

**Town of Shaftsbury  
Selectboard Meeting  
6:30 PM  
Tuesday, September 6, 2016  
Cole Hall, 61 Buck Hill Road, Shaftsbury  
DRAFT**

**Selectboard Members Present: Tim Scoggins, Mitch Race, Tony Krulikowski, Art Whitman, Ken Harrington**

**TA Present: David Kiernan**

**Others Present: Ed Corey, Melanie Dexter**

**1. Call to Order**

Tim Scoggins called the meeting to order at 6:30PM.

**2. Conflict of Interest Statement**

NONE

**3. Approval of Minutes**

Motion: Tony Krulikowski moved to approve the Minutes from the Regular Meeting on August 15, 2016. Art Whitman seconded.

5-0-0 Motion approved.

Motion: Tony Krulikowski moved to approve the Minutes from the Special Meeting on August 25, 2016. Art Whitman seconded.

4-0-1 Motion approved. Mitch Race abstained.

**4. Warrants**

Motion: Mitch Race moved to approve Retirement Warrant #4 \$129.36. Tony Krulikowski seconded.

5-0-0 Motion approved.

Motion: Mitch Race moved to approve Payroll Warrant #4 \$19,312.36. Tony Krulikowski seconded.

5-0-0 Motion approved.

Motion: Mitch Race moved to approve Check Warrant #6 \$7,889.76. Tony Krulikowski seconded.

5-0-0 Motion approved.

Motion: Mitch Race moved to approve Check Warrant #7 \$21,476.44 (PFOA testing expenses to KAS). Tony Krulikowski seconded.

Art Whitman asked if the Town would be paying the total amount. Tim Scoggins said that the State had identified the Town as the “potentially responsible party” and had asked the Town to voluntarily perform the required testing. Mr. Whitman said that he would like more information from the State about the Town’s responsibility regarding PFOA and any continued testing of wells (both at the landfill and private wells in surrounding areas). Mitch Race went on to ask if the Town has now completed its due diligence in testing wells per the State’s orders and if this matter can now be closed. David Kiernan replied that he believed this was just the beginning, even though the PFOA tests on the private wells in the vicinity had all come back under the State’s threshold for parts per trillion. Mr. Kiernan said all of the wells at the landfill were, in fact, being tested and those results will be back in two (2) weeks. Following the results of those tests, more discussions with the State about any continued obligations to monitor would occur.

Ken Harrington asked if there were any indications that the State would adjust its acceptable standard of 20 parts per trillion. Tim Scoggins said that in his reading of materials, the State had placed that limit as a temporary standard and the State is currently taking public comments on making that standard permanent.

David Kiernan said that an attorney is assisting in reviewing the culpability of the Town in the presence of PFOA and that ultimately, the State has jurisdiction and responsibility in the matter. Art Whitman went on to say that the Town did not have any say as to what was deposited in the landfill and that the authority came from the State. Tim Scoggins said that he believed that the Town, as the operator, was ultimately responsible for monitoring what went into the landfill.

Tim Scoggins said that it was his opinion that the Town should pay the invoice for testing as the Town can afford it at the moment. Mr. Scoggins also said that through talks with DEC and other State agencies, his understanding was that if widespread contamination had been found and further remediation was needed, the State would have recognized the limited capabilities of a municipality like Shaftsbury. That said, Mr. Scoggins felt that continued discussions were needed so that a precedent could be set for smaller towns with possible situations like this where landfills may be responsible for contamination.

Ken Harrington asked when David Kiernan would be speaking with the attorney and asked if the decision to pay could be put off until after that conversation. Mr. Kiernan said that the Board could vote now, or discuss in Executive Session, whether or not to consent for payment. However, Mr. Kiernan added, his feeling was that the Town should not put itself in an adversarial position with the State. The concern is that making the payment would be implicit consent for responsibility for contamination.

Tim Scoggins suggested that if the Board would like to postpone payment pending Mr. Kiernan's discussions with the attorney, he would like a motion stating so. Mr. Scoggins also said that while the Town's regular attorney could not assist in this matter due to a conflict of interest, he believed that payment would not constitute an admission of responsibility but cautioned that the Town should implicitly state that the Town is concerned with the health of its citizens but does not claim responsibility for the presence of the PFOA.

