

**MINUTES OF THE SHAFTSBURY SELECT BOARD
APRIL 21, 2008
COLE HALL
SHAFTSBURY, VERMONT**

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

Others Present: **Art Whitman, Carol Whitman, William Jakubowski (DRB), Gary Burgess (DRB), Ed Colvin, John Cerreta, Laurie Polaca, Dave Therman, Jerry Mattison, Brent Peacock, Aaron Chrostowsky (Town Administrator), Susan Swasta (Recording Secretary)**

1. Call Meeting to Order:

Chairman Lon McClintock called the meeting to order at 7:00 PM.

2. Minutes:

Approval of the April 14, 2008 minutes was postponed because the minutes are not ready.

3. Warrants:

The following warrants were presented for approval:

Transfer Warrant: \$ 6,128.18 (landfill fund, water department, sidewalk fund)

Cinda Morse made motion to pay the transfer warrant. Karen Mellinger seconded. Motion carried 5-0-0.

General Warrant AP#44: \$ 25,185.93 (transfer station contract, sand, health insurance, grader repair)

Ms. Morse made motion to pay the general warrant. Ms. Mellinger seconded. Motion carried 5-0-0.

Payroll Warrant #41: \$ 6,408.25

Ms. Morse made motion to pay the payroll warrant. Ms. Mellinger seconded. Motion carried 5-0-0.

Payroll Warrant #42: \$ 6,415.44

Ms. Morse made motion to pay the payroll warrant. Ms. Mellinger seconded. Motion carried 5-0-0.

Chairman McClintock announced that Howard Park will open May 5. He announced a training for flaggers on April 22, noting that anyone who wants to work for the Town as a flagger needs to attend. This would be an unpaid volunteer position.

Chairman McClintock announced Hazardous Waste Day for Shaftsbury, Pownal, and Stamford residents on June 21. Free Metal Week will be June 17-19-21, and Free Tire Day June 21, for Shaftsbury residents only. There is a limit of four tires per household.

Ms. Mellinger presented information on Green Up Day, to be held May 5 from 8:30 to

3:00. She said there will be a dumpster at Cole Hall, and that bags will be available at Whitmans, Cole Hall, Paulin's, and the Shaftsbury Country Store. There will be a ladybug scavenger hunt. Ms. Mellinger stated that North Bennington will hold its own Green Up Day for the first time. Kim Krall may be called for more information.

Wynn Metcalfe announced the May 3 fishing derby sponsored by Hale Mountain Rod and Gun Club. He reported that a lot of people had turned out to help build the playground, and did an incredible job. Mr. Metcalfe noted that Charlie Becker was recognized for 60 years of service to the Shaftsbury Fire Department. He also praised the fire department for their quick response to a fire last weekend.

4. Public Comments:

Ed Colvin came to the table to discuss a matter involving a land sale he had done for Dr. Gestner in 2004. Two of the lots were glebe lots, so a survey had been done. The survey showed two lots encroaching on his 120 acre parcel. Mr. Colvin stated that Dr. Gestner had wanted to split the contested area half and half with the two landowners and be done with it, but that they had disagreed with this, so he ended up giving them the land.

This required a lot line adjustment. Mr. Colvin said that Zoning Administrator Tony Zazzaro told him that this had to be warned as a Development Review Board (DRB) hearing for a two lot subdivision, requiring a \$70 fee. The hearing was held on December 19, 2007 and the issue was closed. Mr. Colvin said that Mr. Zazzaro told him afterwards that he had not had to warn the adjustment, and that it need not have come to the DRB. It could have been done as a quitclaim deed.

Mr. Colvin thought the \$70 should be reimbursed, but Mr. Zazzaro disagreed. Mr. Colvin said that he thinks this is wrong, and he hopes the Select Board will address the matter.

DRB member William Jakubowski stated that the DRB has been trying to get copies of the revised zoning bylaws, since they are supposed to be operating under them. Town Administrator Aaron Chrostowsky said that there has been a problem with formatting that he is working to resolve.

5. Public Hearing for 911 Road Name Changes:

Mr. Chrostowsky stated that the Town is seeking three road name changes in order to update the 911 map with accurate addresses and improve emergency response. Laurie Polaca of Bear Run Road stated that she has maintained the road at her own cost for twenty years, and that making it a legal trail gives everyone the right to drive on it. Mr. Chrostowsky replied that it is already a legal trail, and this won't change. They just want to remove "private" from the name. Ms. Pollaco agreed that it is OK to remove "private."

Ms. Morse made motion to remove "private" from Bear Run Road's name. Ms. Mellinger seconded. Motion carried 5-0-0.

