

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

**BRATTLEBORO SELECTBOARD
WEDNESDAY, NOVEMBER 9, 2016
SPECIAL MEETING – 4:30PM
WITH SITE VISIT FOLLOWED BY PUBLIC HEARING
MINUTES**

7 Selectboard members present: David Gartenstein, Kate O'Connor, David Schoales, and Richard DeGray

8
9 Staff present: Town Manager Peter Elwell, Town Attorney Robert Fisher, Public Works Director Steve
10 Barrett, and Executive Secretary Jan Anderson.

11
12 Media present: BCTV staff and volunteers.

13
14 Others present: Dan Ingold, Peter Boemig, Michael Cersosimo, Sandy Walther (at site visit only), Jeff
15 Morse (at site visit only), ASL interpreter Karen Todd, and others who did not sign the attendance sheet.

16
17 Chair Gartenstein called the meeting to order at 4:30pm. He confirmed that the meeting was officially
18 warned. He reported that requests from property owners on Bittersweet Lane had been received asking
19 the Board to re-consider its Decision, dated August 25, 2016, where it was decided that the Town would
20 not take over Bittersweet Lane and make it a public road, so the Board agreed to hold another site visit
21 and public hearing. He said that one member of the Board would not be present at this meeting but that
22 he could watch the video of the public hearing and then be able to participate in the discussion and
23 decision.

24 **RECESS**

25 Gartenstein called a recess of the meeting at 4:32pm and said that the Board would move to Bittersweet
26 Lane and reconvene for a site visit.

27 **SITE VISIT – Bittersweet Lane**

28 Gartenstein reconvened the meeting at the end of Bittersweet Lane. Sandy Waltham, Peter Boemig,
29 Michael Cersosimo, Jeff Morse, Peter Elwell, Steve Barrett, Robert Fisher, Jan Anderson, and the four
30 Board members were present. There was some general discussion and questions about the road and
31 the area, and participants were asked to appear at the public hearing to make formal statements on the
32 record. Sandy Waltham said she was disabled and unable to attend the public hearing and requested
33 that the Board consider her requests set forth in her letter dated September 2, 2016.

34 **RECESS**

35 Gartenstein called a recess of the meeting at 4:54pm at the site and announced that the Board would
36 move to the Selectboard meeting room at the Municipal Center and reconvene at that location to hold a
37 special meeting and conduct a public hearing.

38 **RECONVENE AT MUNICIPAL CENTER FOR PUBLIC HEARING**

39 Bittersweet Lane Public Hearing. Gartenstein reconvened the meeting at 5:10pm in the Selectboard
40 meeting room at the Municipal Center.

41
42 Gartenstein opened the public hearing.

43 Gartenstein noted that the Board previously considered the request for the Town to “lay out and establish
44 the roadway currently known as ‘Bittersweet Lane’ as a Town Class 3 public highway, and to maintain
45 said road as a public road,” and that the Board issued a Decision in August, 2016, declining to take over
46 the road. He said that requests were since received asking the Board to reconsider its decision and now
47 a second site visit and public hearing were scheduled.

48 Peter Boemig, from Southern Vermont Engineering and Cersosimo Industries, the developers of
49 Bittersweet Lane, thanked the Board for the opportunity to discuss reconsideration of its decision. He
50 said that in 2007, the developer and Town entered into a development agreement where if the developer
51 met certain requirements then the Town would consider taking over the road, similar to other
52 development agreements he had been involved in over the years. He said that the Town, developer, and

1 residents were currently in agreement that the developer had met requirements specified in the
2 agreement, including construction of three houses, paving the road, and adding residential sprinkler
3 systems in the homes. He said that it was anticipated that the Town would take over the road when the
4 conditions were met. He cited other development agreements and discussed the importance of the
5 agreements in order to meet expectations of all parties. He noted that the road was in very good shape
6 and that taxes paid by the homeowners were approximately \$34,000 per year, with the Town receiving
7 about \$18,000.

8 Gartenstein noted that a resident, Sandy Walther (who submitted a letter to the Board in September,
9 2016), was at the site visit and asked that the Board consider the public's use of the neighborhood
10 because cross country ski trails and recreational trails ran near the development and over a number of
11 parcels in the subdivision. Walther also indicated that some people park on Bittersweet Lane while using
12 the trails. Gartenstein noted that access to the ski and backcountry trails were directly off East Orchard
13 Street into a cornfield, and not directly from Bittersweet Lane.

