

Brandon Select Board Meeting November 27, 2017

NOTE: These are unapproved minutes, subject to amendment and/or approval at the subsequent board meeting.

Board Members In Attendance: Seth Hopkins, Brian Coolidge, Devon Fuller, Doug Bailey, Tracy Wyman

Others In Attendance: Dave Atherton, Arlen Bloodworth, Stephanie Elnicki, Christie Whittemore, Anna Scheck, Richard Baker, Kevin Elnicki, Jeff Stewart, Brent Buehler, Bernie Carr, Doug Sawyer

1. Call to order

The meeting was called to order by Seth Hopkins – Chair at 7:00PM.

a) Agenda Adoption

Motion by Doug Bailey/Brian Coolidge to adopt the agenda as amended. **The motion passed unanimously.**

Addition of a second Executive Session Pursuant to 1V.S.A. 313(a)(3) – The Appointment or Employment or Evaluation of a Public Officer or Employee

2. Approval of Minutes

a) November 13, 2017 – Select Board Meeting Minutes

Motion by Brian Coolidge/Devon Fuller to approve the minutes of the November 13, 2017 Select Board meeting. **The motion passed with two abstentions – Doug Bailey and Tracy Wyman.**

Page 3 - correction to the sentence in last paragraph under Comments for Items Not on Agenda: Seth Hopkins “questioned” the contract renewal terms, rather than “confirmed”.

3. Town Manager’s Report

Dave Atherton reported Union, Carver and Rossiter Streets were paved last week. This is temporary paving until next spring when the rest of the sewer/water connections are completed. The storm water structure #1 on Franklin Street and drainage work at the former Mobil station site will start this week. Bridge 114 is still on track to be out to bid in December for 2018 construction. Churchill Road Bridge is still on track to be out to bid in December for the 2018 construction season. The Town has received the 3rd quarter local option tax in the amount of \$49,864.82, with a year to date total of \$170,000.00. The damage reports for Newton Road

roadway and pump station have been reviewed and officially submitted by FEMA. The Town is moving forward with the Walnut Street property and the Town should be in possession of the property soon. In the Rec Department; the February 9th Celtics trip is nearly sold out. The 5th/6th grade level basketball registration is closed with a record 42 boys and girls. There will be two teams at each level. Winter cheerleading will practice at the OV North Campus gym this winter. Thanks to Stephen Keith for making this space available to the Rec Department for youth and adult activities.

Doug Bailey asked if the Town is going to clean up the Walnut Street property. Mr. Atherton reported the Town will acquire the property first in lieu of taxes and will then sell the property, as there are people interested in purchasing the property.

Devon Fuller asked if the option tax funds are being set aside for matching money for Route 7. Mr. Atherton reported the funds are in a separate account designated for capital projects and are not part of the operating budget. If the Town comes up short on the Segment 6 project, the funds could be used for that or for the Park Street project. Funds cannot be used for general expenditures, but have to be used for infrastructure-related projects.

4. Zoning Administrator's Report

Anna Scheck reported over the past month there have been six permit applications submitted, with five currently issued. Two were for new home construction. Under code enforcement, a notice of violation has been sent to a property on Newton Road. The first ticket reviewed today shows the same number of cars and another ticket will be issued tomorrow. A letter has been sent to a business owner on Stone Mill Dam Road regarding a possible zoning violation. There may be a change of intensity of use that would require the DRB amend Conditional Use and local Act 250 permits for the site. There has been a complaint regarding a permitted junkyard located in Forest Dale. The Town's contact at the DEC has indicated they are working with the property owner to bring the property into compliance. The Planning Commission met on November 6th and discussed signage during the Route 7 construction. Ms. Scheck advised that the Planning Commission could not make a motion concerning the additional Route 7 signage, as the ordinance would have to be changed and it would require going through the normal process. This item was discussed with the Town Manager and Ms. Scheck noted the Select Board could perhaps have different authority. There was also continued discussion of signage change and Section 407 of the BLUO. The Commission has asked the Brandon Chamber, Town Office and RRPC for input on these sections. The Planning Commission is also reviewing the Land Use Map and possible revisions to designations in several areas in Town. The yearly rental compliance and fee requests will be sent out during the month of December for response by the end of January. Devon Fuller asked how the rental fee process went this year and Ms. Scheck reported about \$10,900.00 was collected, which was well above the 90% level. Doug Bailey asked if there is a process for the delinquent fees and Ms. Scheck advised that information, concerning their violation could be included in the letters that are sent this year. Seth Hopkins asked if the VLCT could provide information about the Select Board's authority relating to the signage issue. Dave Atherton stated the Select Board did make a change for signage with the overflow culvert project. Ms. Scheck advised there are people that are requesting clarification if