Motion: Ken Harrington moved to postpone the payment of Check Warrant #7 until the Town can speak with an attorney. Art Whitman seconded.

Mitch Race said that the Town already disclaimed responsibility and that this is an invoice for services rendered for the benefit of the taxpayers of Shaftsbury. Tony Krulikowski said that he thinks that the negotiations with the State will take a long time and that any record of payment for related services could be considered for reimbursement. Ken Harrington said that he didn't think the conversation with the attorney would take very long. David Kiernan said that the Town obligated itself to payment when the testing was set up.

Motion to postpone payment:

1-4-0 Motion failed.

Motion to pay Check Warrant #7 \$21, 476.44:

3-2-0 Motion approved.

## **5. Announcements**

### **a. PFOA Test Results**

Tim Scoggins reminded the public that the tests on the 24 private wells all came back under the State standard for acceptable limits and the Town is now awaiting further instructions regarding future testing at the landfill site. Mr. Scoggins expected regular testing for PFOA on the landfill monitoring wells to be mandated.

## **6. Public Comments**

Ed Corey came before the Board and said that he had received a site plan of the former landfill from the State and that Katie (?) had informed him that testing on the monitoring wells for PFOA was taking place. Mr. Corey asked the Board to test the wells at the three (3) Town-owned properties on North Road and added to the list of wells regularly tested twice a year for contaminants. Mr. Corey went on to say that the Town-owned properties in that area had been purchased for a total of \$120,000.00 “with no drinking water” there. He pointed out that a lot adjacent to the current Town garage is still available for a purchase price of \$110,000.00 with Village water available. Mr. Corey feels this is a better use of taxpayers’ dollars.

## **7. Treasurer’s Report**

Melanie Dexter began her report by discussing the fund balance from last fiscal year. Ms. Dexter said that the budget had projected revenues to exceed expenditures by approximately \$43,000.00 but in fact expenditures were so low that the fund balance for the prior fiscal year ended up at approximately \$179,000.00. Ms. Dexter pointed out that revenue was right on target but the expenditures were lower than expected due to the mild winter, a reduction in the road crew, and costs related to improvements to Cole Hall that did not take place.

Ms. Dexter then moved on to the Town’s current cash flow report and the first draw on the line of credit has been made to hold over until tax payments start to come in. Expenditures are down from last fiscal year due to some pre-payment arrangements that had been made by the Town Administrator.

Ms. Dexter said that tax bills have been printed and will likely be out to property owners next week.

Tim Scoggins pointed out that the expenses from PFOA-related matters will be covered thanks to the position of the Town’s current cash flow and savings from the previous fiscal year.

## **8. Road Foreman Report**

David Kiernan delivered the road report and said that all paving for the year is finished with the jobs on East Road, Paran Acres and Hewitt Drive and Harvest Hills being completed. Matteson Road was graded on September 6<sup>th</sup> and West Mountain Road and Ehrich Road will be graded next. Some smaller construction jobs, such as the repair on Airport Road and the lower part of Bahan Road, are slated for fall. Mr. Kiernan went on

to say that a job on Murphy Hill Road will be looked at being put out to bid in June of 2017.

Mr. Kiernan said that some heavy rainfall and the loss of a seasonal employee due to injury had slowed some of the grading work.

Mr. Scoggins asked if the Town was on schedule for the most part with a 5-man crew and Mr. Kiernan replied that it was and the crew was able to take their vacations over the season as well.

Mr. Kiernan went on to report that the Ford F550 was being repaired for this upcoming winter but would need to be replaced for next year.

Tony Krulikowski asked about the September mowing and David Kiernan said that it should be done in the next week.

## **9. Proposed New Town Garage and Transfer Station**

Tim Scoggins presented a proposed site plan from MSK Engineering for the placement of the new Town garage and transfer station, along with the placement of outbuildings and proposed traffic flow around the property. David Kiernan noted that the transfer station could not be placed any closer to North Road due to the Town's own zoning regulations regarding setbacks. Ken Harrington noted that the entrance to the garage was facing south and asked if the Town of Rupert had any issues with ice and snow build-up with their southeast facing entrance. Mr. Kiernan replied that they did not report any issue and with new energy efficiency codes, issues of ice and snow build up have been largely eliminated.

