

**BRATTLEBORO SELECTBOARD
TUESDAY, MARCH 5, 2019
EXECUTIVE SESSION – 6:00PM
REGULAR MEETING – 6:15PM
SELECTBOARD MEETING ROOM, MUNICIPAL CENTER
MINUTES**

Selectboard members present: Kate O'Connor, Brandie Starr, Tim Wessel, Shanta Lee Gander, and David Schoales.

Staff Present: Town Manager Peter Elwell, Assistant Town Manager Patrick Moreland, Town Attorney Robert Fisher, Public Works Director Steve Barrett, and Executive Secretary Jan Anderson.

Media present: BCTV staff and volunteers.

Others present: Kimberly Ashcroft, William H. [illegible last name], James Matthews, Mark Graham, Shawn Pirro, John Clements, Christopher Tanner, Terry Carter, Jessica Matthews, Franz Reichsman, ASL interpreters Elizabeth Fox and Janet Dickinson, and others who did not sign the attendance sheet.

Chair O'Connor called the meeting to order at 6:00pm. She confirmed that the meeting was properly warned.

MOTION BY KATE O'CONNOR TO ENTER INTO EXECUTIVE SESSION TO DISCUSS NEGOTIATING OR SECURING OF REAL ESTATE PURCHASE OR LEASE OPTIONS AND THE APPOINTMENT OR EMPLOYMENT OR EVALUATION OF A PUBLIC OFFICER OR EMPLOYEE, WHERE THE BOARD HAS DETERMINED THAT PREMATURE GENERAL PUBLIC KNOWLEDGE WOULD CLEARLY PLACE THE SELECTBOARD OR PEOPLE INVOLVED AT A SUBSTANTIAL DISADVANTAGE. THE TOWN MANAGER AND ASSISTANT TOWN MANAGER WERE INVITED INTO THE SESSION. MOTION CARRIED 5-0.

Chair O'Connor reconvened the meeting at 6:15pm.

APPROVE MINUTES

O'Connor asked the Board to approve the minutes from the February 19, 2019 meeting. There was no discussion.

MOTION BY BRANDIE STARR TO APPROVE MINUTES FROM FEBRUARY 19. MOTION CARRIED 5-0.

CHAIR'S REMARKS

Chair O'Connor reminded the voters that today was election day and the polls were still open and would be open until 7:00pm. She then spoke about a police raid at 33 Oak Street. She thanked the Brattleboro Police Department, Vermont State Police Task Force, FBI, and U.S. Attorney's Office for their work in this matter. She said that the activities were not just limited to Oak Street, and the perpetrators were involved in other illegal activities in town.

MANAGER'S COMMENTS

None.

SELECTBOARD COMMENTS AND COMMITTEE REPORTS

None.

PUBLIC PARTICIPATION

Terry Carter noted that with Kate O'Connor's departure from the Selectboard, no member of the O'Connor family would be actively participating in local government. She thanked the O'Connor family for their long-standing involvement in government. She also spoke about a past activity of removing

abandoned tires from the West River wetlands, and she asked that another clean-up date be added to the next Selectboard agenda.

Christopher Tanner, of 197 Elliot Street, spoke about drug activities throughout town and expressed his extreme displeasure about past drug activities at his apartment house. He asked that new tenants in his apartment building be screened if they were placed by Groundworks. Brandie Starr invited him to contact her at the Drop In Center.

Rikki Risatti, candidate for District 2 Representative, Trustee of Public Funds, and Selectboard, spoke about some matters contained in the FY20 proposed budget. Risatti invited people to protest at Representative Town Meeting to move from representative-type government toward a direct democracy. She provided other comments and opinions.

LIQUOR COMMISSIONERS

MOTION BY DAVE SCHOALES TO CONVENE AS LIQUOR COMMISSIONERS. MOTION CARRIED 5-0.