the signage is just in front of the businesses. Seth Hopkins asked if the signage would be done broadly through Town to maintain the visibility of business during the construction. Devon Fuller thought that the signage restrictions had been waived for the overflow culvert project only. Doug Bailey noted concern with making the waiver too broad for areas where it would not be necessary. Mr. Fuller agreed it will be difficult for businesses during the construction area. Mr. Atherton advised that Bernie Carr and he would discuss this item with Casella's during their next meeting to know whether businesses will need signs. Mr. Atherton noted the work would be done at night and there will still be parking downtown and it will not be like the culvert project. Mr. Fuller suggested the DBA could possibly purchase a municipal sign that lists all of the businesses downtown that could be placed at appropriate locations in Town. Ms. Scheck suggested a review of the minutes of the meeting that approved the signage change to determine if it had also been approved for all of Segment 6. Mr. Bailey noted the Select Board wants to help the businesses through the construction time. Tracy Wyman agreed a municipal sign on Route 73 and Route 7 could be the most helpful. Bernie Carr also agreed with the cluster sign, noting that it is difficult in the construction area to view signs. This would let people know that the businesses are in Town and this type of sign could be much more controlled. Mr. Hopkins noted it could be a safety issue to have too many signs in the construction area. It was the consensus of the Board to request Mr. Atherton and Mr. Carr discuss this item with Casella's and ascertain whether the ordinance had been waived during the culvert project only or whether it also included Segment 6.

5. Park Street Update

Dave Atherton stated the Town is filling out the revolving loan documents that will ultimately need signatures from the Select Board. In terms of the first meeting with the engineers, there has not been a date set at this time.

6. Whittemore Firearms Concern

Seth Hopkins advised this agenda item was discussed at the last meeting and the Board had been provided ordinances from Middlebury and Proctor. Mr. Hopkins opened discussion by the Board regarding a possible ordinance. Tracy Wyman suggested, following information he found at the state level, to place safety zone signs on the property that the state will provide. Mr. Wyman stated this would be a first-step that the Whittemores could do. Mr. Hopkins suggested that Ms. Whittemore obtain a camera system. Ms. Whittemore stated she was advised that a video is not admissible in court. Mr. Wyman noted he had a similar instance with a neighbor a few years ago and there was nothing he could do. He made the police aware of it and talked to the neighbor so that there was a record on file. Ms. Whittemore stated there has been a police report submitted and noted she also identified the young man, but was told that this was not classified as proof. Ms. Whittemore questioned if video is an invasion and her visual is not proof enough, what other option she has. Mr. Wyman stated he finds it hard to believe that it is an invasion of privacy when law enforcement is using them. Mr. Buehler advised if a person is on their own property and someone is videoing the person, it is an invasion of privacy. Devon Fuller advised that he also spent time looking into this and noted that whatever the Town does is useless, as it is not going to deter anyone from shooting their guns in town. The Chief of Police can site them, but he does not see creating another ordinance in Town that cannot be enforced. Mr. Wyman noted if it

is a firearm, one can trace a projectile back, but it cannot be done with a Beebe gun. Ms. Whittemore advised the window is repaired and asked what stops the people from shooting out other windows. Doug Bailey noted he had the same type of an issue when someone shot one of his dogs and a horse and legally nothing could be done. He stated the Board takes this serious and he has talked with the Police Chief, but he did not think that an ordinance will help. Ms. Whittemore wants the neighbors to stop this before someone is seriously injured. Bernie Carr suggested Ms. Whittemore seek a lawyer to determine what their recourse is according to the law. Mr. Fuller suggested calling the State's Attorney to determine if there is something that can be done.

