

**TOWN OF SHELBURNE
SELECTBOARD
MINUTES OF MEETING
January 10, 2017**

MEMBERS PRESENT: Gary von Stange (Chairman); Colleen Parker, Jerry Storey, Josh Dein, John Kerr.

ADMINISTRATION: Joe Colangelo, Town Manager; Peter Frankenburg, Finance Director.

OTHERS PRESENT: Paul Goodchild, Alex Nalbrach, Adeline Simenon, Perris Worrall, Jessica Brumsted, Carol Young, Debby Bergh, Carol Smith, Ron Gagnon, Tim Pudvar, Joan Lenes, Mark Sammut, Tom Zenaty, Robert Finn, Don Stevens, Stan Schmidt, Doug Merrill, Stacy Remarchek, Tim Williams, Wayne Elliott, Michael Abrams, Heather McKim (Shelburne News).

[Note: Minutes in order of published agenda.]

1. CALL TO ORDER

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

2. APPROVE AGENDA

Amendments to the agenda include:

- Replace Motor Carrier Grants (Item #13) with Redeterminations of the 2015 Equalization Study.

MOTION by Colleen Parker, SECOND by Jerry Storey, to approve the agenda as amended. VOTING: unanimous (5-0); motion carried.

3. CITIZEN PARTICIPATION & PUBLIC COMMENT

Ron Gagnon

Ron Gagnon asked why taxpayers are not allowed to vote on continued spending on litigation for the rail issue and how much has been spent to date since no information has been posted since September. Joe Colangelo explained financial statements are posted quarterly.

Ron Gagnon stated everyone should be spoken to in the same way by the Selectboard and deserve the same courtesies.

Tim Pudvar

Tim Pudvar, 338 Woodbine Road, recalled the previous Town Manager worked under the same contract for 12 years. With the current manager the Selectboard signed a one year contract. The Selectboard is now considering a three year contract and that should have public input. Also, the Selectboard potentially would be approving two contracts within eight months so the contract could be for four years.

4. SELECTBOARD COMMENTS

- Josh Dein said he made a request by email and was instructed to bring up the matter at the Selectboard meeting. The Selectboard has a draft agenda for the 1/24/17 meeting with an Executive Session and decision item on the Town Manager's contract at the end of the meeting. Request is made to hold Executive Session at 6:30 PM with the decision item as the first item of business in the regular meeting following Executive Session. Per the Selectboard Rules of Procedure, the Chair has the final say on the agenda. A response from the Chair on the request regarding Executive Session and subsequent decision item(s) is requested.
- Josh Dein thanked the Town Manager for the performance review being sent to all town committees for input and offered to help compile the information. Citizen review on the evaluation is missing though. When the comments will be reviewed is a concern. The Town Manager contract could be extended to June to avoid the problem of having two contract approvals in one session.
- John Kerr thanked Shelburne Rescue for the recent medical call at this home. Mr. Kerr said the service was professional and efficient.
- Gary von Stange reported research of town manager contracts showed three year contracts are the norm in Chittenden County and the Shelburne Town Manager is paid significantly below that of other municipalities. Regarding the timing, the contract should be done now with the existing Selectboard which has experience with the manager. Doing an employee evaluation in public does not make sense and is not fair to the employee. This would be a dramatic departure from the practice with every employee and Town Manager in town. When Executive Session is held depends on when board members can be present. If it is possible to hold the session earlier in the evening that will be done.
- Josh Dein clarified he did not suggest performance reviews be done in public, but asked that Executive Session be moved to an earlier time and the vote be in public session when the public may be in attendance, adding this is reasonable on an item of this magnitude.
- Gary von Stange said review of the comments on the performance evaluation will be done in Executive Session. At no time has there been consideration of approving a contract in private session.
- Josh Dein clarified the draft agenda showed decision items listed after Executive Session which could be very late in the evening when the public is no longer at the meeting. The decisions should be made in public when the public is available to have the opportunity to make comment. It seems reasonable to be at the convenience of the public as well as the convenience of the Selectboard.
- Jerry Storey volunteered to help compile responses from the town boards on the performance evaluation. Mr. Storey also advised [Durwin] keep a hold of your cap and congratulated the staff on the production of the budget.
- Gary von Stange agreed with the comment of all deserving the same courtesy and urged being constantly aware of having civility.
- Gary von Stange explained legal expenses are high for the railroad matter because the railroad filed a federal lawsuit and a federal case is more expensive. The town filed a lawsuit in Environmental Court. The costs noted on the town website have

