

**MINUTES OF THE SHAFTSBURY SELECT BOARD  
AUGUST 27, 2007  
COLE HALL  
SHAFTSBURY, VERMONT**

Board Present: **Wynn Metcalfe, Chairman, Bill Pennebaker, Karen Mellinger, Lon McClintock, Cinda Morse**

Others Present: **Mike Gleason (Bennington Banner), Art Whitman (Economic Development Committee), Phylis Porio (EDC), Chris Williams (Planning Commission), Nicholas Chan (Pike Industries), Trevor Mance (TAM), Mary Beth Maguire (TAM), Tom Dailey, James Weber, Aaron Chrostowsky (Town Administrator), Susan Swasta (Recording Secretary)**

1. Call Meeting to Order:

**Chairman Wynn Metcalfe called the meeting to order at 7:01 PM. He stated that Hoedown news will be saved for the next meeting, which will be on camera, and thanked the nine volunteers who put the event together.**

2. Minutes:

**August 6, 2007 Select Board minutes**

Cinda Morse made motion to approve the August 6, 2007 minutes. Karen Mellinger seconded.

**The following corrections to the August 6 minutes were requested:**

***On page 3, paragraph 7, under item 6 (Public Hearing on Zoning Bylaw), "log" is changed to "long."***

***On page 2, last paragraph, under item 6 (Public Hearing on Zoning Bylaw), "Ms. Williams" is changed to "Mr. Williams."***

Motion to approve August 6 minutes as amended carried 5-0-0.

**August 20, 2007 Select Board minutes**

Ms. Morse made motion to approve the August 20, 2007 minutes. Ms. Mellinger seconded.

**The following corrections to the August 20 minutes were requested:**

***On page 4, first sentence, under item 7 (Prebate Privacy), "Ms. Pennebaker" is changed to "Mr. Pennebaker."***

***On page 5, paragraph 10, under item 10 (Other Business), ""The Water Board proposes" is changed to "The Water Superintendent, Ms. Mellinger, and Mr. Chrostowsky propose."***

***On page 6, last sentence is changed to "Meeting adjourned at 9:04 PM." (There was no Executive Session.)***

Motion to approve August 20 minutes as amended carried 5-0-0.

3. Warrants:

**The following warrants were presented for approval:**

<b>AP #9 (revised) -</b>	<b>\$ 173,359.96</b>	<b>General Warrant (includes truck lease payments, box culvert, landfill loan payment)</b>
<b>AP #10 -</b>	<b>\$ 4,075.00</b>	<b>General Warrant</b>

AP #11 -	\$	39,067.53	General Warrant (includes health insurance)
AP #12 -	\$	1,256.00	General Warrant
PR #7 -	\$	8,044.63	Payroll Warrant
Warrant #W3W -	\$	405.00	Water Warrant
Transfer Warrant -	\$	18,551.56	

Ms. Morse made motion to pay warrants. Ms. Mellinger seconded. Motion carried 5-0-0.

4. Public Comments:

**There were no public comments.**

5. Opening of Paving Bids:

**Mr. Chrostowsky stated that bids have been received from four contractors for four separate paving projects. These are Grandview Street, Grant Street, State Park Road, and a combined project including Ledgely Drive, Stevens Road, and Westview Place. All are class three roads. He noted that Shaftsbury had received a paving grant last year, so is now at the bottom of the list for future funding.**

**The bids for Grandview were: Beaudoin - \$78 per ton, Wilk - \$61.72, Peckham - \$58.25, and Pike \$61.25.**

**The bids for Grant were: Beaudoin - \$75 per ton, Wilk - \$61.72, Peckham - \$58.15, and Pike \$61.28.**

**The bids for State Park were: Beaudoin - \$67 per ton, Wilk - \$82.17, Peckham - \$66, and Pike \$61.28. This bid was for both reclamation and paving.**