There was discussion of changing the name of part of East Road to Trumbull Hill Road. The latter is a legal trail part of the way and private drive beyond that. Resident Dave Thermer stated his concern that the section west of their driveways is never plowed, so an emergency vehicle would have to turn around. If a vehicle came up East Road, it could get to their driveways faster. Width of the road is also an issue, making it impossible for a fire truck to get up it year round.

Resident John Cerreta said that the property owners maintain that section of the road,

but Chairman McClintock pointed out that it is a public right of way. Gary Burgess stated that there had been a permit before the DRB that may have included upgrading the road as a condition of the permit. He would like to postpone the decision until this is checked out. Mr. Cerreta stated that, as a business owner, a change of address is a major issue. After further discussion it was decided to postpone the decision.

Mr. Pennebaker made motion to table the Trumbull Hill Trail name change until more information is obtained. Ms. Morse seconded. Motion carried 5-0-0.

Ms. Mellinger made motion to change Lower East Road to Saw Mill Road. Ms. Morse seconded. Motion carried 5-0-0.

Ms. Mellinger asked if the people who live on these roads will be notified of their address changes, and Mr. Chrostowsky confirmed that they will be informed.

6. Town Access to Highway Ordinance:

Mr. Jakubowski came to the table for the discussion. He stated that the ordinance for access to highways had been approved by the Select Board in 2005, but that the DRB does not have a signed copy of the ordinance. He also noted that the ordinance does not state who is responsible for processing the access applications, and they would like to see that specified in the ordinance.

Mr. Jakubowski stated that the ordinance does not require the applicant to acquire a surety bond, and that this should be considered so that the Town is not liable for work performed by the applicant. He noted that the ordinance requires that entrances be constructed with no more than a 3% grade for the first twenty feet from the road, and that this is important to enforce because of water coming off driveways into roads. Currently there is no recording in the application files that this has been approved, and this should be looked into.

Mr. Jakubowski said that the ordinance requires minimum 18-inch culverts with end sections, and that end sections have not been being used. He said that Road Foreman Ron Daniels has been approving 15-inch culverts, and the DRB wants to be sure they know in each case that he has allowed the smaller size. Mr. Jakubowski recommended a new section be added to the ordinance on evaluating the process -- making sure a sub-base was put in and checking that everything in the permit has been done.

Mr. Chrostowsky stated that Zoning Administrator Zazzaro prefers that he and Mr. Daniels go out and make the decisions on individual highway access cases. Ms. Morse said the Select Board felt that highway access should be part of the permitting process, and so appropriate for the DRB. She agreed that another piece to the ordinance is needed requiring that the work be checked while it is being done, and signed off on.

There was discussion of how the amount of a bond would be set, and Mr. Jakubowski said that the DRB has no problem with setting a bond, as long as some of these matters with the ordinance are cleared up. Mr. Metcalfe will work on drafting language for the ordinance and Chairman McClintock will review the draft. Art Whitman stated that in North Bennington a deposit is held for a year after the work is completed to make sure that no problems develop.

7. Development Review Board Reorganization:

DRB Vice Chairman Gary Burgess came to the table for discussion. Chairman McClintock asked how the DRB now handles conflict of interest matters. He said that former DRB chairman Jim Carter had told him that when a member had a conflict of interest with

one thing on the agenda, that member did not participate in anything on the agenda for that meeting. Mr. Burgess replied that they don't always do that, but instead deal with an issue involving a recusal last on the agenda, so that the member with a conflict may participate with all matters except the last one. Mr. Metcalfe (who is also a DRB member) said this is the same procedure followed by the Select Board -- to recuse oneself for only one agenda item.

Chairman McClintock asked if a member who was not present at a meeting when an item was presented is permitted to participate if that item continues into another meeting, and whether the member is then permitted to vote on the item. Mr. Burgess said it depends on whether testimony is still being taken at the second meeting -- if so, the member may participate, but if he or she missed all of the testimony, they do not participate in the second meeting.

Chairman McClintock asked if the DRB uses alternates. Mr. Burgess replied that they did when Rick Mattison was an alternate. Chairman McClintock asked if an alternate sticks with a permit if he or she was participating when the permit was taken up, and Mr. Burgess confirmed that this is the procedure. The regular member who was absent sits back and the alternate continues with that permit process.

Mr. Jakubowski noted that if a DRB member misses one meeting, but reviews the minutes and the information on an item, he or she may vote on it. He said that with a seven member DRB, four are needed to approve a permit. Chairman McClintock noted that if only four are present, all four must approve a permit. Mr. Jakubowski stated that this has not happened often, but if only four are present they advise the applicant that unanimous approval will be required, and give the applicant the option to postpone the decision for a full board. Chairman McClintock asked if there has been any problems with having a quorum, and Mr. Burgess replied that there have not. They lacked a quorum only once.

