

**BRATTLEBORO SELECTBOARD  
THURSDAY, AUGUST 4, 2016  
EXECUTIVE SESSION – 4:30PM  
REGULAR MEETING – 5:30PM  
MINUTES**

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

Staff Present: Town Manager Peter Elwell, Town Attorney Robert Fisher, Assistant Town Manager Patrick Moreland, Finance Director John O'Connor, Highway/Utilities Superintendent Hannah O'Connell, Town Assessor Russell Rice, Fire Chief Mike Bucossi, Assistant Fire Chief Peter Lynch, Police Chief Michael Fitzgerald, Police Captain Mark Carignan, Recreation & Parks Director Carol Lolatte, Library Director Starr LaTronica, Planning Director Rod Francis, Town Clerk Annette Cappy, and Executive Secretary Jan Anderson.

Media present: Bob Audette representing the Brattleboro Reformer, Tim Johnson representing WTSA, Olga Peters representing The Commons, and BCTV staff and volunteers.

Others present: James Banslaben, Jon Hoever, Julie Maloof, Byron Stookey, Elizabeth Bridgewater, Connie Snow, Bruce Whitney, Amy Wright, Nancy Barber, Sandy Pechillo, Dale Joy, Lynn Martin, ASL interpreters Janet Dickinson and Karen Todd, and others who did not sign the attendance sheet.

Chair Gartenstein called the meeting to order at 4:30pm. He confirmed that the meeting was officially warned.

**MOTION BY DAVID GARTENSTEIN TO ENTER EXECUTIVE SESSION TO DISCUSS CONTRACTS, ARBITRATION AND MEDIATION, PENDING OR PROBABLE CIVIL LITIGATION, APPOINTMENT OF PUBLIC OFFICER OR EMPLOYEE, AND REAL ESTATE NEGOTIATIONS PURCHASE OR LEASE OPTIONS, WHERE GENERAL PREMATURE DISCLOSURE AND KNOWLEDGE WOULD CLEARLY SUBSTANTIALLY DISADVANTAGE THE TOWN, SELECTBOARD AND PEOPLE INVOLVED. THE TOWN MANAGER AND TOWN ATTORNEY WERE INVITED TO ATTEND. MOTION CARRIED 4-0 (SCHOALES WAS NOT PRESENT AT THE TIME OF THE VOTE).**

Gartenstein reconvened the meeting at 5:30pm. He noted that the agenda was revised yesterday to add a new Item D (Potential Action on a Matter to be Discussed During Executive Session), which would now be moved to Item B and entitled "Consider Settlement with Kingsbury Construction." The Board agreed to adjust the agenda accordingly.

***APPROVE MINUTES***

**MOTION BY RICHARD DEGRAY TO APPROVE THE MINUTES FROM JULY 19 AND JULY 26, 2016 AS PRESENTED. MOTION CARRIED 5-0.**

***CHAIR'S REMARKS***

Chair Gartenstein congratulated Assistant Fire Chief Peter Lynch, who recently accepted the position of Chief of Fire Service Training for the State of Vermont Division of Fire Safety at the Department of Public Safety. He said that AC Lynch had worked in the Town's Fire Department for 34 years, 9 of which were as Assistant Fire Chief. He said that AC Lynch dedicated countless hours to citizens' safety, had worked on the Police-Fire Facilities upgrade project, and lead the development of a school crisis emergency response plan which required coordination with many other departments and agencies. Gartenstein thanked AC Lynch for his dedication and substantial work over the years, and wished him luck in his new position.

### **MANAGER'S COMMENTS**

Town Manager Elwell thanked Assistant Fire Chief Lynch for his years of service with the Town and wished him well with the State position. He said that he looked forward to working with him in his new capacity..