14 DeGray questioned Public Works Director about whether the road met Town specifications and about the
15 number of other development agreements on private roads. Barrett agreed that the road met the required
16 specs and he provided a color-coded map with housing developments on private and public roads.
17 Gartenstein said that he had requested the map earlier in the day and it showed 3 sets of data – the
18 orange and blue markings were private roads; blue markings were private roads with homes (with the
19 number of homes noted); and green markings were public roads with 3 homes or less. Barrett
20 summarized the data on the map being approximately 106 private roads, 70 with condos or homes; 14
21 streets/private streets/roadways with 3 homes; and 30 existing roads plowed by the Town with 3 or less
22 homes. Gartenstein noted there were a number of private roads, with 3 or more homes, which were not
23 maintained by town, and there was a series of public roads with only 2 or 3 homes. He concluded there
24 was much inconsistency in road maintenance on private roads throughout the town. He said that his
25 concerns were whether there was enough public interest to take over the road (which was essentially a
26 driveway to 3 homes), to what extent the public interest served, and the lack of connectivity of the road to
27 other roadways. He also noted that the development agreement specifically provided that a homeowners'
28 association would be formed to address road maintenance in the event that the road was not taken over.

29 There was much discussion about other housing developments and development agreements. Barrett
30 indicated that he was unaware of other agreements on private roads; however, Attorney Fisher noted that
31 they did not specifically research the number and types of development agreements in connection with
32 various developments. There was further discussion about recreational access, public parking, and the
33 specific terms of the Bittersweet Lane development agreement.

34 Gartenstein closed the public hearing. He said that the Board would meet in deliberative session and
35 issue its written decision within sixty days. He noted that Board Member John Allen was not present at
36 this meeting but could review the video of the public hearing and would be invited to attend the
37 deliberative session. Attorney Fisher confirmed that the date for the deliberative session would be
38 scheduled on a future date. There was a brief discussion about the motion.
39

40 **MOTION BY DAVID GARTENSTEIN TO ENTER DELIBERATIVE SESSION WITH THE INTENT TO**
41 **PROVIDE A WRITTEN DECISION ON WHETHER TO LAY OUT THE PROPERTY THAT WAS THE**
42 **SUBJECT TO PUBLIC HEARING ON BITTERSWEET LANE WITH ANY CONDITIONS THE BOARD**
43 **MAY CONSIDER WITH THE WRITTEN DECISION TO BE ISSUED WITHIN 60 DAYS. MOTION**
44 **CARRIED 4-0.**

45
46 Possible Modification Of The Right-Of-Way For John Seitz Drive In The Exit One Industrial Park

47 (a) Survey of the Site

48 (b) Right-of-Way Agreement

49
50 Gartenstein said that the Board was asked to review and approve a modification/quitclaim of a right-of-
51 way (ROW) on John Seitz Drive in the Exit One Industrial Park. He said that the Board received the
52 back-up materials at the time of the meeting and asked Town Manager Elwell to explain the request.
53 Elwell said that in conjunction with a development of a solar array in Guilford, a ROW along the

1 Brattleboro/Guilford town lines would be impacted. He said that the Town of Brattleboro held the ROW
2 across the crest of a hill so the Town could access and maintain its water tank at the end of John Seitz
3 Drive. He reviewed a survey of the area and said that a small portion of the solar array would be built in a
4 portion of the ROW, and the Town was being asked to modify and quitclaim that portion of the ROW to
5 allow for the building of the solar array. He said that after reviewing the site with the developer, Public
6 Works Director Barrett, DPW engineering technician, and Town Attorney Fisher, he concluded that the
7 Town's public interest in the ROW would be adequately protected and he recommended that the Board
8 approve the ROW agreement. Barrett agreed that the Town's concerns were adequately met. Attorney
9 Fisher confirmed that he reviewed the survey and agreement, determined that the metes and bounds in
10 the agreement were consistent with the survey, and that he recommended approval of the agreement.
11 There was some discussion by the Board about the ROW, topography of the area, legal rights, public
12 notice, and public interest.

13
14 **MOTION BY DAVE SCHOALES TO APPROVE THE RIGHT-OF-WAY AGREEMENT**
15 **RECONFIGURING THE RIGHT-OF-WAY ALONG THE BRATTLEBORO/GUILFORD TOWN LINE**
16 **AFFECTING PROPERTIES OF THE TOWN OF BRATTLEBORO WATER PARCEL, BRATTLEBORO**
17 **DEVELOPMENT CREDIT CORPORATION, AND POWERSMITH FARM SOLAR II, LLC, AND TO**
18 **AUTHORIZE THE TOWN MANAGER TO SIGN THE AGREEMENT. MOTION CARRIED 4-0.**

19
20 There was no further business.

21
22 **MOTION BY DAVE SCHOALES AT 6:00PM TO ADJOURN. MOTION CARRIED 5-0.**

23
24
25
26
27

David Schoales, Clerk