- been updated on a regular basis. There has not been as much legal work lately. The Selectboard follows the charter with regard to voting on costs. [Joe Colangelo noted since the start of the current fiscal year \$36,000 has been expended for legal costs. The entire cost of the litigation to date is \$243,000. Budget reports are posted quarterly. Any questions or information requests can be emailed to the Town Manager's Office.]
- Colleen Parker suggested discussion of the rail costs be added to a future agenda.
 - Gary von Stange explained the reason there is a limit of time for public comment on items not on the agenda is to satisfy due process concerns. Notice and opportunity to be heard must be provided to the public. If there is extended discussion on an item that is not noticed then other people in the community do not have the opportunity to attend the meeting and discuss their thoughts. An update on the railway issue including costs will be added to a future agenda.

5. TOWN MANAGER'S REPORT

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

- Water line project on Spear Street has begun and will take a month to complete.
- The town signed a letter to reduce the line of credit for Harrington Avenue.
- There will be a presentation on the Dispatch Implementation Study on 1/31/17.
- There will be a hearing on January 19, 2017 on the county budget.
- Several responses have been received for potential recipients of the Haag award.
- The town has met with Shelburne Limestone to discuss the truck ordinance for Webster Road.
- The surveyor hired by the town is still researching information relative to the Pierson Drive/Boulder Hill survey.

6. PUBLIC HEARING: Zoning Amendments Regulating Secondary Impacts of Adult Entertainment

The public hearing was opened at 8:35 PM. Joe Colangelo said by law towns cannot prohibit Adult Entertainment establishments, but can regulate secondary impacts. Per Shelburne's bylaw Adult Entertainment establishments are allowed in the Mixed Use District of the Route 7 north corridor, must go through a public review process before the DRB, and have specific review criteria including 600' of separation from sensitive land uses and residential zones.

COMMENTS

Gary von Stange read a list of concerns expressed by other towns and people on adverse secondary impacts. There was discussion of the 600' of separation requirement. John Kerr felt the amount is more defensible than 1000' of separation and therefore appropriate. Colleen Parker said the number is arbitrary and suggested 750' be used. Gary von Stange explained if the number is increased then the available acreage for a location is decreased and the court will rule the establishment is not being permitted in any location. The 600' number has withstood legal challenge in the past where a greater number had problems.

Dave Connery asked if there is any risk with the remaining language in the bylaw. Gary von Stange assured the bylaw was formatted on other zoning bylaws that have had legal challenges.

Stan Schmidt asked for clarification of the location area.

Doug Merrill asked what happens if an adult site is in operation and a daycare opens later within 600'.

Joan Lenes urged ensuring the criteria will not confine other new businesses. Gary von Stange said the town's bylaws already apply to businesses in town. Adult Entertainment establishments were not covered, but now are with the proposed bylaw amendment. Joe Colangelo stated the Planning Commission considered thoughtfully the impact on businesses when drafting the bylaw. The Planning Commission unanimously supported the 600' of separation.

There were no further comments.

MOTION by Colleen Parker, SECOND by Jerry Storey that the secondary effects materials assembled by staff as well as testimony of residents offered as part of the Planning Commission hearing on 12/15/16 and testimony at the Selectboard meeting on 1/10/17 be incorporated into the record. VOTING: unanimous (5-0); motion carried.

MOTION by Colleen Parker, SECOND by Josh Dein, to close the public hearing on secondary impacts of Adult Entertainment establishments. VOTING: unanimous (5-0); motion carried.

The public hearing was closed at 9:03 PM.

