

Select Board Meeting Minutes

August 27, 2019

Select Board (SB) Members: Jared Cadwell (Jared), Chuck Martel (Chuck) and Mike Jordan (Mike)

Select Board Assistant: Patti Lewis (Patti)

Road Foreman: Stuart Hallstrom (Stuart)

Minutes Recorder: Lisa Koitzsch (Lisa)

Guests: Jim Barlow (Town Attorney), Richard Davis, Linda Moulton, Carl Dupont, Dorothy Langevin, Allison Johnson

Jared called the meeting to order at 5:00 p.m.

1. Chuck made a motion to approve the minutes of August 13, 2019. Mike seconded, no further discussion, all in favor, motion approved.
2. LOT MOU and Boyce Land Donation

LOT MOU: Jim Barlow, Town Attorney, was tasked by the SB to review the proposed Memorandum of Understanding (MOU) between the towns of Fayston, Warren and Waitsfield for a Local Option Tax (LOT). The document was accompanied by a set of bylaws that would govern the operation of a commission established under the MOU. He explained the basic structure is the three communities would agree to vote to enact and levy a LOT that would be collected by the State of Vermont when it collects Sales Tax. The money would then be passed from the State to the municipalities and under this agreement it would be passed onto the commission, to which each of the municipalities would appoint members, and then distributed to certain organizations set out under the bylaws under certain rules. LOTs for Vermont communities came into being in 1997 when the State moved to a new education funding formula. It was recognized that this would have an impact on certain 'gold' towns in the State and would cause a significant burden on municipal taxes because the education tax would draw so much from those communities. At the time, to mitigate this burden, the legislature proposed allowing these communities to implement a LOT sales tax for sales, rooms and meals, and alcohol. When the statute was enacted, (24 VSA §138 (a)(3)) the legislature set out three categories of municipalities authorized to enact a LOT (see attached document). Fayston and Warren were authorized under the statute to enact a LOT but Waitsfield was not. For the MOU to work, either the statute would have to be amended to broaden the authority to enact a LOT, which Jim does not think is likely, or Waitsfield would have to adopt a municipal charter. He cited S. Burlington as an example of a community with a City Charter to adopt a LOT. Jim said this is a significant hurdle that needs to be overcome. His sense of the legislature's feelings about LOTs is that they are not generous in granting that authority although Jim says that municipalities that do pass a charter have been successful in approaching the legislature and accomplishing it this way. Jared asked how a charter is passed. Jim summarized that there is usually a proposal from the town's SB, followed by a series of detailed public hearings, a final approval by the SB and then public vote by Australian ballot. Once these steps have been completed then the charter is forwarded to the legislature for approval and goes through the full House and Senate votes and is signed off by the Governor. Historically, the state legislature is favorable to charter adoptions. Jared asked if the Bennington Charter had been passed and Jim replied that only a portion had been passed. Jim suggested that perhaps there might be another arrangement that could be reached where something other than a local agreement