Second Class Liquor Application/License – Kimberly Ann Ashcroft, d/b/a Coopers Coop on the Avenue, LLC

- (i) *Application for License Year Ending April 30*
- (ii) *Renewal of License (if approved) for License Year Beginning May 1*

O'Connor said that the Board was asked to approve a first class liquor license for Coopers Coop for the liquor license year ending April 30, and then approve the license renewal for the upcoming year starting May 1. Kimberly Ann Ashcroft and her father (Bill) spoke about the new carry-out store located at 82 Western Avenue. There was some discussion by the Board.

MOTION BY DAVE SCHOALES TO APPROVE (1) A SECOND CLASS LIQUOR LICENSE FOR KIMBERLY ANN ASHCROFT, DOING BUSINESS AS COOPERS COOP ON THE AVENUE LLC, LOCATED AT 82 WESTERN AVENUE FOR THE REMAINDER OF THE 2018 LIQUOR LICENSE YEAR, AND (2) THE RENEWAL OF THE SECOND CLASS LIQUOR LICENSE FOR KIMBERLY ANN ASHCROFT, DOING BUSINESS AS COOPERS COOP ON THE AVENUE LLC, ALSO LOCATED AT 82 WESTERN AVENUE FOR THE LIQUOR LICENSE YEAR BEGINNING MAY 1, 2019, WITH CONDITIONS AS PRESENTED. MOTION CARRIED 5-0.

Second Class Liquor Application/License – Summit Stores, LLC, d/b/a Summit Store #7

- (i) *Application for License Year Ending April 30*
- (ii) *Renewal of License (if approved) for License Year Beginning May 1*

O'Connor said that the Board was asked to approve a first class liquor license for Summit Stores for the liquor license year ending April 30, and then approve the license renewal for the upcoming year starting May 1. Mark Graham (Operations Manager for Convenience Stores) and Shawn Pirro (Multi-Unit Supervisor) were present. Graham said that the business would be a convenience store located at the Mobil gas station at Exit 3. He also complimented Town Clerk Hilary Francis for her assistance with the application process. There was a brief discussion by the Board.

MOTION BY TIM WESSEL TO APPROVE (1) A SECOND CLASS LIQUOR LICENSE FOR SUMMIT STORES LLC, D/B/A SUMMIT STORE #7, LOCATED AT 1114 PUTNEY ROAD, FOR THE REMAINDER OF THE 2018 LIQUOR LICENSE YEAR, AND (2) ALSO RENEWAL OF THE SECOND CLASS LIQUOR LICENSE FOR SUMMIT STORES LLC, D/B/A SUMMIT STORE #7, LOCATED AT 1114 PUTNEY ROAD, FOR THE LIQUOR LICENSE YEAR BEGINNING MAY 1, 2019, WITH CONDITIONS AS PRESENTED. MOTION CARRIED 5-0.

MOTION BY BRANDIE STARR TO ADJOURN AS LIQUOR COMMISSIONERS. MOTION CARRIED 5-0.

WATER AND SEWER COMMISSIONERS

MOTION BY TIM WESSEL TO CONVENE AS WATER AND SEWER COMMISSIONERS. MOTION CARRIED 5-0.

