

**BRATTLEBORO SELECTBOARD  
TUESDAY, MARCH 3, 2015  
REGULAR MEETING – 6:15PM  
MINUTES**

Selectboard members present: David Gartenstein, Kate O'Connor, David Schoales, John Allen, and Donna Macomber.

Staff present: Town Manager Peter B. Elwell, Assistant Town Manager Patrick Moreland, Finance Director John O'Connor, Recreation & Parks Director Carol Lolatte, Highway/Utilities Superintendent Hannah O'Connell, Town Assessor Russell Rice, Planning Director Rod Francis, Planner Sue Fillion, and Executive Secretary Jan Anderson.

Media present: Howard Weiss-Tisman representing the Brattleboro Reformer.

Others present: Francine Vallario, Moss Kahler, Patty Fitzgerald, Marty Fitzgerald, Matthew Steeves, Tim Berg, Ben Berg, Rachel Selsky, Alyssa Todd, Melissa Clark, Brenda Carr, Dora Bouboulis, Spencer Crispe, Joe Bushey, Liz McLoughlin, Jake Dixon, Barbara Gilmore, Milt Gilmore, ASL Interpreters Elizabeth Bjerke and Janet Dixon, BCTV staff and volunteers, and others who did not sign the attendance sheet.

Chair Gartenstein called the meeting to order at 6:19pm in the BCTV studio on the third floor of the Municipal Center. He confirmed that the meeting was officially warned.

***APPROVE MINUTES***

**MOTION BY DONNA MACOMBER TO APPROVE THE MINUTES FROM FEBRUARY 12, 2015 AND FEBRUARY 17, 2015 AS PRESENTED. MOTION CARRIED 5-0.**

***CHAIR'S REMARKS***

Chair Gartenstein reminded voters that polls were open until 7:00pm in the Municipal Center and encouraged voters to get out and vote. He noted that over the past years, emergency services had developed extensive planning in the event of potentially dangerous situations and the planning recently proved valuable at an incident involving a burglary suspect that entered a school. He said that due to the extensive planning, immediate response, and establishment of a chain of command, the Police Department and several other agencies immediately and seamlessly implemented an emergency plan and the incident was resolved with no disruption to the students. He thanked the Police Department and the agencies involved for the swift and effective resolution to the situation. Gartenstein then noted that Selectboard member John Allen suffered a number of losses this week and he extended condolences to the family and asked for a moment of silence.

***MANAGER'S COMMENTS***

Town Manager Elwell said that Administration recently was made aware of a possible CDBG funding source to address the Green Street retaining wall. He said that repair costs were estimated to be approximately \$500,000, and that Brattleboro was eligible for the urgent needs CDBG funds because of the potential danger of the failing wall and the Town having an eligible designated downtown district. He said that the Board would be presented with various repair options at the March 17 meeting, but that the deadline to apply for the funds was approaching and a public hearing would have to be scheduled and warned prior to the next meeting. He said that the Board would schedule its organizational meeting March 23 and he asked that the public hearing be added to that agenda. Gartenstein said that the Board would schedule the organizational meeting later in this meeting.

***SELECTBOARD COMMENTS AND COMMITTEE REPORTS***

Schoales said that on Thursday the Windham Solid Waste Management District (WSWMD) would meet on Thursday to discuss finalists that submitted bids to install solar panels on the former landfill on Old Ferry Road. He also said that the Trustee for the bankrupt Carbon Harvest facility recently assigned the Carbon Harvest lease to a company interested in negotiating with WSWMD to build a \$16 million

anaerobic digester facility at the site. Schoales also congratulated Town Manager Elwell for the recent purchase of his new home in Brattleboro. Additionally, Schoales said that the State Appropriations Committee was considering reducing property tax payments to the Town to assist with the State's budgetary shortfall. He suggested that people contact their legislators and/or Mitzi Johnson at the State legislature to lobby against the underpayment of taxes to the Town.