could be instated to enact a LOT that is shared among municipalities. The other significant issue that Jim sees is as municipalities are authorized to enter into inter-local agreements (such as this MOU), the statute has a significant limit on that authority. It says that expenses for such governmental service activity are included in a municipal budget approved under 17 VSA §26 (64) or comparable charter provision. Jim's interpretation is that it is an express limit and requirement that funding for a LOT has to come from a municipal budget process. The way that funding is set up under the MOU does not comport with this as it is more of a pass through instead of being approved with each town budget. He likened it to a large social service agency appropriation, which should be approved each year by voters. Jim said that every budgeted expense for a town is subject to voter approval. He shared an analogous situation of a host town agreement regarding tipping fees between the Town of Coventry and Casella Waste Management that would give 10% of fees to a local non-profit. The point was that you should submit a budget to voters but that you could not contractually circumvent the budgeting process. Jim summarized that these were the two main issues he saw with the MOU and that these need to be ironed out and solved. Jared said he has raised Jim's general concerns with members of the other towns' Select Boards and they realize that this is a concern that will need to be addressed. Waitsfield SB has agreed to move forward with their attorney reviewing the MOU proposal for a LOT with the idea of putting a charter to vote in 2020. Jared asked Jim if he would prepare appropriate language for the MOU regarding review of budgets and voter approval of budgets so Fayston can be prepared to talk to the other two SBs and could present some alternate and additional language that would meet the requirements of the statute. Chuck stated this would mean Fayston was setting the guidelines for the three towns which they would probably have to work out themselves if Fayston wasn't moving forward with this. Jared clarified that what the three towns would agree to is an MOU that would address the concerns that Jim has raised with new language that would meet the test of the statute. Chuck asked if the first obstacle of getting Waitsfield authorized to participate in MOU would hold us back from presenting the MOU at town meeting. Jared said voters would not accept talking about a LOT charter change unless the intention was discussed as well. Chuck asked that since several members of the Waitsfield SB were not behind the LOT, did this present more of an issue or obstacle going forward. He expressed concern about Fayston investing a lot of time and money beyond what is necessary before we know that this can move forward on a tri-town basis. Mike said it does answer some questions as to how money will be controlled and if we do develop language of having it within town budgets, it gives a checks and balances measure for voters. Mike stated it would be worthwhile to have Jim do some work to see what a revised MOU would look like. Jared agreed that getting an MOU that passes the statute test as a legitimate proposal and let the voters decide. The first time the voters will weigh in will be in Waitsfield with a charter change. This would be a test of the validity of the idea. All three towns will need to be accepting of language in Waitsfield charter regarding the MOU. Chuck agreed but again expressed the need to proceed with caution. Jim said conceptually the towns would want a process where there is a proposed budget from the commission, then from that an assessment that is passed to each town. That assessment would then become part of each town's budget with some sort of directive that the LOT would pay for the assessment. Jared asked if the assessment would be based on recent tax data and Jim replied the tri-town commission would have to come up with a proposed budget of anticipated revenues of LOTs collected. This should be a firm number that follows economic trends as the State has data regarding Sales Tax collection. Chuck asked what the time frame would be for a legislative process like this to be completed. Jim responded that it depended on the complexity of what Waitsfield decides but it is possible it could be done by the end of the current legislative session or during the following

one. Jared asked the SB if it was comfortable having Jim address the concept of transparency of checks and balances and all were in favor. Jim said it would probably be at least a day's work for him to work on this. Jared will be in touch with Andrew Cunningham from Warren to avoid duplication of each town's efforts.

LAND DONATION: Ermione, LLC property on Boyce Road. Jim has been coordinating with Vermont Land Trust (VLT) staff and attorneys on the property transfer to the Town. Jim asked VLT to outline a written document of expectations of all parties involved before the transfer occurs. There will be a gift of the property to the Town and then the Town will turn around and convey the conservation easement to VLT, which will hold the easement and the document will control the Town's use of the property. The Town should do a title search on the property to ensure a clean title and should have title insurance to back this up. The most efficient way to do this is that VLT will have an attorney do a title search and the Town can split this fee. The VLT attorney will be an agent for title insurance so can give the Town a binder on title insurance and write a policy for the Town's benefit. How much title insurance is needed? Jim said to use the Grand List value of the property which is \$500,200 and this would mean the insurance would cost between \$1500 - \$2000. Chuck agreed to these numbers. Jim told the SB that he anticipated closing on this property in early December and wrapping everything up by then. Jim will get a draft conservation easement document from the VLT soon that is standard. The issues will probably not be legal or technical but will focus more on what the town anticipates for the property. Jim will review the document. Jared introduced Lisa as a member of the Conservation Commission and said the Commission will look at the document as well. Lisa said it was her understanding that an interim management plan will need to be in place before the property is transferred. Jim said this was true and that it doesn't have to be full management plan. The expectations are substantial but not overly burdensome. This plan will be crafted with the help of VLT and then reviewed by property owner to see if she has concerns and/or any input. Lisa said Liza Walker has shared some templates with her and received permission from the SB for the FCC to begin work on the interim management plan.