Appeal of Water and Sewer Bill – *J.W. Matthews, 118 High Street*. O'Connor said that the Board was asked to hear the appeal by James and Jessica Matthews of the most recent utility bill for 118 High Street. Mr. Matthews said that they owned three multi-family homes in town and took pride in keeping up the properties and paying their bills on time. He said that the latest utility bill for 118 High Street was extremely high. He said that a Public Works employee inspected the property and identified leaks in some faucets and toilets. He disputed that the leaks could cause such a large amount of water usage and suggested that the meter, which was old, may have provided an inaccurate reading during the bill in question. He spoke at length about conversations with town personnel and provided information to dispute the Town's findings regarding the water usage. He disputed that those leaks could result in such a high reading. He said that the water meter had since been replaced and noted that he did not have an opportunity to independently test the old meter. He said he believed that the old meter was inaccurate. He said that since a plumber had repaired the leaks and a toilet, and since a new meter had been installed, the water usage and bill were now within normal ranges. He also complained about how he was treated by certain town personnel. He stated that there was confusion about the process by which to appeal the bill so he made a good faith payment of what he believed the actual bill should be. He said that consequently he received additional fines and fees since the bill had not been paid in full. He suggested that a grievance procedure be put in place and asked the Town to correct the bill and waive the fines and penalty fees. Town Manager Elwell noted that the Town's practice was to alert property owners when an abnormally high reading had been reported and to inspect the property when requested. He spoke of other incidents of high meter readings and about two instances where the utility bills were adjusted. He said that one instance was due to a faulty meter that was proved to have malfunctioned and the other incident where a basement had flooded and was pumped out so the sewer bill was adjusted accordingly. He also spoke about the connection between water usage and the corresponding sewer charge. He said that the staff did not find a faulty circumstance in this matter and suggested that the appeal be denied. He said that for the fair operation of the system all users should be treated equally. Public Works Director Steve Barrett said that staff inspected the property and found leaks as reported in his memo to the Town Manager and James Matthews, which was included in the Board's back-up materials. He said that even small leaks could increase the water usage in such an amount. He said that the original meter was installed in 1991 and that some of the older meters did not accurately read usage but that they usually read low, which benefitted the property owners. He said that after the old meter was removed, it was tested to be 99% accurate. Board member Gander suggested that the penalty and fine could be waived since a good faith payment had been made. Town Attorney Robert Fisher responded that it was within the discretion of the Water and Sewer Commissions to waive the penalty. He said that the Water and Sewer Commissioners were being asked to consider whether there was a manifest error in the water bill. He said that two sections of the Code of Ordinances were to be considered in making a determination. He said that Section 18-213 stated "if a meter gets out of order and fails to register, the consumer will be charged during such failure at the average daily consumption as shown by the meter when it was in good order." He said that the next Section #18-214 specified that "all water passing through a meter will be charged for whether used or wasted." There was much discussion by the Board, including whether to waive the penalty and late fees and better defining and notifying property owners of the appeal process. Elwell responded that staff would be directed to include information about an appeal process on future notices. He said that the Board would be reviewing water and sewer rates in the future and could add a more definitive appeal process to the ordinances at that time. O'Connor confirmed that, although unfortunate, leaks had been located at the property. Wessel shared a story where one of his tenants inadvertently left a garden hose running which resulted in an unusually high utility bill. Schoales

noted that a fair amount of time had passed between the Matthews' meter reading and the inspection by town personnel and said that he supported waiving the penalty fees. Starr suggested that if a grievance process was offered that consideration should be given to the "gray area". Gander agreed. A member of the audience, Rikki Risatti, suggested that old infrastructure outside of the building could have been the cause of the leak.

MOTION BY DAVE SCHOALES TO UPHOLD THE DECISION OF THE PUBLIC WORKS DEPARTMENT TO REQUIRE FULL PAYMENT OF THE MOST RECENT UTILITY BILL FOR 118 HIGH STREET.

There was some discussion about whether the motion should contain language about waiving the late fee. Schoales amended and restated the motion.

AMENDED MOTION BY DAVE SCHOALES TO UPHOLD THE DECISION OF THE PUBLIC WORKS DEPARTMENT TO REQUIRE FULL PAYMENT OF THE MOST RECENT UTILITY BILL FOR 118 HIGH STREET, AND THAT STAFF BE DIRECTED TO INCLUDE THE DESCRIPTION OF THE APPEAL PROCESS WITH ANY CALL-BACK NOTICE. MOTION CARRIED 3-2 (STARR AND GANDER OPPOSED).

Elwell asked that if the Board was directing staff to waive the penalty and late fee that it be offered in a motion.

MOTION BY BRANDIE STARR TO WAIVE THE LATE FEE AND PENALTY ON THE UTILITY BILL FOR 118 HIGH STREET. MOTION CARRIED 4-1 (WESSEL OPPOSED).

