

Brandon Select Board Meeting May 13, 2019

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

Board Members In Attendance: Doug Bailey, Seth Hopkins, Tracy Wyman, Brian Coolidge, Tim Guiles

Others In Attendance: Dave Atherton, Bernie Carr, Jeff Stewart, Steve Bissette, Dick Kirby, Russell Jones, Wayne Rausenberger, Barry Varian, Zapata Courage, Brent Buehler, Charles Powell

1. Call to order

a) Agenda Adoption – Motion by Doug Bailey/Tracy Wyman to adopt the agenda. **The motion passed unanimously.**

2. Approval of Minutes

a/b) Approval of Minutes – April 22, 2019 - Select Board Meeting

Motion by Brian Coolidge/Tracy Wyman to approve the April 22, 2019 Select Board Meeting minutes. **The motion passed unanimously.**

3. Town Manager’s Report

Dave Atherton provided the following Town Manager’s report for the weeks of April 27th and May 5th.

Union Street Sidewalk:

Waiting for release of funds from VTrans and FHA.

Park Street:

MOA signed by the Town between FHA, VTrans and Historic Preservation. There are some archeological surveys that will need to be completed where crosswalks go through existing green areas.

Newton Road:

Reviewed and signed the subgrant agreement with Two Rivers-Ottawaquechee Regional Commission. This is the additional 25% match for the first round of property buyouts. The first property buyout closing is scheduled for May 24th, with the other two to be scheduled soon after.

Segment 6:

Capital Rock will be finishing night blasting in Segment C beginning of next week and moving into day work in Segment A on High Street. This will involve the road closure of High Street until blasting is completed and one lane alternating on Route 7 after High Street.

Catamount Excavation will be finishing temp water in Segment C and moving into Segment A that will include support of blasters and scheduled water shutdowns for temp water transfers on both High Street and Route 7 the beginning of next week.

Begin sewer and water in Segment C the night of the 13th that will be overlapping with Capital Rock for a couple of nights to verify ledge removal is satisfactory. Continuing over to water until both are completed.

Begin work on Route 7 Segment D box cut, as well as wrapping up West Seminary sewer and drainage.

Work on Route 7 Segment D box cut, as well as wrapping up West Seminary sewer and drainage.

Water shutdowns will be coordinated the day prior to be more precise with notifications.

Bridge 114:

Membrane installation and box cut starting this week. This will be night work.

Other Happenings:

McConnell Road paving grant has been approved. We will complete ditching, culvert work and wheel rut damage in-house. Will schedule paving sometime in July.

The Churchill Road Culvert project historic review has been completed and there were no findings.

Prepared and submitted the EVSE grant for a proposed charging station at the 7 Conant Square parking area (lot behind Mobil Station).

Completed Red Cross shelter inspects on May 6, 2019. Our 3 shelters are Neshobe School, Otter Valley High School and American Legion Post 55.

Mr. Atherton will be out of the office May 15th through May 17th to attend a PACIF conference.

The Local Emergency Management Plan has been approved by the State.

“No Thru Truck” signs have been ordered for Town Farm Road, Wheeler Road, Richmond Road and Lover’s Lane.

Doug Bailey questioned when the playground equipment donated from McDonald’s would be installed. Mr. Atherton did not have information on the installation.

Seth Hopkins commended Mr. Atherton on the completion of some projects that have taken a lot of persistence to complete.

Brent Buehler asked if a hearing is required when the Town leases property that is town owned. Mr. Atherton advised a hearing is required when the Town is selling something, however, with leasing the Town retains ownership of the property and a hearing is not required.

Steve Bissette advised there is a tree across the river and a big chunk of bank gone on Barlow Avenue. Mr. Atherton advised the Town must get permission from the State to remove items from the river.

4. Public Comment and Participation

There was no discussion held.