3. N. Fayston, Big Basin, and Bragg Hill Speed Issue: Richard Davis and Dorothy Langevin appeared before the SB to discuss the issue of excessive speed, the safety of multiple roadway users and dangerous driving near horses on N. Fayston and Big Basin Road. Jared said the SB has received multiple notices of speed and safety concerns from residents, including a letter (attached to minutes) from Bowen Holden who lives at the intersection of Bragg Hill and Kew Vasseur Roads. Richard stated that he feels there is a more suburban feel to Fayston and as the roads have gotten wider and things have evolved, people are in more of a hurry going places. Speeds are creeping up on the roads. Richard rides horses and has noticed a big difference and has had several unpleasant encounters with people after asking them to slow down. He said many people don't understand horses or know the law concerning slowing down when horses are present on the roadways. Jared thanked him for giving the SB a copy of the Vermont Horse Council Statute regarding vehicle control in the presence of horses. Richard told the SB there is some ignorance about being around livestock and animals and there should be some discussion about what should be done. He said people are slowing down to the speed limit but this is not enough when you are passing animals on the road and told the SB that an animal's reaction should determine if the speed is slow enough. Jared asked how many horse owners or stables there were near Richard's home and he cited the Icelandic Horse Farm, as well as a few others. Jared drove on N. Fayston and Big Basin to look for signs warning people about horses or horseback riding and warning drivers that livestock was in the area and he found none. He said there need to be some signs and the Town could easily invest in signage indicating that horses and other livestock were using the roads, in addition to walkers and cyclists. He added that the

issue on N. Fayston and Big Basin was not unique and another area of concern was on Bragg Hill. There are cyclists, runners, walkers, children and pets using the road. Short of hiring a Sheriff, he said the Town needs to educate people driving these roads. Richard suggested that perhaps someone could be hired to talk to people occasionally about the issue, maybe a law enforcement officer. He also presented a price sheet for radar signs that could be moved around with different messages and could get people to pay more attention. The cost would be approximately \$2,000. He suggested forming a group to discuss and pursue the issue and perhaps get coverage in the Valley Reporter. Chuck asked if there was anyone at VTrans that could offer advice on traffic calming beyond just signage and commented that Fayston can't be the only community going through this. Richard stated that peoples' behavior will often change after consequences. Both Chuck and Dorothy said they have witnessed people driving very fast on N. Fayston Road especially during commuting times. Richard suggested concerned residents could make homemade signs to put along the roadside and asked the SB if they would grant permission to put those signs out when needed. Jared said that neighborhood homemade signs could go up as they do seem to have an effect. He asked Stuart if the roadside mowing was complete and Stuart said yes and that the signs could go out as long as they didn't impede the right of way or snowplowing. The SB agreed with this. Mike suggested that the Horse Council's policy could be posted to the Town's email list and to Front Porch Forum. Patti confirmed there were currently 346 people signed up to receive notices from the Town. Dorothy said she has seen many out of state cars passing her house at the intersection of Center Fayston, North Fayston and Big Basin Road. She said she supports out of state visitors but that too many of them seem anxious to get to the Burnt Rock trailhead quickly. Mike said Freddie Graves has also seen an increase in traffic and speed recently. Jared said the town would put out a notice from the Select Board on Front Porch Forum and the Mail Chimp distribution list advising people to slow down on the back roads. He asked Richard to help draft a one paragraph statement that could be shared on social media. Dorothy said she also sees quite a few all-terrain vehicles driving on the roads and wondered if this was legal. She also wants people to notice the stop signs on the roads and be mindful about stopping. Jared said that even though there are specific areas that people are complaining about, this is a general problem throughout Fayston. He commented that the Town will give an education campaign a try and see if it gets any traction as there is no money in the budget this year for digital traffic signs. Richard asked if neighbors could raise money for a digital sign, would the Town put the sign up. Jared said he wasn't sure but Chuck stated he did not see a problem with that. Stuart expressed concern about liability and maintenance. Patti said the SB would have to check with VLCT to see if there are insurance or legal issues and added that there could be an issue with neighbors complaining about flashing lights. Mike asked if VLCT has resources for something like this and Jared asked Patti to check with VLCT and VTrans. He added that signs warning people of horseback riders/children playing etc. would be effective. Mike asked Richard if he thought there were specific times of day when cars speeding by horses are worse than others. Richard replies that commuter hours are usually the worst. Trade and delivery trucks can also be difficult. Richard will draft a paragraph and send to the SB for review. Lisa suggested to Jared that perhaps Bowen Holden could also review the paragraph. Jared reiterated there are several signs that could be installed. Stuart asked where these signs would be installed. Mike said in places that are more densely used by riders, children, etc.

4. Certificate of No Appeal or Suit Pending: A form that needs to be signed in the back of the Grand List for 2017 and 2018 needs to be signed as there are no longer any appeals pending on any property for those years. Mike made motion to sign the Certificate of No Appeal or Suit Pending

for the 2017 and 2018 grand lists. Chuck seconded, no further discussion, all in favor, motion approved.