Mr. Jakubowski stated that they have seven people who work well together and who have diverse backgrounds and an ability to look at many sides of an issue. He does not think they should look at a five member DRB. Ms. Mellinger asked how they use alternates in a conflict of interest situation, and Mr. Burgess replied that the alternate steps right in. Alternates are requested to attend all meetings.

Ms. Mellinger noted that DRB minutes show that some Board members recuse themselves for almost an entire meeting. She asked why, in that case, an alternate would not take over for the whole meeting, and the member with a conflict not participate at all. Mr. Burgess says that DRB Chairwoman Phylis Porio already does that. She looks at agendas in advance and lets everyone know. Ms. Mellinger said that minutes show that a Board member will start a meeting, and then recuse, and that this causes a real perception of conflict of interest.

Mr. Burgess asked if there is any solid reason to go from a seven member to a five member DRB. Chairman McClintock said it is the Town's only seven member board, and that other boards have no attendance problems. Mr. Burgess said that the DRB is working very smoothly and has a more diverse group with seven.

Mr. Jakubowski added that there will be more problems with a quorum with a five member board, and that a seven member board offers more flexibility. In his own case, he is retired and will want to travel more. Mr. Jakubowski discussed DRB recusals, and gave the Select Board recording secretary records of DRB recusals.

Chairman McClintock asked why a quorum should be more difficult for the DRB than for the Select Board or Planning Commission. Art Whitman said that it is important to have a quorum show up when a big project is approved. He said the DRB needs diverse

membership and professional expertise. Mr. Metcalfe noted that only DRB members Jakubowski and David Mance had experience with subdivisions, and these members got the DRB up to professional standards on this. Mr. Mance wrote a subdivision cheat sheet that they still use. Mr. Metcalfe said that Mr. Mance bends over backwards to recuse himself if needed.

Ms. Morse stated that two years ago they had had conflict of interest issues throughout Town boards, and had brought in Vermont League of Cities and Towns (VLCT) consultant Dominick Cloud for a workshop. After that the Select Board and DRB adopted rules of procedure, and all meetings open with a recusal question. They are much more conscious of conflict of interest.

Ms. Morse said that it troubles her that the Select Board would think of making a change of this sort counter to the wishes of the DRB. She said it could be revisited in the future if things change, but presently there are no substantiated reasons for change to a five member DRB. Mr. Pennebaker noted that there are seven people on the DRB, but only four on the Planning Commission, which has been eager to find a fifth.

Ms. Mellinger stated that Mr. Cloud had indicated that one DRB member was close to the line in conflict of interest. She said that during the recent solid waste bylaw working session this member had a serious conflict of interest but had participated. Mr. Metcalfe replied that the working session was not about TAM, but about the solid waste bylaw. He also noted, in response to Mr. Pennebaker, that there is a huge difference between DRB business and Planning Commission business, and that a person would not necessarily be interested in both.

Mr. Burgess said that this issue is being politicized, and that it is an attempt to get rid of Mr. Mance by shortening the DRB to five. Chairman McClintock stated that Mr. Mance had recused himself from some of the discussion of the solid waste bylaw because of impact on TAM, so it is legitimate to question the appropriateness of his participation in the working session.

He noted that boards have no authority to make a person recuse himself or herself, so it is dependent on the person with the conflict. He said that this is not about individuals. Mr. Jakubowski said that there are procedures to remove a person from a board, and if the Select Board feels this needs to be done, those procedures should be followed.

8. Open Cab and Chassis Bids:

Mr. Chrostowsky opened one bid for cab and chassis from DeLurie Sales and Service. The bid amount is \$70,895.00.

9. Open Plow and Dump Body Bids:

Mr. Chrostowsky opened one bid for plow and dump body from H.B. Fairfield. The bid amount is \$42,550.00.

10. Open Paving Bids:

Mr. Chrostowsky opened four bids for paving: Frank Wickham Construction for 86.36 per ton, Wilk Paving for 68.85 per ton, Peckhams for 68.00 per ton, and Pike for 71.84 per ton. He and Mr. Daniels will compare the specifics of the bids and report back.

11. Open Box Culvert Bids:

Mr. Chrostowsky opened two box culvert bids: CSI for \$28,495 and Camp Precast for \$27,725. He and Mr. Daniels will go over the bids.