5. Presentation by Zapata Courage, Vermont Wetlands Ecologist

Zapata Courage, District Wetland Ecologist from the State provided a presentation on the Otter Creek Wetland. Ms. Courage covers Addison and Rutland Counties and part of Bennington County and Rochester. There are two commissions that had asked to reclassify the Cornwall Swamp and the Leicester/Whiting Swamp from a Class II to Class I. They are all the same complex that stretches from Brandon to Middlebury. There is a Steering Committee and a Technical Committee involved in this process and the Steering Committee wants to advise all municipalities associated with the area. There will be two informal public meetings held and if a petition is moved forward, there will be formal public meetings. Ms. Courage is part of the Technical Committee but will be recusing herself once it moves to the Legislative body. There are only 8 Class I wetlands in the State and the Army Corps of Engineers regulates all wetlands. A comparison between Class I, II and III wetlands was discussed. Class II are less than ½ acre in size, with no functional significance and permitting is not required. Class II wetlands, which include Otter Creek, are over ½ acre, are often mapped, have significant function or value and have a 50-foot buffer. Class I wetlands are often large, currently 10 to 730 acres in size, are always mapped, have exceptional and/or irreplaceable functional significance and have a 100-foot standard buffer that can be increased. Permitting is required in Class II and Class I, with the permitting requirements similar. In Class I, wetland impacts permitted only for compelling public need to protect public health and safety. Ms. Courage provided various maps outlining the types of wetlands. Regarding mapping the Wetland, there have been options discussed such as going by town boundaries, road networks or areas of function to define the entire wetland that meets the criteria. The Steering Committee is meeting every two weeks and will be reviewing the type of mapping that could be done to determine what makes sense geographically and topographically. The mapping exercise is a big piece and once that is completed, it will determine the affected landowners. The core areas associated with the river have been determined and the mapping included a buffer zone that protects the integrity of the wetland for a variety of reasons. From the mapping, all landowners would be identified and invited to two informal public meetings. One is scheduled in Cornwall on June 25th from 6:30PM to 8:30PM. The second will be scheduled in Salisbury within a few days from the first meeting. This will provide an opportunity to answer questions on an informal basis and once a petition is submitted,

a formal notice will be sent, and formal meetings will be held. In addition to the abutting landowners, additional outreach will be done. For landowners, permitting activities within the wetland can only occur if activity meets a compelling need. Agriculture and silviculture are permitted. For most landowners, given the current land use is agriculture or silviculture, there may not be any added regulations, as those activities can continue. Agricultural conversion, such as the addition of a solar project, would require a wetland permit and most of the time it would not be permitted. Regarding mosquito control, this would still be allowed as exempt uses can still take place. This will not impact the local mosquito districts authority to spread larvicide in the wetlands. There is a lot of wetland protection already happening at the municipal level, as this would overlap with flood zones and river corridors, which rules can be more stringent for those areas. The wetland rules support the purpose of the other two aspects of regulation and function. For municipalities, existing road infrastructures must be maintained and sometimes need to be widened or replaced and it is recognized the work needs to be done for health and safety goals. A permit could be issued for these types of projects. Ms. Courage noted a permit for a solar project would not be approved in a Class I wetland but could be permitted in a Class I buffer. With only 8 other Class I wetlands in the State, in having a wetland that is truly exception, it is good to provide this type of distinction and protection and Brandon has the largest wetland in the State. Education and outreach potential for abutting landowners makes a difference, regardless of whether the project comes to fruition. There are currently no Class I wetlands in Addison County and only one in Rutland County. Class I wetlands are chosen because they are deemed invaluable and the Town will need to determine if it wants to pursue this endeavor. The process would include identifying the boundaries and potentially incorporating a partnership. The abutting landowners would need to be identified and contact initiated. Data will be gathered, and documentation will be obtained to create outreach materials. There are approximately 500 landowners within the 15,000-acre wetland. Landowners can either support, be neutral or oppose the mapping. The Steering Committee will determine whether to submit a petition to the Vermont Wetlands Program once the public meetings are held and questions, concerns and public support is determined. If the petition is submitted, the package would go to the Secretary of State who would submit it to ICAR, and ICAR would ultimately submit it to LCAR. If there is broad support, it could be adopted as a rule. This process can take anywhere between 9 and 18 months. The Steering Committee has an aggressive timeline and is hoping to submit a petition by the end of August. In a study of wetlands, with normal flooding events, on average there is \$125k to \$450k per year savings in flood prevention. From a wildlife and migratory bird perspective, the wetland supports a diversity of wildlife. Brandon also has an area that has been identified as a wildlife corridor. There are rare, threatened and endangered species in the wetlands and the species cannot survive elsewhere. For these reasons, 15,000 acres of wetland cannot be replaced. For all of the reasons noted, the Otter Creek Wetland Complex meets the criteria of a Class I wetland. Two conservation commissions have indicated they would like to move forward with this petition. They want to make sure the Select Board is aware of the process and extended an invitation for a representative from Brandon to be engaged in the process. Funding is being requested through the EPA to update the mapping within the Otter Creek Watershed to provide better accuracy of mapping.

