the 32 acre project site off Route 7 west of Harbour Industries and reported the following:

- According to Vermont Department of Environmental Conservation (DEC) the land is part of the LaPlatte River basin and contains significant natural area and habitat, rare old forest, plants, and species.
- There will be similar operation to the salt facility in Burlington at the proposed intermodal facility, but the town does not know the long term plan for the site.
- The town takes exception to the claim of exemption from review of the development, and is in fact finding mode to better understand impacts from the project.
- The effort by the developer, Vermont Railways, to bring the project to the town's attention is recognized.

- The state stopped the tree clearing that was being done on the site. There was a study done by the state in Year 2000 that said streets and land uses not compatible with trucking operations necessitate a new access road into the site.
- The town issued a notice of zoning violation due to the difference of opinion between the town and Vermont Railways on the exemption issue. After the violation was issued by the town the railroad closed the parking lot by the train station off Harbor Road. The town did not understand the link between the project and the parking lot off Harbor Road. Closing the parking lot created a safety concern for the town and area businesses. The parking lot has since been reopened and the town is working with Vermont Railways and the state on a lease for the parking lot.
- Information compiled thus far on the project is posted on the town website.

Graham Byers, Shelburne resident, narrated a video showing an aerial view of the LaPlatte River and Lake Champlain in proximity to the site of the intermodal facility and the tree clearing that has taken place to date.

Elise Serhaus, Shelburne resident, showed pictures of the tree clearing, typical traffic congestion on Shelburne Road, and flooding by Bay Road. Issues/questions for Vermont Railways to address include:

- Environmental studies done to date
- Impact on the LaPlatte River and the lake
- Protecting the town in the event of a major accident or catastrophe
- Who is responsible to cover costs that may arise from the project (i.e. turn lane, traffic light, maintenance of roads, new fire truck)
- Type of noise and mitigation measures that are effective
- Frequency the gates are triggered at Harbor Road and the times of day/night
- Materials stored/transported/distributed from the site other than salt
- Additional traffic on Bay Road to relieve added traffic on Shelburne Road
- Impact to Shelburne Rescue response time
- Scope of the project including number of rail cars, materials transported, stored, distributed, and the increase in truck traffic
- Relationship between Vermont Railways and Barrett Trucking at the site

David Wulfson, President of Vermont Rail System, mentioned his residency in Shelburne, Charlotte, and Chittenden County since 1963 as evidence that he does care for the community. Mr. Wulfson apologized for miscommunications between the town and the railroad, but felt both can work together and move forward. There is an open house on the project on 2/11/16.

Jeff Nelson, Director of Environmental Services at VHB Engineering Services, stated the following:

- There will be a new deceleration lane from Route 7 into the site, a rail spur to the development, office and shed buildings. The parcel is 33 acres. The project site is 19 acres.

- Wetlands, streams, vernal pools (there were none), threatened and endangered plant and animals species, floodplain (100 year per FEMA) and river corridor (where the river channel moves over time) have been field evaluated and mapped.
- The project area is outside the floodplain and river corridor. The salt sheds will be 10' higher than the highest recorded flood level.
- Regulatory reviews to ensure the site is designed in a manner to protect water quality in the LaPlatte River and Lake Champlain include:
 - Water and wetlands by the Army Corps. of Engineers per Section 404 of the Clean Water Act (CWA)
 - Construction storm water permit from the state (DEC) to govern earth disturbances during the project
 - Multi-sector general permit for storm water from DEC for storm water management
- The project does not impact any wetlands.

Dave Salidino, VHB traffic engineer, stated the following:

- A traffic impact study is being developed for the project.
- Barrett trucks are running on Flynn Ave. in Burlington now. These trucks will relocate to the Shelburne site.
- The split in direction of the truck traffic will be 85% going north and 15% going south on Route 7. The 15% of trucks are currently traveling through the village of Shelburne and there will be minimal increase in the number of trucks going north.
- The trucks will load/leave prior to peak hour traffic in the morning and return prior to the peak hour traffic in the afternoon.
- The warrants are not met for a traffic light, but a south turn lane into the site is warranted.
- Sight distance from the access point is over 800' (400' to 500' is the minimum necessary).
- The section of Route 7 by the site is not classified as a "high crash" location.