Gartenstein said that the Traffic Safety Committee met last week and later in this meeting the Board would consider a proposed collaboration with Local Motion to further develop the Town's Traffic Calming Plan and help prioritize and develop responses to traffic safety issues.

### **PUBLIC PARTICIPATION**

None.

### **UNFINISHED BUSINESS**

Pay-As-You-Throw - Public Education and Enforcement. Gartenstein said that the Board recently adopted a series of measures giving structure to the pay-as-you-throw (PAYT) solid waste and recycling program, and the Board was now asked to discuss possible collaborative efforts between Waste Zero and Moss Kahler for education and ancillary services (including enforcement) during the rollout phase. Elwell said that Waste Zero and Moss Kahler previously submitted separate bids for the work, but they had since discussed and agreed upon a collaborative alternative. He reviewed details and costs contained in the three options before the Board, and read a statement from Steve Lisauskas, from Waste Zero, endorsing the collaborative approach. He said that staff strongly recommended the collaborative option (option 3). Moss Kahler spoke in detail about the collaborative proposal between himself and Waste Zero. He said the educational component was extremely important to the success of the program and he discussed the work that he had been asked by staff to perform since January 1 for which he had not been compensated. Kate O'Connor spoke of concerns about option 3, including unknown costs, paying for duplicative services, inclusion of costs for curbside composting, retroactive pay, timing of Kahler's bid, and the increased cost. John Allen spoke in favor of accepting the bid from Waste Zero (option 1). There was substantial discussion by the Board, including the three proposed options, having a local representative for follow-up services and enforcement, costs, and public education.

**MOTION BY DAVID GARTENSTEIN TO AUTHORIZE THE TOWN MANAGER TO ENTER INTO A CONTRACT WITH WASTE ZERO TO DESIGN EDUCATIONAL LITERATURE, ASSIST WITH THE DEVELOPMENT OF THE TOWN'S PAY-AS-YOU-THROW WEB PAGE, TO ANALYZE AND PRESENT BRATTLEBORO'S PAY-AS-YOU-THROW SUCCESS AT REGULAR INTERVALS, IN AN AMOUNT NOT TO EXCEED \$4,250 AND WITH MOSS KAHLER TO PROVIDE SUPPORT SERVICES TO WASTE ZERO WITH BAG DESIGN, PROVIDE RETAIL SUPPORT, PROVIDE PUBLIC EDUCATION FORUMS, SUPPORT EXPANSION OF THE CURBSIDE COMPOST PROGRAM, ASSIST WASTE ZERO WITH PUBLIC RELATIONS, GATHER DATA, AND PROVIDE THE MUNICIPALITY WITH ENFORCEMENT SUPPORT SERVICES IN AN AMOUNT NOT TO EXCEED \$19,000, PLUS MATERIALS COSTS NOT TO EXCEED \$6,000, FOR A TOTAL OF \$29,250. MOTION CARRIED 3-2 (O'CONNOR AND ALLEN OPPOSED).**

Award Bid – West River Park Snack Bar / Restroom Facility. Gartenstein said that at the February 17 Selectboard meeting, the Board asked whether it could give bid preference to a Vermont company even if the bid was not the lowest. Elwell spoke about provisions in the Town's Procurement Manual and said that the Board was required to accept the lowest bid unless the bid did not meet requirements set forth in the RFP. Moreland said that the Town Attorney also supported awarding the bid to the lowest bidder. There was no discussion by the Board.

**MOTION BY DAVID SCHOALES TO AWARD THE BID FOR CONSTRUCTION OF THE WEST RIVER PARK SNACK BAR / RESTROOM FACILITY TO INGRAM CONSTRUCTION OF SWANZEY, NEW HAMPSHIRE, FOR \$63,734.00. MOTION CARRIED 5-0.**

Committee Appointment - BASIC (Brattleboro Area Skatepark Is Coming). Gartenstein said that applications from Les Montgomery and Elizabeth McLoughlin had been received to fill the vacant seat on

the BASIC committee, but that Les Montgomery had since withdrawn his application. He asked for nominations for the BASIC Committee.