Wayne Rausenberger questioned if the buffer zone could be expanded and whether the petition would move forward if all were not in agreement. Ms. Courage stated there are special regulations in those areas and if there are only a couple of landowners not in agreement, it

probably would be submitted. If there are many landowners who do not agree, a town may be excluded from the petition. This type of information is what will be determined from the informal hearings. Mr. Rausenberger expressed concern that expanding the buffer zone will eventually become a “no-spray” zone for the Mosquito District. Ms. Courage stated that pesticides are regulated by the Agency of Agriculture and the Wetland Program has no regulatory oversight with the Mosquito Districts. Ms. Courage suggested people attend the informal hearings so that the Steering Committee can address any questions or concerns people have.

Seth Hopkins asked if the Board wanted to have representation on the Steering Committee. Dave Atherton advised the Planning Commission is currently working on the river corridor and suggested they would ultimately be the Committee that would rewrite the BLUO, if a change was made. Ms. Courage advised the meetings are being held at the Regional Planning Commission in Middlebury and Matt Lacy would be the point of contact. Ms. Courage will provide Mr. Atherton with Mr. Lacey’s contact information. Mr. Hopkins suggested there be a representative from the Select Board, in addition to any other representative from the Town. Mr. Atherton will advise the Planning Commission about this subject. Tim Guiles questioned whether the Select Board could provide general support for obtaining the Class I designation. Mr. Hopkins did not think there has been enough discussion to act at the Board level and suggested participation in the Steering Committee prior to taking any action. Mr. Atherton noted that most of this land is in conservation due to hazard mitigation and there is a lot of NRCS land. It was the consensus of the Board for the Town Manager and Seth Hopkins to approach the Planning Commission to determine if they want to participate in this effort. The next Steering Committee meeting is scheduled for May 20th.

6. Approve/Renewal of Salvage Yard

Dave Atherton advised this is the salvage yard owned by Gerad Lowell on Paint Works Road. The Board approved a five-year certificate in 2014, with the stipulation that zoning regulations are followed. The owner is meeting the criteria and there have not been any issues noted.

Motion by Tracy Wyman/Tim Guiles to approve the Salvage Yard permit for Thunder Towing & Auto Recovery. **The motion passed unanimously.**

Doug Bailey asked if there is a restriction regarding size of items. Mr. Atherton advised that the items are not to go over the top of the fence.

7. Update Conflict of Interest Policy

Dave Atherton advised the Board had adopted a policy in 2010 and a recommendation has been received from VLCT for a renewal policy.

Motion by Seth Hopkins/Tracy Wyman to approve the Conflict of Interest Policy, as presented. **The motion passed unanimously.**

The 2019 policy will replace the 2010 policy.

8. ANR Settlement Agreement

Dave Atherton advised the agreement for consideration is from the sewer line break last spring. The Town has been working with ANR to get fines reduced, which started at over \$30,000.00 and are now down to \$12,000.00. It is thought that they cannot go any lower. There were stipulations that included an engineering study of the wastewater plant that has been done.

Motion by Tracy Wyman/Doug Bailey to approve the ANR settlement agreement. **The motion passed unanimously.**

Seth Hopkin questioned if the Town has anything in place to improve the response time in terms of detecting a leak/rupture. Dave Atherton noted Brandon found a break that wasn't in the river and would not have been dumping anything into the river and repaired the problem. Mr. Atherton stated it could not have been found any sooner. Mr. Hopkins confirmed that the alarm malfunction noted in Item 7 had been corrected.

