

**BRATTLEBORO SELECTBOARD  
MONDAY, APRIL 7, 2014  
SITE VISIT - 176 NEW ENGLAND DRIVE – 5:30PM  
SPECIAL MEETING, SELECTBOARD MEETING ROOM – 6:15PM  
MINUTES**

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

Staff present: Interim Town Manager Patrick Moreland, Town Attorney Robert Fisher, Highway/Utilities Superintendent Hannah O'Connell, and Executive Secretary Jan Anderson.

Media present: Tim Johnson representing WTSA.

Others present: Peg Lopata, Wendy Innis, Sandy Shriver, Esq., John Kohler, Linda Kohler, Chris Grotke, and others who did not sign the attendance sheet.

**CONVENE MEETING AND SITE VISIT** – *176 New England Drive*. Chair Gartenstein called the meeting to order at 5:30pm at 176 New England Drive. He confirmed that the meeting was officially warned.

The Board members, staff, and participants reviewed and discussed the existing site, historical use of a turnaround on the site, location of a proposed 30' x 70' turnaround, and an alternate turnaround situated closer to the Lopata property boundary.

Gartenstein called a recess at approximately 5:50pm and said that the meeting would be immediately reconvened at the Municipal Center in the Selectboard meeting room.

**RECONVENE MEETING** – *Selectboard Meeting Room, Municipal Center*. Gartenstein reconvened the meeting at 5:57pm in the Selectboard meeting room at the Municipal Center.

**MOTION BY DAVID GARTENSTEIN TO ENTER INTO EXECUTIVE SESSION TO DISCUSS A LITIGATION MATTER WHERE THE SELECTBOARD HAS DETERMINED THAT PREMATURE PUBLIC DISCLOSURE WOULD PUT THE MUNICIPALITY AT A SUBSTANTIAL DISADVANTAGE. THE TOWN ATTORNEY, HIGHWAY/UTILITIES SUPERINTENDENT, AND INTERIM TOWN MANAGER WERE INVITED TO ATTEND. MOTION CARRIED 4-0.**

Gartenstein reconvened the meeting at 6:12pm.

**PUBLIC PARTICIPATION**

None.

**LAYING OUT PUBLIC ROAD** – *Discussion, Public Hearing*. Gartenstein opened the public hearing under 19 VSA, Sections 708 and 709, regarding laying out a public highway. He said that under consideration was a turnaround 70' x 30' at the top of New England Drive. He said that the scope of the hearing was to address two locations for the potential turnaround on property owned by Lopata. He noted that the Town offered three exhibits, being: Exhibit #1 entitled "Plat of Survey for Brattleboro Department of Public Works - North End of New England Drive" showing a 70 x 30 turnaround approximately 45 feet into Lopata property, Exhibit #2 being a "Preliminary Map for Discussion Only, Not a Finished Survey" showing a "Y" turnaround at the property line of Lopata, and Exhibit #3 being an appraisal report prepared by Dart Everett, dated April 4, 2014, and addressed to Russell Rice. The three Exhibits were marked and admitted into the record. Town Attorney Fisher reviewed the turnarounds outlined on Exhibits #1 and #2, spoke of the historical use of turnarounds on the property, summarized discussions at the site visit, and clarified that Exhibit #1 with a 70' x 30' rectangle turnaround was the proposal that was noticed to the abutters. He said that the standards that the Board must find for laying out a public right of way were findings of public good, public necessity, and public convenience. Highway/Utilities Superintendent O'Connell spoke of the difficulty and safety factors of vehicles reaching the end of New England Drive that were not able to turn around to exit. She said that vehicles, such as passenger vehicles, Public Works plows and sand trucks, delivery trucks, oil trucks, fire engines, and

other emergency vehicles, could not turn around and were forced to back down the hill and around a curve for about 1/4 mile which was extremely dangerous. She said that a spotter was required to safely and legally back out. She also said that the road was not adequately plowed, salted, and sanded this past winter because of the lack of a turnaround and difficulty in exiting.

Sandy Shriver, attorney for the property owner Peg Lopata, said that Lopata would consent to there being a public necessity and to the taking of some property, but was adamantly opposed to taking property shown as a "T" on Exhibit #1. He said that Lopata would timely grant an easement on the area shown on Exhibit #2 for a fair price, which would resolve the lawsuits, avoid protracted litigation, and provide time to accomplish the engineering and improvements this year. He said that an easement closer to the house as noted on Exhibit #1 would be a greater impact on her property, would land-lock a portion of the property, eliminate use of a portion of the property, diminish the value of the property, and increase the amount of just compensation Lopata would request.

Peg Lopata said that she felt that the burden for public good should be shared and that she was taking the entire burden. She asked that any turnaround be located far away from her house so as to diminish the impact.

Wendy Innis spoke of the importance of having a turnaround in that area, and said that a turnaround close to her property would impact her more.

Gartenstein said that the Town would have to do some analysis to determine what work had to be done to install a turnaround closer to the property line. He also noted that the Everett appraisal stated there was no monetary value to that property. Shriver disagreed and said that Lopata may hire her own appraiser to determine the true value of the property.

Gartenstein said that the Town also offered Exhibit #4, being a SVE (Southern Vermont Engineering) Study, dated March 13, 2013, and he made Exhibit #4 a part of the record. He said that certain concerns were noted in the SVE study and that the Public Works Department would have to assess any additional work that may be necessary to install a turnaround.

The Board agreed that it would accept additional materials, such as appraisals, cost estimates, and engineering costs, for 30 days, and it would render a decision on the matter within 60 days. Attorney Fisher offered to be the recipient of the materials which would then be distributed to the parties, abutters and Board.

Gartenstein asked for additional comments. There were no further comments and he closed the public hearing. He stated that the record would be kept open for 30 days for the submission of additional materials.

#### **NO ACTION TAKEN.**

**APPROVE WARNING** – *Special Town and Town School District Meeting.* Gartenstein said that the Board was asked to schedule a Special Town Meeting on the budget referendum (Article 19 at Representative Town Meeting) and to approve the Warning for a special town meeting. The Board agreed to schedule the special town meeting on Thursday, April 17, 2014. Gartenstein read the Warning and Article 19. The Board also agreed to schedule an informational town meeting on Wednesday, April 9, 2014 at Oak Grove School in the gymnasium starting at 6:30pm.

#### **MOTION BY DAVID GARTENSTEIN TO APPROVE THE WARNING AS READ AND PRESENTED. MOTION CARRIED 4-0.**

Gartenstein announced that the Board would enter into executive session and that no further business would be conducted following the executive session.

#### **MOTION BY DAVID GARTENSTEIN TO ENTER INTO EXECUTIVE SESSION TO DISCUSS PERSONNEL AND LITIGATION MATTERS WHERE THE BOARD HAS CONCLUDED THAT**

**PREMATURE PUBLIC KNOWLEDGE AND DISCLOSURE WOULD PUT THE MUNICIPALITY AT A SUBSTANTIAL DISADVANTAGE. THE TOWN ATTORNEY AND INTERIM TOWN MANAGER WERE INVITED TO ATTEND. MOTION CARRIED 4-0.**

Gartenstein reconvened the meeting at 7:00pm. There was no further business.

**MOTION BY DAVID GARTENSTEIN AT 7:00PM TO ADJOURN. MOTION CARRIED 4-0.**

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David Schoales, Clerk