**The bids for Ledgely, etc. were: Beaudoin - \$70 per ton, Wilk - \$61.72, Peckham - \$58.03, and Pike \$61.28.**

**Ms. Morse asked how much is available to spend on paving. Mr. Chrostowsky replied that there is \$30,000 in the paving fund, \$15,000 in the paving reserve fund.**

**Chairman Metcalfe noted that no bids will be accepted until Highway Foreman Ron Daniels goes over them. He said that Mr. Daniels should attend the meeting when bids are awarded.**

**Ms. Morse asked if these are four separate projects, for which different contractors may be hired. Mr. Chrostowsky confirmed that this is the case.**

**Ms. Mellinger asked about figures for total project costs. Mr. Chrostowsky stated that the Grandview low bid would total \$18,930, Grant would be \$11,630, and the combined Ledgely project would be \$20,988, The low bids for all three are from Peckham. The low bid for State Park, from Pike Industries, would total \$44,565.44.**

**Mr. Pennebaker asked if all the bids used the same number of tons in their calculations. Mr. Chrostowsky replied that they did not. Mr. Chrostowsky noted that Mr. Daniels hopes to do the Grandview Street and Grant Street paving projects first.**

**Ms. Morse asked if the state will participate in the work on State Park Road. Chairman Metcalfe replied that the Vermont Road Commissioner has been called about this and is supposed to come and talk about it. Ms. Morse said that a Department of Transportation representative, Rep. Alice Miller, and Sen. Dick Hartwell should also be involved in the discussion.**

**There was discussion of the poor condition of State Park Road, and whether it makes more sense to revert to an unpaved surface rather than repaving. It was also suggested that the Town could give up the road.**

**Trevor Mance stated that he thinks a dirt road would be fine because blacktopping doesn't hold up. He thinks it would be a shame to give up the road by allowing it to become a trail.**

#### **6. Zoning Bylaw Review Working Session**

**Chairman Metcalfe stated that Phylis Porio, Art Whitman, and Chris Williams will now join the Board in discussion of the zoning bylaw. Members of the audience may comment at the end of the working session.**

**He explained that the bylaw will not be approved tonight. In order to help narrow the scope of the discussion, Mr. Chrostowsky will write the issues on an easel as the discussion takes place.**

**Chairman Metcalfe noted that he is representing the Select Board in this working session -- not the Development Review Board (DRB), on which he also serves. Mr. Pennebaker said that he represents the Select Board, not the Planning Commission.**

**Ms. Morse stated that she is representing the Select Board, not the Economic Development Committee (EDC). Ms. Porio stated that she is representing the EDC, not the DRB, which has not yet met to form a consolidated position on the bylaw.**

**Mr. McClintock suggested beginning with housekeeping corrections to the bylaw, which are technical and not related to policy. He stated that "DRB" should be used throughout the bylaw, and that he would like a definition of "DRB" in the appendix. Mr. McClintock also noted the following sections for possible changes in language:**

**In section 3.5 the reference to the Town Plan creates confusion.**

**Section 4.1.1.42 on family childcare facilities. These have to be treated as single family residences.**

**In section 7.10 both "community care home" and "group home" should be used.**

**In 7.11.0 "negotiate" should be replaced by "enter into or execute." Chairman Metcalfe stated that they are not required to execute. Mr. McClintock said this should be looked at later, then, and is not just a housekeeping issue.**

**On page 57 there is reference to a \$100 fine. Mr. McClintock asked if this is \$100 a day or \$100, period. Mr. Pennebaker noted the next sentence clarifies that it is \$100 a day.**

**Ms. Mellinger listed a number of places where "Planning Commission" should be replaced by "DRB." These changes should occur in sections 3.5.1.2, 6.1.1, 6.2.1, and 6.4.1. She stated that a definition of solid waste facility should be added to page 68.**

**Mr. Pennebaker noted that "Planning Commission" should be changed to "DRB" in 7.3.7.2. He asked if the Planning Commission should be referred to in 7.2.1, on streams and drainage ways. All agreed that this entire sentence should be removed.**