MOTION by Colleen Parker, SECOND by Jerry Storey, to adopt the following findings on secondary impacts of Adult Entertainment uses:

- 1. The town has obtained and reviewed a range of documents (land use reports, crime impact reports, judicial opinions, expert reports, etc.) providing evidence of the secondary effects of Adult Entertainment land uses.**
- 2. The town reasonably believes the documents to be relevant to characterizing the secondary impacts of Adult Entertainment uses if such uses were located in Shelburne.**
- 3. Adult Entertainment land uses as a category of commercial uses are associated with a wide variety of adverse secondary effects including, but not limited to, negative impacts on surrounding properties, personal and property crimes, public safety risks, confrontations, lewdness, public indecency, illicit sexual activity and potential spread of disease, illicit drug use and trafficking, litter, aesthetic impacts, traffic, noise, and blight, and further, alcohol consumption impairs judgment and lowers inhibitions thereby increasing the risk of adverse secondary effects.**

4. **The aforementioned negative effects as documented in available literature and evidence justify restrictions on the location of Adult Entertainment establishments and application of relevant review criteria.**

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

MOTION by Jerry Storey, SECOND by Josh Dein, to adopt the proposed zoning bylaw changes warned for public hearing on January 6, 2017 to add language intended to mitigate the adverse secondary impacts associated with Adult Entertainment facilities while not unduly limiting freedom of speech and expression.

VOTING: 4 ayes, one nay (Colleen Parker); motion carried.

7. JOINT PUBLIC HEARING TOWN AND SCHOOL: FY2018 Budget

The joint public hearing was opened at 7:30 PM.

School Budget

Dave Connery, Chair of CVSD and Shelburne School Board, gave background information on the consolidated school district (seven school districts consolidated into one with a 12 member governance board). Programs of distinction, teachers, renovations at Shelburne Community School, and standardized test results of the Shelburne student body were also reviewed. Projected enrollment in Shelburne shows a 3% increase. The facility has the capacity to handle the growth. The FY2018 Champlain Valley School District (CVSD) consolidated budget is \$75,429,730. Fund balance was applied to the budget from all the towns in the district. Cost per equalized pupil is \$15,455 for the 3,842 students in the district. Shelburne's K-8th Grade equalized pupil costs for 2016-2017 was \$14,271. High school students are more expensive to educate. CVSD will be looking at all costs and efficiencies to identify where to reduce costs. The final draft budget will be presented January 17, 2017. Votes on the ballot article for the budget will be comingled from all the towns in the district and compiled into one vote, for or against. The ballot also includes an article for the purchase of three new buses for the district (\$288,000).

Gary von Stange expressed appreciation for the work of Bob Mason who is retiring from the school district.

Town Budget

Joe Colangelo reviewed the budget process that began in August 2016. The proposed town budget is \$8,110,052 requiring \$5,872,963 to be raised by property taxes. One percent growth in the grand list is assumed. Proposed tax rate is \$0.38. Expenditure increase is 5% (\$307,000). Municipal tax rate increase is 4%. CLA is 95%. School property tax share is 80% and municipal property tax share is 20%. Significant costs in the budget include personnel, debt, paving, property insurance, Police Department, Highway Department, Fire, Library, and Dispatch. Insurance impact on the budget is 4% increase. Unassigned fund balance is \$500,000. Storm water cost is \$118,000 not including \$500,000 per year for required capital improvements. Long term debt obligation reduces in FY2023. Other challenges to the budget include cell tower revenue share, zoning enforcement, on the record review, technology, storm water (utility model), fund balance, employee hours and support, open space, legal budget, collective

bargaining agreement, dispatch, historic town hall, library, village safety improvements, and the Quint fire truck.

COMMENTS

Don Stevens asked to establish a cap on spending that requires voter input if exceeded by over 20%. Gary von Stange said the town charter gives direction and the Selectboard follows the process in the charter. Josh Dein added if a department goes over budget the Selectboard must approve the overage. Jerry Storey stated there was an extraordinary overage in the last fiscal year and at least \$15,000 overage this fiscal year so the Selectboard could have identified spending that was trending in a certain way, made the public aware, and taken steps to minimize the effects and prevent the same in the future. Gary von Stange pointed out it is difficult when there is litigation because strategies must remain confidential. Updates on costs have been provided right along.

Josh Dein spoke in support of expanding the hours in the Finance Office to 40 hours per week.

MOTION by Josh Dein, SECOND by Jerry Storey, to increase the position in the Finance Office by 10 hours per week to a 40 hours per week position.