**KATE O'CONNOR NOMINATED ELIZABETH McLOUGHLIN FOR THE BASIC COMMITTEE.  
NOMINATION CARRIED BY A VOTE OF 5-0.**

***NEW BUSINESS***

Dog Park Presentation and Skatepark Update. Recreation & Parks Director Lolatte said that two new programs were proposed for installation at the upper area at Living Memorial Park (LMP), being the skatepark and a dog park. She said that the location of the skatepark had previously been approved by the Board, and a separate request to add a dog park in the same vicinity had recently been received. She provided a map of the area with locations of the proposed programs, discussed the two new programs, and also discussed the possible impact that the new programs may have on the ski area at LMP. She said that she had several meetings with Rachel Selsky and Marianne Guerinot, supporters of the dog park, and representatives from Living Memorial Park Snow Sports (LMPSS), who were in general agreement. Rachel Selsky was present and discussed the need for a dog park in Brattleboro and the appropriateness of the location at LMP. She also discussed design and other requirements of a dog park, building costs, upkeep, and fund-raising efforts that would be required to pay for the design and installation. Lolatte spoke about her meeting with a representative from the Town's insurance carrier (Vermont League of Cities and Towns (VLCT)) about insurance concerns and requirements around installation and maintenance of the skatepark and dog park. Planning Director Francis spoke about possible requirements by the State on the existing Act 250 permit for LMP and whether amendments to the permit may be required due to the installation of the two new programs. He offered to explore a jurisdictional opinion from the State about whether any amendment would be required or whether only local permitting was necessary. Lolatte suggested meeting with an engineer to discuss design and costs for the skatepark and dog park, and for the two groups to discuss payment of the engineer's expense. Ben Berg spoke about his use of the ski hill at LMP. Spencer Crispe, from BASIC Committee, discussed safety concerns about dogs interfering with the skateboarders and in support of the ski area. Alyssa Todd spoke in support of the dog park. Melissa Clark spoke in favor of the dog park and of concerns that BASIC may be required to pay for aspects of the dog park. Jake Dixon from LMPSS said that the LMPSS Board recently met and approved construction of a skateboard park at LMP provided that construction and use of it would not adversely affect the skiing activities, and that the LMPSS Board did not consider the dog park proposal. Tim Berg, from LMPSS, spoke in favor of having a skatepark and in support of maintaining the ski area. There was much discussion by the Board.

**MOTION BY DONNA MACOMBER TO AUTHORIZE STAFF TO CONTRACT WITH AN ENGINEER FOR PRELIMINARY PLANS FOR BOTH A DOG PARK AND A SKATEPARK IN THE UPPER PORTION OF LIVING MEMORIAL PARK.**

Gartenstein offered a friendly amendment to add that costs be borne by dog park sponsors and BASIC in their fair shares. Macomber accepted the friendly amendment.

**AMENDED MOTION BY DONNA MACOMBER TO AUTHORIZE STAFF TO CONTRACT WITH AN ENGINEER FOR PRELIMINARY PLANS FOR BOTH A DOG PARK AND A SKATEPARK IN THE UPPER PORTION OF LIVING MEMORIAL PARK WITH COSTS TO BE BORNE BY DOG PARK SPONSORS AND BASIC IN THEIR FAIR SHARES. MOTION CARRIED 4-0 (SCHOALES WAS NOT PRESENT AT THE TIME OF THE VOTE).**

At this time, Gartenstein said that he received election results, that everyone whose names were on the ballot won because there were no contested races, and that the four ballot items had been defeated.

Award Bid – FY16 Heating Oil, Barrows & Fisher Oil. Elwell said that the Board was asked to award a contract to Barrows and Fisher Oil for 82,000 gallons of No. 2 heating fuel oil at a prepaid price of \$1.97 per gallon for the Town and Windham Southeast Supervisory Union (WSESU) for FY16. There was a brief discussion.