5. Bids for wood removal at the gravel pit: Only one bid for the firewood has been received. The logs are going to a mill. Patti asked if the bid should be extended or closed. Mike said he thinks the bid is done. Jared moved to accept the bid for firewood, Chuck seconded, no further discussion, all in favor, motion approved.
6. Road Foreman update: Stuart reported that gravel crushing is going slowly. There is a lot of water on the site and that is slowing things down. The shoulder material for Bragg Hill will come off this crusher and will be ready in three to four weeks. Two more culverts will be replaced on Phen Road. Moulton Road is in really good shape. Jared said it is the best it has ever been. Lisa asked about horse trailers parking at the gravel pit. Stuart said to park on the right side so that it is out of way of trucks turning.
7. SB read mail and signed orders. Jared said he is attending the VLCT Town Fair.
8. Other business:

Allison Johnson's property is on the corner of Slide Brook and Crean Road and talked to the SB about Slide Brook Road. Jared stated culvert replacement is the responsibility of the Association or Bob Crean. Chuck summarized the SB's previous meeting with Margo Wade. Sugarbush is finished their work on the road. There is an agreement between the Town and Bob that states that he or the association is responsible for culvert replacement but that culverts need to meet town requirements. The SB advised Bob to get state advisement on the culvert replacement and the state has come back with its requirements. Allison told the SB that she was present at the meeting between the State and Bob. Allison purchased her lot from Bob and has an escrow agreement with him. She reviewed the SB agreement with Bob Crean, specifically Section 2 which lays out requirements for road upgrades. She is asking for the SB's help to make sure that this job is done the right way and follows the requirements laid out in the agreement. She would like Stuart to be in contact with contractors doing the work to ensure that it is being done correctly. Allison is asking the contractor to give an accurate estimate and project timeline and would like the SB to weigh in on this. The SB reviewed Section 2 of the agreement. Jared asked Stuart if he had reviewed the state's recommendations and he said yes. Allison said she is happy with the state's recommendations but would like to make sure the agreement is followed. Jared asked Stuart to check in with Lamson (the contractor) and monitor the work he is doing. Mike said the contractor and Bob Crean should give the work specifications to the Town and to Allison and the SB would review to see if they adhere to the requirements in the agreement. Chuck reiterated that Bob and his contractor would have to develop the specs, Stuart would have to review, and then someone would have to place a cost on the work. This way, Allison would know that the standards would be followed. All discussed standards for Class 4 roads. Jared suggested tracking down stipulated Boyce Road permit guidelines which might help in this respect. He recalls Gunnar McCain coming up with those specs. Chuck will review the land use regulations. The SB will request from Crean and Lamson all specifications to see if they follow the agreement. Allison reiterated that she would like the SB to come up with specs but Chuck stated that Crean and his contractor would do this and then the SB would approve the details of the work.

Old Store site: Carl Dupont said he was going to come to the next SB meeting to talk about the old store lot but recently saw information in the Valley Reporter about proposed affordable housing on this lot. Carl mentioned he was offended by the wording regarding abandoned trailers as he tries to keep the property mown and looking tidy. He brought a lot map and reviewed it with the SB, including septic locations. He said he was hoping to purchase the lot to protect his interests. Linda Moulton said Habitat for Humanity did not build in that location

because there was no place for a septic area and that nothing could be done with the lot because of existing easements. Chuck said he talked to John Weir recently and that the lot is in the flood hazard overlay district which means no new buildings can go up. Linda said that the map was wrong and that it was inverted. She commented that both the small houses are not in the flood plain. Patti asked if Linda was referring to the 2013 map. Jared asked if all the storage tanks had been removed and Stuart responded they had been and it was all signed off by the State. Linda said that they did not get all the tanks as there were some underneath the back of the building and she does not believe that those tanks have been removed. Stuart said he did the digging and did not find anything. Carl will come to the office and talk with Patti about the survey map. Slide Number 328B.

At 6:37 p.m. Chuck made the motion to adjourn the SB meeting. Mike seconded, no further discussion, all in favor, motion approved.

The next SB meeting is **September 10, 2019 at 5:00 p.m.** at the Robert Vasseur Municipal Building.

Respectfully submitted,

Lisa O. Koitzsch

Approved: Jared Cadwell