Selden Houghton, Vermont Railways, stated the following:

- There is no plan to block Harbor Road when switching because the block of train cars is not long enough to reach the crossing.
- The sheds will double the storage capacity of salt, but the volume of salt being brought into Vermont is not doubling.
- Salt will be loaded into the storage sheds in the summer months when it is easier and to be prepared for winter.

Eric Benson, general counsel to the railroad, advised the following:

- Barrett Trucking is not moving to Shelburne. The railroad is building a salt facility and Barrett Trucking will be an agent of the railroad to handle daily operations of the salt function.
- Federal law 49USC11904 says the railroad cannot publicly disclose shipper information, quantities, and related information. Vermont Railways did offer to

- have a confidentiality agreement with the town and discuss specific traffic information related to the facility in Executive Session.
- The railroad is offering items for consideration by the town including building a turn lane at the railroad's expense if required by the state. Vermont Railways is a small railroad comparatively and has limited resources so every dollar spent fighting for the project is one less dollar that can be spent toward the items offered.
 - The railroad would like to resolve matters and proceed working together to make the project the best possible for the benefit of the community and the region at large of which Shelburne is a part.

Gary von Stange recalled the town was asked to keep confidential the list of items offered by the railroad that were discussed in Executive Session so it is surprising to see the list of items for consideration publicly displayed.

Joe Colangelo, Shelburne Town Manager, said he does not take a position on the project, but does have concerns about the facility at the proposed location and those concerns were communicated to the Selectboard. The concerns include traffic congestion, public safety (the location is difficult for large trucks and could cause safety problems), environmental concerns, and noise pollution. The study by the state on relocation of the rail yard in Burlington said the site by Harbour Industries is not compatible for trucking operations. The section of Route 7 is a slight hill and curve so safety is an issue. More specific numbers on trucks are needed. More information on the effectiveness of noise mitigation measures is needed.

Heather Furman, The Nature Conservancy, stated the LaPlatte River and the floodplain forest and ecosystem are a resource of statewide significance. Ms. Furman gave the history of the acquisition of land along the LaPlatte River over the past two generations, and requested that Vermont Railways reconsider the appropriateness of locating the salt facility at the site in Shelburne and that state and federal partners provide leadership now to help find another location.

Josh Simons, Lake Champlain Waldorf School, expressed concern about the degradation of the neighborhood from noise, environmental degradation (a project of this nature would have been given a high level of scrutiny due to the sensitive environment), safety issues, and traffic issues. Mr. Simons pointed out Vermont Railways operates under a lease agreement with the state who actually owns the railroad. Section 5.1 of the lease says the railroad promises to comply with federal, state and local laws, but instead Vermont Railways clear cut 19 acres of delicate habitat without saying a word to anyone which is not corporate citizenship. Vermont Railways is offering quid pro quo to be a good corporate citizen in the town, but they promised through the covenant and they broke their promise which is not the right way to reach a compromise. Mr. Simons suggested locating small sheds in several areas along the rail line so more jobs are created and the project is truly local and manageable.

Gail Albert, Shelburne Natural Resources and Conservation Committee, said the reaction to the project is not NIMBY (not-in-my-backyard), but rather in support of the commitment by the town over the past 25 years to protect the LaPlatte waterway, lake, and water quality. The property that has been deforested is one of the few places as the LaPlatte River flows through the town that has not been protected. The 19 acres of deforested land was part of the buffer that protects the waterway. Shelburne Natural Resources and Conservation Committee is very concerned about the project, increased encroachment of invasive species, increase in pollution, the engineering to mitigate salt escape, and the increase in impervious surface.

Marty Illick, Lewis Creek Association and LaPlatte Watershed, said the Lewis Creek/LaPlatte organization has been compiling data since 1990 and doing planning work and improvement projects to protect the watershed. Prevention is the theme and the regulatory world will not cover it all. The river corridor will change. The salt shed is a good idea, but in the wrong location. A location closer to the highway interstate should be sought.