**MOTION BY DAVID SCHOALES TO AWARD A CONTRACT TO BARROWS AND FISHER OIL FOR 82,000 GALLONS OF NO. 2 HEATING FUEL OIL AT A PREPAID PRICE OF \$1.97 PER GALLON FOR FY16. MOTION CARRIED 5-0.**

Police-Fire Facilities Bond Counsel Opinion – Elwell said that the Town Attorney and Town Manager's office asked Attorney J. Paul Giuliani, bond counsel, for his opinion on use of the \$14.3 million bond previously approved by Representative Town Meeting in conjunction with recent proposed changes to the Police-Fire Facilities Building Project. He said that Attorney Giuliani advised against proceeding with only the Fire Department renovations while redefining the Police Department facilities, and that Attorney Giuliani's response was included in the Board's packets. Schoales suggested that the project should continue to be discussed and was interested in scheduling a Special Representative Town Meeting. There was discussion about how to proceed with the project, whether to schedule a Special Representative Town Meeting, exploring alternatives for the police facilities, and obtaining public input on the project as the police facility revisions become more defined.

**NO ACTION TAKEN.**

Town Meeting Informational Meeting and Town Meeting Preparation – Gartenstein reminded the public that the Informational Town Meeting was scheduled on Monday, March 16 at 7:00pm and the Representative Town Meeting on March 21. He said that since the budget was approved, the Board had been made aware of additional information on four matters that could potentially affect the proposed budget, being (1) the FY16 fuel oil savings on which the Board just voted, (2) the bond counsel's opinion about use of funds on the Police-Fire project, (3) increased County taxes, and (4) additional funds available in the unassigned fund balance. He explained that (1) the Board just voted on awarding a bid for FY16 fuel oil which provided a General Fund savings of \$59,000 over the amount previously budgeted, (2) \$140,200 could be removed from the proposed budget due to the bond counsel's opinion about the inability to use funds on the Police-Fire project at this time, (3) the County taxes had increased by approximately \$11,000 over the previously budgeted amount, and (4) the Finance Department reported that an additional \$200,00 above the targeted unassigned fund balance was available for use. There was substantial discussion by the Board, Town Manager, and Finance Director about the new information and how it could/should be incorporated into the proposed budget for presentation at Representative Town Meeting. Elwell cautioned against using any of the unassigned fund balance for tax relief and stressed that operating costs should be adjusted. After a lengthy discussion, the Board agreed to amend the proposed FY16 budget by removing the over-projected fuel oil funds, removing the funds allocated to the Police-Fire project, and increasing the amount budgeted for County taxes.

**MOTION BY DAVID GARTENSTEIN THAT THE BUDGET THAT WILL BE DISCUSSED AT INFORMATIONAL TOWN MEETING AND PRESENTED TO REPRESENTATIVE TOWN MEETING BE REDUCED BY THE AMOUNT THAT PREVIOUSLY WAS INCLUDED IN THE BUDGET FOR ADDITIONAL FINANCING ON THE POLICE-FIRE FACILITY. MOTION CARRIED 5-0.**

**MOTION BY DAVID GARTENSTEIN THAT THE BUDGET THAT WILL BE DISCUSSED AT INFORMATIONAL TOWN MEETING AND PRESENTED TO REPRESENTATIVE TOWN MEETING BE ADJUSTED TO REFLECT THE CURRENT INFORMATION ON FY16 FUEL OIL PRICES AND COUNTY TAXES. MOTION CARRIED 5-0.**

There was further discussion about whether to use additional funds from the Unassigned Fund Balance for capital projects and/or to keep the property tax rate the same as last year.