Tim Scoggins said that the design was contingent upon the purchase of 510 North Road and that closing has not yet occurred. Mr. Scoggins said the matter would be discussed further in executive session.

Art Whitman said that he has a concern for the percent grade for the access to the storage area below the garage. David Kiernan said that he believed that the access road would likely be curved to accommodate the trucks. David Kiernan went on to say that the main concern for the design was to work within the limits of what is allowed at the site by Town standards and fit all the necessary facilities into the plan. The conditions for storing materials such as the sand and salt winter mix were then discussed with Mr. Kiernan stating that the mix would need to be stored on an impervious surface with roof over top to eliminate run-off into the monitoring wells.

Art Whitman then asked about this year's (2016-2017) mix and confirmed with David Kiernan that Dailey's/Peckham will allow for pick up at their plant. Mr. Kiernan affirmed

this arrangement and said that the pile currently behind the existing Town garage would be used over weekends and off-hours.

Art Whitman asked if the contract to manage the transfer station could be put out to bid every year or if there is a standing agreement with TAM that would need to be met. David Kiernan said that as part of the Town's plan to operate a transfer station, the Town has a three-year contract with TAM that was just renewed last year. Mr. Kiernan said that he was not familiar with this sort of work going out to bid as only TAM and Casella are the two local companies that perform that sort of work. Art Whitman asked if the Town could approach Trevor Mance about possibly funding some of the project in exchange for an extended project. David Kiernan said that everything is up for negotiation at this point. It was pointed out that the area near the transfer station will likely need to be paved for any spillage. Ken Harrington asked if the plan has been presented to TAM by MSK and Mr. Kiernan said that it has.

David Kiernan said that this site plan will need to be revised and then a formal presentation will be made by Jason Dolmetsch at MSK to the Board. Following that presentation, the Board can vote to adopt the site plan. Tim Scoggins asked if the next step would be to put the project out for a Request for Proposals (RFP) and Mr. Kiernan said that Morton would need to perform test borings prior to issuing an RFP in order to determine if the building(s) can be supported there. David Kiernan hoped to have the project wrapped up with firmer numbers over the next two (2) months to go out to bid.

David Kiernan reviewed the process as follows: 1) Finish MSK's contract for the site plan; 2) complete Morton's contract to provide biddable documents; 3) determine timing of public bond vote and issuance of RFP.

Mitch Race asked if the containers for recycling would be on platforms or sunken into the ground. Mr. Kiernan said that they would be sunken into the ground for easy access and that the brush pile that is currently above the transfer station would be brought closer to the new site.

#### **10. Proposed Public Works Employee(s) – Water Dept/Parks/Highway/Snowplowing/Custodial**

David Kiernan said that he circulated a proposed job description to the Board members that would include the following duties:

- Maintenance duties for all Town buildings and property (other than school)
- Assistance with highway division
- Snow and ice removal from sidewalks and building
- Mowing of all Town parks
- Daily cleaning of park buildings and Town building

- Collection and removal of recyclables and solid waste from Town buildings

Mr. Kiernan went on to say that the Town is looking for one, or possibly two, 25-hour per week employees and indicated that the Water Department is also in need of some assistance as both current employees wish to fully retire. Mr. Kiernan said that he was also looking for assistance with plowing during the winter. Mr. Kiernan said that the cost of the employee or employees could easily be absorbed by the taxpayers and pointed out that if two positions were filled, there could be coverage for the Water Department when both Joe Herrmann and Jim McGinnis completely retire.

Art Whitman asked if the position could support more than 25 hours per week and Mr. Kiernan said that was another reason why he thought two employees may be a better fit. Mr. Kiernan said that some interest had already been expressed in the position and could be supplemental to someone with an already-existing business. Art Whitman said that he felt that Howard Park alone may be a 20-hour job. David Kiernan said that the tractor at Howard Park needs to be replaced to streamline the time currently needed to mow the property.

David Kiernan said that during the winter, the employee could not only assist with plowing but also maintain the parks and keep them open year-round. Mr. Kiernan also said that a portion of employee's time would need to be dedicated to the Water Department due to the budget allocations.