Crea Lintilhac, Lintilhac Foundation, said the Foundation supports environmental projects, water quality, energy, and conservation. The Foundation contacted environmental lawyers for a better understanding of the pre-emption and environmental issues with the proposed facility. A hydrogeologist was also hired to do water quality testing to get baseline data for comparison in the future. The Foundation works with experts to advise on impacts and provide information. It is hoped the progress of the project can be slowed to have a thorough and considered assessment of what will happen to the town in terms of traffic impacts and considerable environmental impacts.

David Connery, Shelburne School Board, stated parents are concerned with the development and the increase in traffic, increase in trains, increase in response time by emergency vehicles to the school, and the threat to the safety of children walking to/from school by the increase in trains. An unintended consequence with traffic control by Harbour Industries is that children will be encouraged to cross the road and walk/bike to school on the side of the road without sidewalk. There is also concern about impacts on the LaPlatte River.

Madeline Connery, SCS student, read a poem giving voice to the trees which are the “glue that holds the world together”. Ms. Connery urged others to speak up for the trees.

Ron Bouchard, Chairman of the Shelburne Planning Commission, said the Planning Commission is responsible for land use planning in town including, but not limited to, traffic, safety, and environmental concerns. There is great concern about what Vermont Railways is doing on the property because there will be tremendous impacts for years to come and the town has no way to control or evaluate. Vermont Railways refuses to go through the permitting process and disclose details on traffic, materials stored, and quantities. The town needs to know if there will be hazardous materials stored on the site now or in the future so the town can update the All Hazards Mitigation Plan in case of an accident or leak into the waterway. The water intake for Champlain Water District is in

Shelburne Bay. Vermont Railways is implored to go through the same process any landowner must go through and the town is urged to take any and all steps to have the project go through the standard process before everyone is irreparably harmed.

Fritz Horton, Shelburne Historic Preservation & Design Review Committee (SHP&DRC), said the committee has concerns about noise and traffic impact on the natural historic district.

John DuBrul, Automaster, said his company supports smart growth in Shelburne to support the economy, and has done numerous projects requiring traffic studies, storm water, Act 250, DRB, planning and zoning review, lighting studies, public opinion, historic artifact inspections. The process is fair and should apply to everyone. Mr. DuBrul said his company spent \$500,000 on storm water mitigation on their property so no water enters the waterway without being treated. All share in the effort and do their part. More will have to be done down the road. Automaster has done its part. Automaster is considering a project that is along the railroad track and could work with the railroad to deliver cars by rail to take advantage of the pre-emption from review, but this is not the proper way and Automaster will not do this and thinks other should not either.

Marc Gamble, Shelburne Bike/Ped Committee, said it would be a disaster for a train to block Harbor Road because of the impact on response time by emergency vehicles, traffic congestion, and the likelihood school children will find a way around the train or walk down the tracks. Mr. Gamble said the deed for the property by Harbour Industries contains a 30' bike path easement and the town should take advantage of this and connect Bay Road to Webster Road.

John King, business owner at Harbour Industries, said not knowing creates fear and that is what is driving the questions and concerns. Communication answers questions and concerns. Mr. King said he observed operations at the Burlington salt operation and had a discussion with Mr. Wulfson which alleviated some concerns. Vermont Railways, the Selectboard, and the community are asked to engage in communication to reach a reasonable end goal.

Kevin Clayton, Shelburne business owner, expressed concern about the following:

- Route 7 traffic blocking the entrances to businesses in town when the train comes through.
- Bay Road bridge clearance being too low for fire trucks so Harbor Road is the only route.
- Unchecked environmental impact on the land.
- Noise pollution on the town and wildlife.
- Protecting the LaPlatte River basin as a sacred place to connect with nature and as the home to many species of birds and wildlife. Without oversight it is not known how the project will impact delicate and sensitive areas or if the special place will be protected at all from the commercial development.
- The federal pre-emption is only for the salt the railroad needs to keep the tracks open, not for a private business to sell and distribute salt.