9. Transfer Station

Tim Guiles met with Stephanie Elnicki concerning the transfer station. Mr. Guiles also met with Gabe McGuinn, Representative to the Solid Waste District. Mr. Guiles advised one point is the lack of a working scale, however, there is a scale at the transfer station on Gleason Road in Rutland. Mr. McGuinn suggested since Brandon is one of the larger towns in the district that it would be beneficial to have a scale at the transfer station. Mr. Guiles noted the contract is deficient and does not properly specify what should happen. He suggested reopening the contract to define specifics and discuss a stronger contract regarding a scale, recycling costs, etc. Mr. McGuinn advised there have been several scale purchases done with forward lease payments, which could be a possibility with a new contract. One of the points that came up was the possibility of the Town taking over the transfer station, as it is large enough in size and the road crew could potentially run the transfer station. Mr. Guiles suggested the Select Board motion to reopen the contract, which might result in rebidding the transfer station contract or give latitude to develop a long-term plan for the Town to take it over. Seth Hopkins stated the Town Manager would do the negotiation as the contract agent. Mr. Atherton stated it was thought there were large gaps in the contract when it was renewed last year, and he agreed the Town should try to reopen it. Tracy Wyman agreed with reopening the contract but did not think a scale is a necessity, as Hubbard's and the Rutland transfer station has scales. He would not renegotiate with the scales being a bargaining point. Doug Bailey was advised the transfer station does not need a scale as the Town does not have large haulers and Mr. Bailey is concerned with paying a large amount of money for scales. Mr. Atherton thought there are many options and it needs to be determined what is best for the Town. Mr. Guiles stated in conversation with Mr. McGuinn, it was noted that some communities are interested in helping the State meet its recycling goals and just staying the same is not enough. Mr. Guiles would like to come up with a vision to provide as many services as possible to the community. Mr. Bailey agreed that if recycling is not made affordable, people will stop doing it and the Town needs to assist with this effort. Tracy Wyman agreed it would be a benefit to the Town to have a town-run transfer station and he thought it would be possible. It was confirmed the contractor has paid the rent. Mr. Atherton reiterated it

needs to be determined the best way to move forward and how to provide the best service. Mr. Atherton advised the Town owns the building and the dumpsters which are now gone. He noted the fee schedule and the amendment was never signed by Earth Waste. Mr. Bailey suggested representatives from the Select Board have a discussion with the contractor. It was noted there are many complaints with the transfer station now charging \$2.50 per bag for recyclables. Mr. Hopkins noted it would make more sense to charge more for the garbage and no charge for recycling. It was determined that Mr. Guiles and Mr. Bailey will have a discussion with the contractor concerning pricing and reopening the contract.

10. Fiscal

a) General Fund Warrant – May 13, 2019 - \$111,643.86

Motion by Brian Coolidge/Tracy Wyman to approve the warrants of May 13, 2019 in the amount of \$111,643.86. **The motion passed unanimously.**

b) Route 7 Construction Warrant – May 13, 2019 - \$500,403.77

Motion by Brian Coolidge/Doug Bailey to approve the Route 7 Construction warrant in the amount of \$500,403.77. **The motion passed with one abstention – Tracy Wyman.**

c) Bridge 114 Warrant – May 13, 2019 - \$9,340.08

Motion by Tracy Wyman/Brian Coolidge to approve the Bridge 114 warrant in the amount of \$9,340.08. **The motion passed unanimously.**

The Select Board recessed at 8:47PM.

The Select Board reconvened at 8:57 PM

Motion by Tracy Wyman/Brian Coolidge to enter executive session at 8:57PM in accordance with 1 VSA 313(a) (3) – the appointment or employment or evaluation of a public officer or employee, with the session to include the Town Manager. **The motion passed unanimously.**

11. Executive Session

The Select Board came out of executive session at 9:09PM. There were no actions required.

Motion by Brian Coolidge/Tracy Wyman to find that the premature general public knowledge of the negotiation strategies with the NEBPA will clearly place the Town at a substantial disadvantage. **The motion passed unanimously.**

Motion by Brian Coolidge/Tracy Wyman to enter into executive session at 9:10PM in accordance with 1 VSA 313(a) (1) to discuss the current collective bargaining agreement with the NEBPA, with the session to include the Town Manager. **The motion passed unanimously.**

12. Executive Session

The Select Board came out of executive session at 9:32PM. There were no actions required.

13. Adjournment

Motion by Brian Coolidge/Seth Hopkins to adjourn the Select Board meeting at 9:33PM. **The motion passed unanimously.**

Respectfully submitted,

Charlene Bryant
Recording Secretary