Hinsdale Bridge Project – Engineering Agreement for Final Design of Water and Sewer Improvements. Public Works Director Barrett said that the Board was asked to approve an engineering agreement with Dufresne Group for final design of the water and sewer improvements to be constructed on Vernon Street in conjunction with the Hinsdale Bridge Project. He spoke about the project to build a new bridge from Hinsdale to Brattleboro. He said that the cost of the engineering contract would be reimbursed by the State of Vermont in accordance with an agreement approved by the Selectboard in September, 2018. Elwell added that construction would not take place for a couple of years. Rikki Risatti asked the Selectboard to address drinking water quality in private apartments. There was some discussion by the Board about the bridge project.

MOTION BY SHANTA LEE GANDER TO AUTHORIZE THE TOWN MANAGER TO EXECUTE AN ENGINEERING AGREEMENT WITH DUFRESNE GROUP FOR FINAL DESIGN OF THE WATER AND SEWER IMPROVEMENTS TO BE CONSTRUCTED ON VERNON STREET IN CONJUNCTION WITH THE HINSDALE BRIDGE PROJECT. MOTION CARRIED 5-0.

Chestnut Hill Reservoir Project – Construction Phase Engineering Agreement. Public Works Director Barrett said that the Board was asked to approve an agreement with DuBois Engineering for construction phase engineering services on the Chestnut Hill Reservoir Project in an amount not to exceed \$29,164. He spoke about the decade-long history of this project which he summarized in his memo dated February 11, 2019. There was some discussion about the project and the reasonableness of completing it. O'Connor spoke about the history of the project. Barrett said that previous property owners voted against turning the property into a green space and in 2009 Representative Town Meeting voted against selling the property to the abutters and voted to fund the refurbishment of the reservoir.

MOTION BY DAVE SCHOALES TO AUTHORIZE THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH DUBOIS ENGINEERING FOR CONSTRUCTION PHASE ENGINEERING SERVICES ON THE CHESTNUT HILL RESERVOIR PROJECT IN AN AMOUNT NOT TO EXCEED \$29,164. MOTION CARRIED 3-2 (STARR AND GANDER OPPOSED).

Odor Control at the Wastewater Treatment Facilities – Update. Public Works Director Barrett provided and discussed a report regarding the recently completed odor control study at the wastewater treatment plant. Rikki Risatti spoke about environmental concerns. Several Board members asked questions about the report and the proposed improvements to the plant.

NO ACTION TAKEN.

Energy Efficiency at the Wastewater Treatment Facilities – Update. Public Works Director Barrett provided and spoke about a report regarding the energy efficiency study at the wastewater treatment plant. He said that the study was completed in 2017 and was reviewed with the Energy Committee in 2018. He said that staff had already implemented many of the study's recommendations and would continue to do so in the future. There was some discussion by the Board.

NO ACTION TAKEN.

Main Street Water Lines – Recent Major Break and Recommended Follow-Up Project. Public Works Director Barrett provided and discussed his report regarding the water line break that occurred last month on Main Street. He said that the leak was found on a sprinkler valve bonnet servicing the building located at 165 Main Street. He said that due to the age of the infrastructure in that area, staff was proposing the replacement and upgrade of approximately 300 feet of water main on Main Street that was laid in 1880, along with control valves that would enable DPW utility crews to isolate sections of water main on Main Street and High Street more quickly and effectively in the event of future water line breaks. Franz Reichsman inquired about the expected cost of the project. Rikki Risatti asked if a town policy existed to routinely check old infrastructure and also spoke of environmental concerns. There was some discussion by the Board.

MOTION BY SHANTA LEE GANDER TO AUTHORIZE TOWN STAFF TO EXPEDITE REPLACEMENT OF APPROXIMATELY 300 FEET OF WATER LINE BETWEEN 129 MAIN STREET AND 181 MAIN STREET, INCLUDING NEW CONTROL VALVES, AS PRESENTED. MOTION CARRIED 5-0.

Review of Water and Sewer Rates – Discussion to Prepare for Upcoming Rate Ordinance. Elwell said that last spring the Board had a discussion about water and sewer rates and whether to take a year off from rate increases. He said that this was the final year of a 5-year rate ordinance. He spoke about the matters contained in his memo dated February 28, 2019, including the recommendation that the Board allow the current water and sewer fee schedule to remain in effect for an additional year. He said that if this Board agreed with having no rate increase for 2019-2020, staff would bring an ordinance amendment to maintain the existing rates for one year to the next Selectboard for a first and second reading and public hearing before adopting the amendment. The Board agreed to the recommendation.