- Salt was spilled on the railroad tracks by Barrett Trucking in Thetford which was not reported or cleaned up and impacted area wells.

Kevin Clayton urged putting away the pre-emption and having the town ensure zoning, planning, and water quality laws are followed for the protection of the citizens and natural resources. True actions of honesty, integrity, cooperation, transparency, and complying with state and local regulations are the only things that matter.

Kate Lalley, Planning Commission, stated projected impacts of traffic will be additional congestion on Harbor Road, Bay Road, and Route 7, and an unsafe condition created at the intersection of Webster Road/Route 7. The added traffic congestion will discourage walking and biking to school. There is a bike/path easement on the railroad property and perhaps the location of the easement can be changed to expand the bike/ped network to create a bypass of these areas.

Padraic Monks, DEC Storm Water Division, explained the permits that are applicable to the rail site including:

- State storm water discharge permit for discharge from impervious surface. (The railroad is exempt from this permit.)
- Construction permit. (Application from the railroad was received and there were no comments during the comment period. This permit ends when the site is permanently stabilized).
- Multi-sector permit to cover the industrial nature of the site. (The permit will exist as long as the facility exists. An application from the railroad has not yet been received, but when received will be put out to public notice for the comment and appeal period.)

Mr. Monks said the Storm Water Division covers impact to wetlands and the 50' buffer zones, but the railroad is exempt from state jurisdiction. U.S. Army Corps. does review of wetlands, but not buffers.

Michelle Boomhower, VTrans Policy & Planning, reviewed the Section 1111 process which is required for access to Route 7. The process includes a traffic impact study and discussion of mitigation measures between the state and the developer. There is not a provision for the town to intervene. Gary von Stange pointed out Section 1111(b) states there shall be compliance with local zoning.

Jim Dumont, legal counsel with the Lintilhac Foundation, cited the case by Burlington against the salt shed facility that went to Vermont Supreme Court where the court ruled that not all city planning and zoning is pre-empted. Traffic and salt runoff are not pre-empted. Another case against Green Mountain Railroad salt shed went to federal court and the court agreed with the Vermont Supreme Court ruling on traffic and salt runoff not being pre-empted. Additionally, the Surface Transportation Board said the railroad must comply with the NEPA environmental review process before cutting down a single tree. Gary von Stange said town officials and staff met with representatives from the Congressional delegation (Leahy, Sanders, Welch) and requested the Surface Transportation Board be contacted to ensure the railroad submits all applications and the STB fulfills all its obligations under the statutes and regulations.

Derek Senior, businessman and Shelburne resident, cited the Thetford salt contamination of wells, and noted in addition to salt at the site in Shelburne the railroad is looking at lumber, fuel, heavy construction equipment. Mr. Senior questioned the rush by the railroad to clear the land of 170 year old 'old growth' forest when the town had so many unanswered questions and concerns. There are significant grey areas with the pre-emption. The court ruled there are areas where local rules are upheld. The railroad said to trust them, but the rush to clear cut trees and ignore the rigor of the town to protect the environment as well as the mistake made in Thetford makes trust difficult.

Lloyd Everts, Shelburne resident, questioned why the town zoned such a sensitive area for commercial/industrial use and if other areas are being checked to see if the same has been done. If the rail industry is treated as NIMBY and rail goes away, then goods will have to be transported by truck which will mean making a road out of the rail bed. Gary von Stange explained the property is zoned Commerce & Industry South. Town zoning is constantly being reviewed. The town hopes to institute form based zoning at some point in time. The situation with the railroad is not NIMBY, but a case where the town and residents and organizations have identified concrete concerns.

Zoltan Keva, businessman and Shelburne resident, acknowledged the good the railroad has done, but said raping the lot and cutting the trees whether they can or not is not the Vermont way, and the railroad is not a good neighbor when doing things like that. Mr. Keva said the railroad made a mistake by wanting a salt shed or oil or industry on the pristine land and should fix the mistake by selling or giving the land back to The Nature Conservancy. The railroad should be a good neighbor.