7. Comments for Items not on the Agenda

Tracy Wyman reported the Fire Department had contacted him and they are looking into installing permanent emergency detour signs on Route 7, in the event of an accident and the need to reroute traffic off Route 7. Mr. Wyman advised them that they would need to discuss this item with the Department of Public Works. Dave Atherton advised that he will talk with the Fire Chief about this subject.

Bernie Carr wished to make people aware of the passing of Gene Pagano. Mr. Carr noted that Mr. Pagano did a lot for the Town and was the person mainly responsible for the development of the Green Park. Mr. Carr also noted he was the best street sweeper ever, worked for the Water District and there was nothing he would not do for the Town. All present stood for a moment of silence in honor of Mr. Pagano.

Mr. Carr did the drawing for the Even Better Brandon Project and this month's winner was Ed Thomas.

Stephanie Elnicki asked if the Board had read how the contract is managed with Earth Waste Management. Seth Hopkins advised that the Town Manager has the authority to execute contracts and the Board is aware that the Town Manager is not renewing the current contract. Ms. Elnicki advised that they had their legal counsel contact the Town Manager and he does not agree and she wanted the Select Board to be aware and to be sure that everyone understands the contract and the consequences of taking this position instead of collaborating with them. Some of the issues regarding the way different types of wastes are handled is within the role and scope of the contract. Ms. Elnicki respectfully disagrees and she wanted the Board to be aware of that. Ms. Elnicki offered to share all correspondence that addresses the concerns the Town has and noted she has proposed some options regarding the e-waste issues. Ms. Elnicki thinks there has been an ulterior motive and felt their company and employees have been hurt and it has not been a fair process. The Town should have offered a letter of warning that addresses the concerns. They did not submit an RFP because they had already submitted their renewal. Ms. Elnicki stated this is an urgent issue because the contract renewal is in a week and if there is going to be a change; it would have to be a rapid change.

Mr. Hopkins asked if the Town Manager has consulted with the Town's attorney. Dave Atherton advised that he has spoken with the Town's attorney after receiving the letter from Earth Waste's attorney. Mr. Atherton advised that he had received the letter from Earth Waste indicating their

intent to renew. He sent a letter to Earth Waste in September addressing the concerns about the issues that had been previously discussed, such as electronic recycling, charging for florescent lights and going to single-sort rather than separating. There were items in the letter that were addressed when the Town Manager, Bill Moore and Daryl Burlett met with Tom Schmelzenbach and Kevin Elnicki and it had been indicated they would make changes.

Stephanie Elnicki provided an account of actions that began with a letter sent on August 23rd to renew the contract. A letter was sent on September 13th raising concerns, of which three of the four items have been corrected. On September 21st, a letter was sent to the Town Manager to meet. A meeting was held on October 16th and all four items were addressed. Ms. Elnicki noted there are certain types of waste that are determined to need special handling and they can take care of them as they see fit. On October 25th, they sent a follow-on email.

Dave Atherton stated these are issues that have been brought to the attention of the Town from residents regarding such items as electronics and used oil that were brought to Earth Waste's attention in multiple emails. The Town has contacted the state and is now certified for electronic drop off. Ms. Elnicki noted there was a certain period of time when many entities were not able to deliver electronics to the state facility and were not paid for them. Ms. Elnicki also noted these items were charge items initially. It was noted the current contract is from 2012 and there is an attachment (a) that does not list oil. Ms. Elnicki advised the state has attempted to streamline waste, such as e-waste and some vendors were stuck with e-waste and no payment for management. Mr. Atherton stated Earth Waste was advised whenever a customer complaint was received because the Town provides this as a service to the townspeople. Kevin Elnicki stated he has worked with the Town and if there is an issue, there is a system in place to address it. Mr. Atherton stated the Town has addressed these issues and is moving forward with the RFP process. Ms. Elnicki will share with the Board all of the transfer station information so that they can provide input on how Earth Waste can do a better job. It was noted there are signs at the transfer station that provide contact information and Ms. Elnicki noted that perhaps the citizens go to the Town first, but she was not aware of the many complaints and thought that there are a number of customers who are satisfied and Earth Waste has done the best that they possibly could. Mr. Atherton stated another item the Town dealt with was recertification and there were some questionable items, such as charging for florescent lightbulbs. Mr. Atherton advised the Town has made many calls with concerns from residents. Mr. Elnicki advised the state permit is in Earth Waste's name and the Town should take this into consideration to make sure there is a smooth transition. Doug Bailey asked the date of the current contract and Ms. Elnicki advised it began 12/03/12 and expires 12/3/17. Ms. Elnicki stated Earth Waste has the right to renew 3 additional terms and a notice was provided 90+ days out. Mr. Atherton advised the deadline for the RFP's was today. Daryl Burlett and he will review them tomorrow and will have a decision then. Mr. Bailey asked if the Town will be reviewing the Earth Waste terms in the RFP process and Mr. Atherton advised that they could be considered. Ms. Elnicki stated the Town's letter said that there were concerns but no notice of default. Ms. Elnicki stated the hours of operation were changed due to darkness, but the same number of hours of service are provided. If the Town wants the transfer station opened later, lighting would need to be installed. Ms. Elnicki stated Earth Waste has submitted their intent to renew and addressed the four issues. Mr. Hopkins asked Mr. Atherton to consider Earth Waste's renewal notice. Mr. Atherton stated the issues that were addressed were over a three-year period and as of September, nothing had been done. The