**Mr. Pennebaker stated that "planning" should be removed in 7.11.9, and that "Planning Commission" should be changed to "DRB" on page 67, concerning privy pits.**

**After these housekeeping changes were discussed, Chairman Metcalfe asked for issues and concerns about the bylaw.**

**Ms. Mellinger brought up the exclusion of slaughter houses as permitted activities in section 6.4.2.2.4. There was a discussion of whether this section should be interpreted as allowing only what is listed, meaning that anything not listed is not allowed.**

Chairman Metcalfe noted the example of dog kennels, which the DRB had had to deny because it is not an included activity. Ms. Porio stated that the activities listed should be just suggestions, not an exclusionary list. Mr. McClintock said that the language could be changed.

Mr. Williams said that his understanding of Chapter 117 is that you cannot specifically exclude anything. He noted that according to the bylaw as now written every activity is conditional -- nothing is allowed by right. This means every use must be considered on a case by case basis. Even those activities listed are only conditionally allowed.

There was discussion of the interpretation of 117. Mr. Williams stated that it says you can't exclude activities which serve the public good, not that you can't exclude anything. Art Whitman said that a slaughterhouse might be a public good, but Mr. Pennebaker said that the state lists a very particular set of uses that benefit the public good in 117.

Mr. McClintock said that he does not understand why the Planning Commission that wrote the original bylaw wanted to encourage some activities and discourage others. Because of the way it is now written, it may be discouraging some activities that they would want in the future. The present Planning Commission should address this.

Mr. Pennebaker said that this should not be done arbitrarily. It requires careful study. Chairman Metcalfe noted that slaughterhouses would be just one of many possible activities to be added. Ms. Morse asked what "careful consideration" means in terms of the time frame for this bylaw.

Chairman Metcalfe advised that they need to stay focused on this document. The Planning Commission can come back to them with other changes as they work through them. Mr. Williams stated that this will be high impact policy work that will require public hearings to see what people want to be allowed. Chairman Metcalfe noted that the last bylaw change had not been well prepared, and had been rejected by residents.

Mr. McClintock said that he still thinks this wording creates a problem, and that the environmental court could use it to disallow activities in the industrial zone. He asked if the Planning Commission could just focus on the industrial zone. Chairman Metcalfe replied that they should wait to hear back from the DRB. For now, they should just deal with 117 and solid waste.

Mr. Williams stated that nothing is "as of right." Everything is a conditional use. He asked if that is an approach they want to keep. Mr. McClintock said that the problem is that all industries are different and idiosyncratic, so it is normal for industrial uses to be conditional. Chairman Metcalfe said that they will let the Planning Commission and DRB take up this matter.

There was further talk of what the scope of the discussion should be. Mr. McClintock stated that language in section 3.2.3, on building height, says that something they cannot regulate is subject to a variance. Mr. Pennebaker said that this section was added by the Bennington County Regional Commission (BCRC).

Referring to section 3.5.2.4, Ms. McClintock asked who are the parties involved in a traffic study. Mr. Pennebaker said that the intention was for the applicant and the DRB to be the parties. Mr. McClintock suggested using the term "qualified licensed engineer." Mr. Pennebaker suggested changing "agreeable" to "acceptable."

Mr. McClintock stated that the second paragraph of section 4.1.3.1, on rural residential districts, seems to say that home occupations may only store equipment on one lot. Mr. Williams replied that it does not; it says storage is not allowed in village residential, only rural residential. It was agreed to strike that sentence in rural residential and move it to the section on village residential.