Peter Antinozzi, Shelburne resident, said in 1979 the deed for the property was revised and the town was deeded 20 acres so essentially the railroad is using the town's land to create an environmental boondoggle which will ruin a pristine watershed that cleans the water. It will only take one mistake to permanently ruin the water that people drink. The townspeople do not want the water poisoned and the land taken and the economy ruined by federal pre-emption that has not been fully fulfilled. The people of Shelburne need to make sure the railroad does not unjustly take the land and ruin the town.

Henri DeMarne, Shelburne resident, said it is wrong to assume the 100 year flood because there have been 500 year floods that have washed away bridges. Also, there is no room for chemical or hazardous substances near a watercourse. The salt shed should be away from the water and on higher ground.

David Bertram, Shelburne resident, said Vermont Railways thinks it will win ultimately without going through the steps to protect the environment and watershed and believes the people will forget all the impacts the facility will have on the community, but the railroad cannot hide behind pre-emption to get the project done. The town should take the lead and engage environmental experts to create a baseline of salinity levels and toxins in the water because when the ground freezes the salt will run into the river. Mr. Wulfson

should be put on notice that the railroad may win the battle, but will lose the war because the town is protecting the lake and the children.

Mohegan-Abnaki Chief, Don Stevens, Shelburne resident, said the LaPlatte basin area is sacred ground. There are documented historic sites that fall under Section 106 of Historic Preservation. Rock Thunder is off Shelburne Point and part of the tribe's creation stories. The tribe had village and oral histories and burial grounds along the LaPlatte River. Studies were done for the Ticonderoga rail and the sewer treatment plants and artifacts were found. The entire area is a Native American sensitive site. The railroad gave assurance they will help protect the sites. Mr. Stevens said he wants to make sure the town and railroad do not forget the Mohegan-Abnaki ancestors who have lost a lot and do not want to lose everything of their past so the sites needs to be protected and what cannot be protected needs to be respected.

Ron Gagnon, Shelburne resident, said the townspeople should be concerned about automobiles stopping on the railroad tracks and the number of cars on Harbor Road impacting emergency vehicles. The railroad should go through the review process for the intermodal facility, but having the facility is acceptable.

Laurie Fisher, Lake Champlain Committee, read a statement about the charge of the organization (protecting the lake, water quality, providing access and fostering stewardship) and expressed concerns about the proximity of the rail facility to an ecologically rich and complex natural area of local, regional, and statewide significance that includes river floodplain, Class 1 wetlands, and one of the highest quality floodplain forests in the state. Ms. Fisher urged Vermont Railways to exercise responsible ecological restraint on the site, but even if the facility is exempt it is not a wise business decision.

Peter Kassel, Shelburne resident, stated hauling salt by rail is better than hauling salt by truck, but clear cutting so close to the river was a mistake that should be made right by the railroad selling the land to The Nature Conservancy to recoup some of the loss. The town is at fault for zoning the environmentally sensitive land industrial so the town made a mistake as well. Vermont Railways should approach the owner of the former Kmart property as a possible location for the salt facility. The discussion needs to be taken further to come up with a better solution.

Kevin Berget, Charlotte resident, spoke of the beauty of the LaPlatte basin, like a cathedral, that co-exists with a thriving community. The railroad is a public good and a business, but there is great concern about leaks into groundwater or flooding that will create a superfund site. If the facility gets underway 250 acres of irreplaceable wild Vermont fanning out into Shelburne Bay will not survive. Shelburne should put all effort into protecting and restoring the area.

Gary von Stange assured that the Selectboard is willing to work with Vermont Railways to help find an alternative site that is in the best interest of the railroad and the town.

There were no further comments.

5. ADJOURNMENT

MOTION by Tim Pudvar, SECOND by Colleen Parker, to adjourn the meeting.

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

The meeting was adjourned at 9:51 PM.

RecScty: MERiordan