Town became state-certified because of the e-waste issue. There were too many concerns and complaints received, which is what prompted the RFP process and because it has gone on too long. Mr. Atherton needs to make sure the transfer station meets the Town's needs and it was not felt that this was happening.

8. Fiscal

a) Warrant – November 27, 2017 - \$1,121,957.84

Motion by Devon Fuller/Brian Coolidge to approve the November 27, 2017 warrant in the amount of \$1,121,957.84. **The motion passed unanimously.**

It was noted that \$956,000.00 of the warrant was for the OV unified school district.

Doug Bailey questioned the payment to Bob Read regarding the culvert. Dave Atherton reported the payment is from the overflow culvert project to obtain the easement for the inlet on his property. This is a permanent easement and is part of the project cost, which is reimbursable at 75%. Mr. Bailey questioned the warrant to Watershed Consulting Associates and Mr. Atherton advised the invoices were paid by the storm water grant.

b) Route 7 Segment 6 Construction Warrant – November 27, 2017 - \$306,222.13

Motion by Doug Bailey/Brian Coolidge to approve the November 27, 2017 Route 7 Construction warrant in the amount of \$306,222.13. **The motion passed with one abstention – Tracy Wyman.**

The Board recessed to convene as the Board of Sewer Commissioners meeting at 8:17PM.

The Select Board reconvened at 8:29PM.

Motion by Doug Bailey/Devon Fuller to find that premature general public knowledge of a pending or probable litigation, to which the public body may be a party, will clearly place the Town at a substantial disadvantage. **The motion passed with one abstention – Seth Hopkins.**

Motion by Doug Bailey/Devon Fuller to enter into executive session at 8:30PM, without Mr. Hopkins present, to discuss the pending or probable litigation and to include Attorney John Klesh under the provisions of Title 1, Section 313(a)(1) of the Vermont Statutes. **The motion passed with one abstention – Seth Hopkins.**

9. Executive Session Pursuant to 1V.S.A. 313(a)(1) of the Vermont Statutes

Motion by Tracy Wyman/Doug Bailey to come out of executive session at 9:07PM. **The motion passed unanimously.**

There were no actions required.

Motion by Devon Fuller/Brian Coolidge to enter into executive session at 9:09PM pursuant to 1VSA 313(a)(3) regarding the appointment or employment or evaluation of a public officer or employee with the Town Manager in attendance. Mr. Hopkins rejoined the Board. **The motion passed unanimously.**

10. Executive Session Pursuant to 1V.S.A. 313(a)(3) – The Appointment or Employment or Evaluation of a Public Officer or Employee

Motion by Tracy Wyman/Devon Fuller to come out of executive session at 9:50PM. **The motion passed unanimously.**

There were no actions required.

10. Adjournment

Motion by Tracy Wyman/Devon Fuller to adjourn the Select Board meeting at 9:51PM. **The motion passed unanimously.**

Respectfully submitted,

Charlene Bryant
Recording Secretary