DISCUSSION: The following comments were made:

- **Peter Frankenburg explained the transition in the Finance Office to include support of IT needs of the town, primarily the website. Three full-time employees were dedicated to finance issues and then one individual began focus on the website and now is retired, working part-time from home. The part-time hours for IT will be through the Town Manager's Office and there will be a 30 hour position in the Finance Department dedicated to finance issues.**
- **Jerry Storey said it would be an egregious error not to respond positively to the request. The burdens on the Finance Office will grow.**
- **Colleen Parke urged respecting the Finance Director's evaluation that 30 hours is workable. The revenue can be used elsewhere in the budget.**
- **Gary von Stange said there are many items that would be nice to have, but the tax burden needs to be contained.**
- **Don Gagnon said he sees Peter Frankenburg working late every night.**

There were no further comments.

VOTING: 2 ayes, 3 nays (Gary von Stange, Colleen Parker, John Kerr); motion did not carry.

Josh Dein mentioned the transfer of funds from FY16 (\$438,000), FY17 (\$374,000), and FY18 (\$506,000). Joe Colangelo explained most of the increase in the amount (\$131,000) is Fire Department grants. If grants are not received then the expenditures are not done.

Josh Dein mentioned the Clerk not discussing the Town Clerk budget with the Selectboard. Joe Colangelo said the Town Clerk was present at the last meeting, but time ran short and discussion did not take place.

Dave Connery asked about the \$500,000 fund balance for the town versus the lower fund balance carried by the school which has a larger budget. Gary von Stange said the auditors and the town charter advise a 5% fund balance. The town wants to be sure there is money available to address any emergency capital issues.

Joan Lenes also asked about the recommendation for fund balance. Peter Frankenburg reiterated the charter targets 5% fund balance. Many municipalities carry 10% fund balance. Risks need to be identified (economy, types of properties, and such) when determining the appropriate fund balance. If the fund balance exceeds 5% the town can spend the overage on one time capital projects.

Don Stevens asked about planning for the impact of new development on the school district. Dave Connery said Shelburne Central School can handle more students. With more houses built in town there will be more tax revenue to support the increase in staff that will be needed for additional students. There are trend analyses out 15 years that provide data.

Gary von Stange stated the lack of grand list growth puts a burden on the taxpayers.

Jerry Storey urged awarding priority to a staffing addition in Public Works in the future year.

There were no further comments.

MOTION by Jerry Storey, SECOND by Colleen Parker, to close the public hearing on the joint school and town budgets. VOTING: unanimous (5-0); motion carried.

The public hearing was closed at 8:33 PM.

8. PUBLIC COMPLAINTS OF INDUSTRIAL NOISE INCREASES AT THE INTERMODAL FACILITY

John Kerr reported complaints and comments have been received on the noise from the rail site. Also, ballast from the railroad bridge is falling on the roadway likely due to the additional weight in the trains going over the bridge. Discussions directly with the railroad and the trucking company (Barrett's) should be held to determine how to resolve the complaints.

Josh Dein said he went to the site to see the source of the noise and recorded four different noises on his Iphone (yard engine, squealing wheels from the locomotive, vibrating screen). The noise levels according to his Iphone were in the 60-70 decibel level. The highest level recorded was 80 decibels.

Alex Nalbrach, resident off Bay Road about a mile from the rail facility, testified the noise wakes up his family at 6 AM and is heard all day long even with the windows closed. The noise has dramatically changed the character of why people come to live in Shelburne. Now it is like living in an industrial zone. The vibrations from the railyard are

cracking the ceilings in the house which have already been fixed three times since moving into the house six months ago. The quality of the community is changed with this noise pollution that is impacting the schools and residents. There must be restrictions in the permit on the secondary damage that can be inflicted on the community.

Adeline Simenon, resident who moved to Shelburne from Los Angeles, said the banging noise awakens her children every morning. The noise is having an effect on the family and will impact property value. Ms. Simenon asked how long the noise will go on and if there were mitigation measures used in Burlington. John Kerr said the activity will continue most of the calendar year. A second salt structure is planned to be built. Burlington was able to limit the number of trucks into and out of the site, require some sound proofing for unloading, and have some operating timeframes for the site. Gary von Stange said the town has asked the railroad for mitigation measures, but the railroad has refused and will not provide any information.

Doug Merrill, Mariner's Cove, said he has also noticed the noise and is concerned about the impact on property value. The level of noise this close to a residential community is outrageous. Noise is difficult to quantify and measure and it is expensive to do a noise study. This is a new use and they are new neighbors so it is hoped they would be accommodating to the town.

John Kerr said the noise on 1/7/17 began at 6:20 AM. Salt was being delivered to the site.