David Kiernan said that he would be scheduling appointments in the coming week for interviews with the Water Department and the Road Crew, and would then ask a committee from the Board to be formed to review the candidates. Tim Scoggins asked what hourly rate the Town expected to pay and Mr. Kiernan said that it had not been determined yet. Ken Harrington asked how long the licensing process takes for the Water Department requirements and David Kiernan said that he believed it could be completed easily but hands-on experience would be crucial.

Tim Scoggins and David Kiernan both highlighted the need for responsible, hard-working, self-motivated and honest individuals to fill these positions. Tim Scoggins said that the person that the Board likes may cost the Town a bit more money but he or she would be worth it in the long run.

## **11. Personnel Policy Updates**

David Kiernan has been reviewing the Town's policies on personnel in regard to a new State law on part-time employees. Mr. Kiernan said that permanent part-time employees are entitled to some sick and vacation time, to go into effect next year.

The Board then reviewed Article 6.3 of the current Personnel Policy regarding sick, vacation and personal time counting toward overtime hours worked (for full-time employees). Mr. Kiernan reminded the Board that they had discussed removing that line so that employees would not lose overtime hours should they become sick later in the pay period. Article 6.3.1 concerning the adjustment of hours when overtime may be expected and David Kiernan said that this would almost definitely be the case with a part-time winter employee when a storm is coming. Article 6.4.3 states that overtime will be paid 2.5 times the regular rate of pay and will not be changed. Article 8.0 concerning the payment of overtime to only full-time employees of the Town will need to be reworked to accommodate the requirements of the new law. Article 8.2 addresses when sick and personal time may be taken and the new State law has five (5) specific instances where time can be taken: 1) ill or injured; 2) obtains preventive, therapeutic or diagnostic health care; 3) care of sick or injured family member; 4) arranging social or other services for employee or family member who is a victim of domestic abuse or sexual assault or stalking; or, 5) cares for family member if the school or business where the individual is usually located is closed for public health or safety. Mr. Kiernan highlighted that this may be an issue because schools are generally closed for public safety during snow storms and the Town cannot have snow plowers calling in because of weather. Mr. Kiernan said he would seek additional clarification regarding that portion of the law. Article 8.2.1 regarding the rate of accumulation will also need to be changed to accommodate part-time employees (defined as those working 18 hours per week or more for 20 or more weeks a year). Part-time employees will be entitled to one hour of paid leave for every 52 hours of work.

David Kiernan indicated that the Board can discuss this matter again but he wanted the Board to consider it ahead of hiring the new public works employee(s). Mr. Kiernan said that he also wanted to build in vacation time (unpaid) to the new positions. Tim Scoggins said that if the Town is simply looking to align its personnel policy to meet the basic State standards, he questioned whether or not the Town needs to re-state the requirements set by the legislature. Art Whitman said that he believed the Town needs to clearly outline the policy and not out the onus on the employee to search out State statutes on the matter. Mr. Scoggins said that he favored a reference to the State law in the policy so that future Selectboard members know where the requirements were generated from.

## **12. Elm Street Speed Limit Change – Third/Final Reading - Adoption**

David Kiernan said that the third reading and adoption of the speed limit ordinance change for Elm Street would take place at tonight's meeting but that any resident in opposition could file a petition with the Town Clerk anytime before September 28<sup>th</sup> to repeal the ordinance. Should no petition in opposition be filed, the ordinance will take effect on October 7<sup>th</sup>. Art Whitman asked if the signage would be changed at the time and David Kiernan confirmed it would but that warning signs regarding the curves in the road have already gone up.

Tim Scoggins paraphrased the third reading of the proposed Elm Street speed limit change to the Selectboard by stating that the speed limit will be changed from 35 mph to 25 mph at the request of many of the property owners on Elm Street.

**13. Town Administrator's Report**

NONE

**14. Other Business**

NONE

**15. Review of Action Items**

8/15/16 Regular Meeting:

Art Whitman asked what the consequence will be if a resident declined PFOA testing – **David Kiernan will address this with an attorney.**

8/25/16 Special Meeting:

Tim Scoggins will follow up with the State regarding a meeting concerning the protocol for dealing with the PFOA found in the landfill – **Tim Scoggins said a meeting is being scheduled with State officials and David Kiernan will be discussing the matter with an attorney.**

**16. Executive Session**

Motion: Mitch Race moved to go into executive session at the meeting at 8:01PM. Ken Harrington seconded.

5-0-0 Motion approved.