**MOTION BY DAVID GARTENSTEIN TO TAKE \$200,000 ADDITIONAL MONEY FROM THE UNASSIGNED FUND BALANCE AND TO AMEND ARTICLE 19 IN THE WARNING TO PROVIDE \$485,000 IN UNASSIGNED FUND BALANCE FOR CAPITAL PROJECTS AND TO ADD \$90,000 FROM THE UNASSIGNED FUND BALANCE TO DEFRAY TAXES.**

Elwell suggested amending the motion to include "approximately" when referring to the \$90,000 because the actual adjustment may vary when the budget was revised to reflect the Board's intent. Gartenstein accepted the amendment.

**AMENDED MOTION BY DAVID GARTENSTEIN TO TAKE \$200,000 ADDITIONAL MONEY FROM THE UNASSIGNED FUND BALANCE AND AMEND ARTICLE 19 TO PROVIDE \$485,000 IN UNASSIGNED FUND BALANCE FOR CAPITAL PROJECTS AND TO ADD APPROXIMATELY \$90,000 FROM THE UNASSIGNED FUND BALANCE TO DEFRAY TAXES. MOTION CARRIED 5-0.**

There was further discussion about how to revise the proposed FY16 budget to reflect the Board's intended budget amendments. Staff was asked to revise it and make the amended proposed budget available for review prior to the Informational Town Meeting.

Comprehensive Review of Town Operations and Financial Planning Project – Elwell provided a very brief update of his plan for preparing a long-term financial plan. He requested an opportunity at Representative Town Meeting to present the long-term plan and said he would discuss it in more detail at the April 7 Selectboard meeting. There was a brief discussion by the Board about the importance of having a long-term financial plan. Elwell was asked to reach out to media sources to discuss the plan and introduce it to the public.

**NO ACTION TAKEN.**

VTrans Grant – Traffic Safety Committee, Local Motion. Gartenstein said that the Traffic Safety Committee had been working on a number of traffic safety efforts but that follow-through could be more efficient and effective. Highway/Utilities Superintendent Hannah O'Connell said that Local Motion, a non-profit bicycle/pedestrian advocacy group from Burlington, Vermont, had approached the Town and presented a proposal funded by the State to assist with the development of a system to prioritize bicycle, pedestrian, and traffic safety concerns. She said that Local Motion had worked with the Town and Safe Streets group in the past and was offering a very flexible program that would help develop a priority system to identify the importance of safety issues, enhance program policies in effect, assist with finding and writing grants, and create a walk audit template. Elwell said that the Board was asked to endorse the project and approve preparation of a memorandum of understanding to work with Local Motion. There was some discussion by the Board.

**MOTION BY DAVID GARTENSTEIN TO ENDORSE WORKING WITH LOCAL MOTION TO ENHANCE THE TOWN'S BICYCLE/PEDESTRIAN SAFETY IMPROVEMENT PROCEDURES AND AUTHORIZE THE TOWN MANAGER TO DEVELOP A MEMORANDUM OF UNDERSTANDING WITH LOCAL MOTION. MOTION CARRIED 5-0.**

At this time, the Board agreed to adjust the agenda to accommodate a staff member who had been waiting to discuss an agenda item.

Business License Fines – Assessor's Office. Town Assessor Russell Rice said that the Board was asked to assess penalties on businesses that had failed to renew or obtain their 2015 Business Licenses. He said that the businesses on the list (with the exception of three that had since obtained their business licenses) had been contacted many times since November, 2014 to remind them that the licenses were due. There was a brief discussion. Gartenstein read the names of the businesses that had not renewed/obtained their 2015 Business Licenses.

**MOTION BY JOHN ALLEN TO ASSESS FINES FOR BUSINESSES THAT HAVE FAILED TO RENEW OR OBTAIN 2015 BUSINESS LICENSES AS PRESENTED, AND TO PURSUE COLLECTION OF THOSE FINES IN SMALL CLAIMS COURT.**

Gartenstein offered a friendly amendment to include collection of fines, license fees and penalties in the motion. Allen accepted the friendly amendment.