Don Stevens said he hears the crack of AK-47 gunfire from the Lime Kiln Road firing range from daybreak to sundown every day so there is other noise happening in other areas of town.

Ron Gagnon, Village Vale, asked why there is an increase in train traffic for the same amount of salt as was in Burlington. Mr. Gagnon said the noise has not been a problem for his family. John Kerr said there is a dramatic increase in the tonnage of salt at this site and the increase in traffic is the railcars stocking the facility.

Stacy Remarchek, Spinnaker Lane, testified the increased activity, noise and vibrations from the site are unnerving.

Tim Williams, neighbor to the intermodal facility, urged contacting VOSHA about the noise so an investigation can be started.

Josh Dein suggested a group of neighbors meet informally with the railroad at the site to discuss mitigation of the noise. John Kerr advised against sending the public to the site, but rather having the town set up a meeting and facilitating the discussion. Josh Dein said given the difficulty the town is having negotiating with the railroad on the operation an informal discussion with residents may find a simple solution.

9. STATE REVOLVING LOAN FUND PLANNING APPLICATION FOR SEWER IMPROVEMENTS

Wayne Elliott, engineer, explained the planning loan for \$87,000 in engineering for sewer improvements approved by the town, \$5,000 in legal expenses (easements), and \$2,000 in permit fees for a total of \$94,000. The town qualifies for a loan subsidy up to 50% of the loan amount.

MOTION by Jerry Storey, SECOND by Josh Dein, to authorize the Shelburne application to the state revolving loan fund to finance design engineering and prep documents for construction in the amount of \$94,000. VOTING: unanimous (5-0); motion carried.

10. UPWP GRANT APPLICATION TO CCRPC

Joe Colangelo said the town applies every year for grants through the UPWP program. Regional Planning feels the town's projects are strong candidates for funding.

MOTION by Colleen Parker, SECOND by Jerry Storey, to endorse the Town of Shelburne application to the FY2018 UPWP for the following projects as presented in the memo from Dean Pierce, dated 1/26/17:

- 1. Village Transportation Study**
- 2. Rural Area Build-Out Analysis**
- 3. GIS Mapping**
- 4. Impact Fee Study**

And further, to authorize the Town Manager to submit the application to CCRPC. VOTING: unanimous (5-0); motion carried.

11. REQUEST TO DO PROFESSIONALLY CONSTRUCTED SURVEY AS PART OF TOWN MEETING re: LIBRARY BUILDING

Joe Colangelo said Mike Moser will write, distribute, tally, and analyze the survey to find out what residents are willing to fund for the library building. The survey will be mailed as soon as possible.

Colleen Parker pointed out the Library Building Steering Commission has only used donated, non-taxpayer funds for the work done to date.

Thanks were extended to Colleen Parker for her work on the library building issue. Jerry Storey said the survey is a powerful response in a week from the committee.

MOTION by Jerry Storey, SECOND by Josh Dein, to approve the request by the Library Building Steering Committee for a professionally constructed survey as part of town meeting. VOTING: unanimous (5-0); motion carried.

12. BOND FOR FIRE DEPARTMENT QUINT LADDER TRUCK

MOTION by Colleen Parker, SECOND by Jerry Storey, to adopt and sign the resolution, warning, and Declaration of Official Intent for general obligation bonds not to exceed \$970,000 for a Fire Department Quint ladder truck. VOTING: unanimous (5-0); motion carried.

13. REDETERMINATION OF 2015 EQUALIZATION STUDY

MOTION by Colleen Parker, SECOND by Jerry Storey, to instruct the Selectboard Chair to sign the petition for redetermination of the results of the 2015 Equalization Study. VOTING: unanimous (5-0); motion carried.

14. EXECUTIVE SESSION and/or ADJOURNMENT

MOTION by Colleen Parker, SECNOD by John Kerr, to find that premature public knowledge of legal strategy would clearly place the Selectboard at substantial disadvantage. VOTING: unanimous (5-0); motion carried.

MOTION by Colleen Parker, SECOND by John Kerr, to go into Executive Session to discuss Vermont Rail litigation and the Town Manager contract, and to invite the Town Manager and Town Attorney (via telephone) to attend. VOTING: unanimous (5-0); motion carried.

The regular meeting was adjourned and Executive Session convened at 10:04 PM.

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