NO ACTION TAKEN.

MOTION BY BRANDIE STARR TO ADJOURN AS WATER AND SEWER COMMISSIONERS. MOTION CARRIED 5-0.

UNFINISHED BUSINESS

Ordinance Amendment – Second Reading and Public Hearing, Chapter 7 (Ordinance Regulating Solid Waste), Section 2 (Regulating Single-Use Plastic Bags), Article IV (Exemptions to General Prohibition). O'Connor said that the Board was asked to hold a second reading and public hearing on an amendment to Chapter 7 of the Code of Ordinances that would provide an exemption to the single use plastic bag ban to allow the use of plastic bags to protect artwork and art supplies that merchants sell to customers.

O'Connor opened the public hearing. She said that a minor amendment was proposed to Chapter 7 (Ordinance Regulating Solid Waste), Section 2 (Regulating Single-Use Plastic Bags), Article IV (Exemptions to General Prohibition) by adding the words "framed art and art supplies" to subsection (1).

as an exemption. She asked John Clements, from Zephyr Design, if the amendment was acceptable and he agreed that it was. Rikki Risatti encouraged accepting biodegradable bags rather than making an exemption to the ordinance. Clements responded that he could not find biodegradable bags in the sizes that he required. Risatti stated that any plastics should be biodegradable or recyclable. There was no further discussion. O'Connor closed the public hearing.

MOTION BY SHANTA LEE GANDER TO APPROVE THE PROPOSED ORDINANCE AMENDMENT, AS PRESENTED. MOTION CARRIED 5-0.

NEW BUSINESS

Applications for Law Enforcement Education Foundation Grants – Fire Department

- (i) *Ballistic Helmet Grant*
- (ii) *Tactical Combat Casualty Care Training Grant*

Elwell said that the Board was asked to approve two grant applications that the Fire Department proposed to submit to the Law Enforcement Education Foundation for \$3,219 to acquire 10 ballistic helmets (which would be matched with the 10 ballistic vests acquired through a similar grant last year), and \$19,700 for a 2-day training program on “tactical combat casualty care” to prepare Town firefighters for mass casualty incidents in conjunction with law enforcement, all as set forth in Fire Chief Bucossi’s memo dated February 20, 2019. Attorney Fisher noted a typo in the proposed motion in the Board’s back-up material and suggested changing the word “vest” to “helmet.” Rikki Risatti made reference to items in the Police Department’s FY20 budget. There was a brief discussion by the Board.

MOTION BY BRANDIE STARR TO AUTHORIZE AN APPLICATION FOR A \$3,219 EQUIPMENT GRANT FROM THE LAW ENFORCEMENT EDUCATION FOUNDATION FOR 10 BALLISTIC HELMETS AND AN APPLICATION FOR A \$19,700 EDUCATION GRANT FROM THE LAW ENFORCEMENT EDUCATION FOUNDATION FOR TACTICAL COMBAT CASUALTY CARE. MOTION CARRIED 5-0.

Announce Committee Vacancies – O’Connor said that the Board was asked to announce vacancies to several Town boards and committees. She said that the Board would likely appoint new members at its meeting on March 19 so applications should be submitted to the Town Manager’s Office by noon on Thursday, March 14. She also noted that the Energy Committee would appear before the Selectboard at the March 19 meeting to request that the number of members be reduced by two. She said that the Board would announce the vacancies at this time but may make changes at that meeting. Shanta Lee Gander read the list of vacancies. Rikki Risatti inquired about the number of vacancies on some committees. There was no discussion by the Board.

NO MOTION WAS OFFERED.

There was no further business.

MOTION BY BRANDIE STARR TO ADJOURN AT 8:42PM. MOTION CARRIED 5-0.

Tim Wessel, Clerk