**AMENDED MOTION BY JOHN ALLEN TO ASSESS FINES FOR BUSINESSES THAT HAVE FAILED TO RENEW OR OBTAIN 2015 BUSINESS LICENSES AS PRESENTED, AND TO PURSUE COLLECTION OF THOSE FINES, LICENSE FEES, AND PENALTIES IN SMALL CLAIMS COURT. MOTION CARRIED 5-0.**

Proposed Zoning Code Amendments – Presentation. Liz McLoughlin, Chair of the Planning Commission, and Rod Francis and Sue Fillion from Planning Services, spoke of the need for and process to revise the Land Use Regulations (LUR). They said that the current LUR were outdated and that land use regulations were contained in two separate, Zoning Ordinances and Subdivision Regulations, but the new LUR would combine all of the land use regulations in one document. They said that a series of workshops had been provided in various locations to include the public in the process. McLoughlin, Francis, and Fillion provided the Board with a PowerPoint presentation and spoke in detail and at length about the many aspects, changes, and effects of the proposed LUR. There were many questions by the Board and a substantial amount of discussion. The Board asked the Planning Department to determine a timeframe necessary to complete the re-writes and present the final LUR in whole or in parts to the public at upcoming Selectboard meetings.

**NO ACTION TAKEN.**

Committee Appointment – Small Business Assistance Program (SBAP). Gartenstein said that the Board was asked to accept the resignation of Stephan Morse from the Small Business Assistance Program and appoint Adam Grinold as his replacement. There was no discussion by the Board.

**MOTION BY KATE O’CONNOR TO ACCEPT THE RESIGNATION OF STEPHAN MORSE FROM THE SMALL BUSINESS ASSISTANCE PROGRAM AND APPOINT ADAM GRINOLD TO THE SMALL BUSINESS ASSISTANCE PROGRAM. MOTION CARRIED 5-0.**

Ordinance Amendments - First Reading. Gartenstein said that the Board was asked hold a first reading on two amendments to the Code of Ordinances.

*(a) Pay-As-You-Throw, Chapter 7 (Ordinance Regulating the Collection and Disposal of Solid Waste).* Assistant Town Manager Moreland spoke about the need to substantially revise Chapter 7 of the Code of Ordinances in order to incorporate the statutory changes required to the solid waste and recycling programs. There was some discussion by the Board. Gartenstein said that a complete version of the proposed changes were provided to the Board, would be posted on the Town’s website, and that copies were available in the Town Manager’s office. He said that the second reading and public hearing were scheduled at the March 17 Selectboard meeting.

*(b) On-Street Parking, Appendix C (Regulations Governing the Control of Traffic), Art. III (Parking Meter Areas), Section 16-110 (On-Street Areas)*

Moreland spoke about proposed changes to Appendix C of the Code of Ordinances to bring the ordinances current with actual on-street parking meter areas. There was a brief discussion by the Board. Gartenstein said that a complete version of the proposed changes were provided to the Board, would be posted on the Town’s website, and that copies were available in the Town Manager’s office. He said that the second reading and public hearing were scheduled at the March 17 Selectboard meeting.

**NO ACTION TAKEN.**

Property Assessed Clean Energy Program (PACE) – Selectboard Member Schoales. Schoales provided a summary sheet (Financing Options for Home Energy Improvements) and said that there were two new developments in the PACE Program that added urgency to implementing the PACE Program for Brattleboro residents. Administration was asked to re-examine past concerns about the program and investigate whether going forward with the program was feasible.

**NO ACTION TAKEN.**

Gartenstein said that the Board needed to schedule an organizational meeting on Monday, March 23 for the new Board members to be sworn-in and to hold a public meeting on a CDBG urgent needs grant for the Elliot Street retaining wall. The Board agreed to meet at 5:15pm on March 23.

There was no further business.

**MOTION BY DAVID SCHOALES TO ADJOURN AT 10:15PM. MOTION CARRIED 5-0.**

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David Schoales, Clerk