There was discussion on host town agreements. Mr. McClintock stated that, if the Select Board does not require a host town agreement, the applicant does not have to sign one. Chairman

**Metcalfe agreed that the applicant is required to negotiate, but that the Select Board may decide that a host town agreement is unnecessary. He noted that a host town agreement is completely separate from the DRB.**

**Mr. McClintock suggested that it might be an advantage to always require a host town agreement for an industrial site. If a new owner comes in, a new host town agreement will be required. He suggested adding a sentence that host town agreements are not assignable.**

**Mr. Pennebaker asked if it is permissible to require a legislative body to enter into an agreement. Chairman Metcalfe said that it is permissible.**

**Mr. Whitman said that the EDC is concerned that section 7.11.9 could require the Town to collect fees and distribute them to property owners. Mr. McClintock stated that this sounds like condemnation, and that he does not know if they have that authority. He explained that it could be defined as condemnation because if you change the rules, you prevent a landowner from using land as originally permitted.**

**Mr. McClintock said that he would like a legal opinion. Mr. Williams replied that Town Attorney Rob Woolmington had not raised a flag on this language. Ms. Morse said that he should be asked again about it.**

**There was a discussion of land devaluation and how it is determined, and whether this is a matter for civil courts or if the Town should be involved in valuations. Chairman Metcalfe stated that he would like Mr. Woolmington to look at this before any attempt is made to change the language.**

**Chairman Metcalfe said that they will schedule another working session on the bylaw for the next Select Board meeting. He then opened the session to public comment.**

**Trevor Mance said that the section on compensation to property owners, which had just been under discussion, should be limited to abutting properties. Otherwise, where does it end? Mr. Mance does not think the Town has the resources to deal with all the potential lawsuits, or the ability to put hard numbers on people's properties.**

**Tom Dailey, representing TAM, said there is a huge body of law dealing with condemnation and assessment. He is afraid it could be used to drag a host town agreement out for years.**

**There was discussion of the problem with making these assessments on the front end of the process, in the host town agreement. Ms. Morse said she would prefer not to have the language in the bylaw.**

**Mr. Pennebaker suggested substituting "remediation" for "compensation." Mr. McClintock said that remediation would go to the DRB. Chairman Metcalfe suggested that the DRB and all of this group meet on Wednesday, September 12 to discuss the bylaw. All agreed.**

**Other Business:**

**James Weber stated that he is appearing on behalf of a Shaftsbury Hollow resident. He expressed concern about the slow emergency response to that area and asked if a quick response station could be added to Shaftsbury Hollow Road.**

**Chairman Metcalfe replied that Fire Chief Joe Vadakin has a good relationship with the White Creek Fire Department, and their response time to that area is ten minutes.**

**Mr. Weber said that White Creek does not get 911 calls, and Chairman Metcalfe replied that he thinks Chief Vadakin has resolved the issue of 911 calls. He asked Mr. Weber to talk to Chief Vadakin and come back to the Board if he needs to discuss it further.**

**Mr. Pennebaker said he had talked to Buzz Surwillo, who called Heindel and Noyes. Mr.**

**Pennebaker has drafted a letter reflecting his views. He will email it to Board members for comment.**

**Ms. Mellinger said she wants to draft a letter of thanks to the young man who did the Howard Park project. Mr. Chrostowsky will draft a proclamation so that he can be recognized at a Board meeting.**

**Mr. McClintock stated that he had met with Zoning Administrator Tony Zazzaro on the zoning administrator job description. He also met with Mr. Chrostowsky on the road plan, and there is good momentum going in improving it.**

**Mr. Chrostowsky said he had checked with the BCRC on adoption of the Town Plan. It must be adopted in 2010, and this may be done by the Select Board. Ms. Mellinger said that Rex Burke of the BCRC had told her it must be approved by the townspeople. Mr. Chrostowsky will talk to Mr. Burke about this.**

**There was discussion of whether expiration of the Town Plan for a few days would cause problems. Mr. Chrostowsky will resolve this with Mr. Burke.**

**Mr. Chrostowsky reported on the three procedures that may be used to adopt a water commissioner. It may be done by the Select Board, with or without a resolution, or done by Town Meeting election.**

**Mr. Pennebaker noted that there is still some cleanup to do after the Hoedown.**

Meeting adjourned at 9:22 PM.

**Respectfully Submitted,  
Susan Swasta**