12. Town Administrator's Update:

Mr. Chrostowsky stated that discussion of the baseball league use of Howard Park should be on the next agenda. He reported that the soccer league will build a stand at Howard Park that will be donated to the Town. Chairman McClintock said that the construction needs to be discussed and approved by the Board.

Mr. Chrostowsky reported that the fire department is using the new fuel depot at the Town Garage. He stated that Fairbanks Scale will come to look at and adjust the scale at the transfer station. They have submitted paperwork to certify the scale to the state.

13. Other Business:

Mr. Metcalfe asked why appointments are being handled in Executive Session, and Chairman McClintock replied that it is traditionally done that way when individual applicants are being discussed.

Mr. Metcalfe stated that only one valid candidate had applied for the cemetery job. He knows of a very capable contractor who would be interested in taking on the work for \$11,300, which is the amount paid for cemetery work in the past. This person could start tomorrow. The problem is that submitting a RFP would delay the process, and the cemetery is in bad shape now, with Memorial Day coming up.

Chairman McClintock asked if the contractor could do it on an interim basis and then do the RFP, but Mr. Metcalfe said it would be unfair if the contractor then did not end up getting the contract. Mr. Chrostowsky said that the Town emergency policy would permit an immediate contract without an RFP in these circumstances.

Ms. Morse made motion to take up the matter of hiring a contractor for cemetery work in Executive Session. Ms. Mellinger seconded. Motion carried 5-0-0.

Ms. Metcalfe stated that they need to come up with a way to have the Town phone answered when Mr. Chrostowsky is busy or away, because otherwise a person just keeps getting the answering machine.

Ms. Morse reported that the Economic Development Committee (EDC) has made recommendations for boundaries for a Village Center Designation. They will bring this to the Select Board when the BCRC has done the map.

Mr. Pennebaker reported on a meeting on broadband service that he had attended. He said the state may fund broadband service. Mr. Pennebaker said he had attended the fireman's dinner and that it was a fun, well-attended event. He also reported that he had driven down Townline Road, and that it is in superb condition, but nothing has been done about the culvert. Mr. Pennebaker reported that he and Mr. Chrostowsky had met concerning methane remediation with consulting engineer Don Marsh and Buzz Surwillo of the Agency of Natural Resources. All agreed to proceed with pumping from the vent.

Chairman McClintock said he had followed up with Planning Commission Chairman Craig Bruder on Zoning Administrator procedures, and that the evaluation procedure is still being worked on. He stated that he is meeting with Road Foreman Daniels, and that they are staying focused on the road plan.

Ms. Morse asked if any of the applicants for Town boards and commissions are new

names, and Mr. Chrostowsky replied that most are not. He said that some of the new applicants have been presented to the boards, and some have not. Chairman McClintock said that they can decide to have applicants vetted by the board or commission. Ms. Morse said that, as a courtesy, current board and commission members should be involved in the discussion.

15. Executive Session:

Ms. Mellinger made motion to go into Executive Session (Personnel). Ms. Morse seconded. Motion carried 5-0-0.

The Board went into Executive Session at 9:25 PM.

The Board came out of Executive Session at 10:25 PM.

Ms. Morse made motion to appoint Ken Coonradt to the Energy Trustee of Public Funds. Mr. Metcalfe seconded. Motion carried 5-0.

Ms. Morse made motion to appoint Ben Hulett to the Energy Coordinator. Mr. Metcalfe seconded. Motion carried 5-0.

Ms. Mellinger made motion to re-appoint Jerry Mattison to the Emergency Management Coordinator. Mr. Pennebaker seconded. Motion carried 5-0.

Ms. Mellinger made motion to re-appoint Barth VandeEls to the Health Officer. Mr. Pennebaker seconded. Motion carried 5-0.

Ms. Morse made motion to re-appoint Ron Daniels to the Road Commissioner. Mr. Metcalfe seconded. Motion carried 5-0.

Ms. Morse made motion to re-appoint Traci Mulligan to the Animal Control Officer. Mr. Metcalfe seconded. Motion carried 5-0.

Ms. Morse made motion to re-appoint Gary Burgess to the Development Review Board. Mr. Metcalfe seconded. Motion carried 5-0.

Ms. Morse made motion to re-appoint Fritz Ludwig to the Development Review Board. Mr. Metcalfe seconded. Motion carried 4-1.

Ms. Mellinger made motion to send a letter to Mr. Ludwig regarding his re-appointment to the DRB with reservations. Mr. Pennebaker seconded. Motion carried 3-2.

Ms. Morse made motion to re-appoint Dave Mance to the Development Review Board. Mr. Metcalfe seconded. Motion carried 3-2.

The meeting adjourned at 10:45 PM.

**Respectfully Submitted,
Susan Swasta**