### **SELECTBOARD COMMENTS AND COMMITTEE REPORTS**

DeGray thanked Assistant Fire Chief Lynch for his service and said that he had been an asset to the community and municipality and would be missed. He then noted that a pedestrian-vehicular accident occurred on Western Avenue last week and suggested that the Selectboard add an agenda item to discuss purchasing pedestrian lighting devices to improve safety for walkers at high volume traffic/ crossing areas on major thoroughfares.

Schoales noted that a racial assault took place on Elliot Street last week and that due to quick action by the Police Department the suspects were arrested quickly. He thanked the Police Department for their service.

### **PUBLIC PARTICIPATION**

None.

### **HEALTH COMMISSIONERS**

#### **MOTION BY JOHN ALLEN TO CONVENE AS HEALTH COMMISSIONERS. MOTION CARRIED 5-0.**

Re-Appoint Deputy Health Officer – Fire Captain Leonard Howard, III. Elwell said that the Board of Health was made up of the Local Health Officer and the Selectboard. Local Health Officer Peter Lynch joined the Board. Elwell said that the Board of Health was asked to recommend to the Vermont Department of Health the re-appointment of Fire Captain Leonard Howard, III, to the position of Deputy Town Health Officer for a term to expire on July 31, 2019. There was a brief discussion.

#### **MOTION BY JOHN ALLEN TO RECOMMEND TO THE VERMONT DEPARTMENT OF HEALTH THE RE-APPOINTMENT OF FIRE CAPTAIN LEONARD HOWARD, III, TO THE POSITION OF DEPUTY TOWN HEALTH OFFICER FOR A TERM TO EXPIRE ON JULY 31, 2019. MOTION CARRIED 6-0.**

#### **MOTION BY JOHN ALLEN TO ADJOURN AS HEALTH COMMISSIONERS. MOTION CARRIED 5-0 (HEALTH OFFICER LYNCH REFRAINED FROM THE VOTE).**

### **UNFINISHED BUSINESS**

Police-Fire Facilities Project Update. Gartenstein said that construction on the West Brattleboro Fire Station started this week and noted that the groundbreaking ceremony took place earlier in the afternoon. Town Manager Elwell provided the Board with an update on the overall status of project and reported that the Town received bond approval at the lowest rate that had ever been issued through the bond bank. He said that the interest rate on a 20-year bond would be 2.732%, which was 1/2 percent below the rate estimated during the project presentations and would save an average of about \$20,000 per year over the life of the loan. Elwell then asked the Board to approve a policy for administrative approval on change orders on the owner's contingency with either a drawdown or credit. He said the policy was similar to the general purchasing policy and where the Town Manager would have authority to approve change orders less than \$10,000, with follow-up to the Police-Fire Facilities Building Committee (PFFBC), and ratification by the Selectboard. With urgent time-sensitive change orders over \$10,000, the Town Manager, after determining that delaying a decision would harm the Town or interfere with the project, could approve the change order. He said he would immediately notify the Selectboard and PFFBC by e-mail, and the change order would be reviewed by the PFFBC and ratified by the Selectboard at their next meetings, all as set forth in his July 28 memo. There was much discussion by the Board.

**MOTION BY KATE O’CONNOR TO APPROVE THE “POLICY FOR USE OF OWNER’S CONTINGENCY AND/OR REDUCTION IN PROJECT SCOPE” AS PROPOSED BY THE TOWN MANAGER IN HIS MEMORANDUM DATED JULY 28, 2016. MOTION CARRIED 5-0.**

Elwell noted that earlier in the week he approved an allocation for testing services for the West Brattleboro Fire Station on an as-needed basis. He reviewed the need for testing services, discussed the bids that were received, and his approval of the bid not to exceed \$5,000. He said that next week the PFFBC would review the detailed plans for Central Fire Station and preliminary plans for the Police Station and the Selectboard would be asked to approve the Central Fire Station plans at an upcoming meeting. There was a brief discussion by the Board.

**NO ACTION WAS TAKEN.**

***NEW BUSINESS***

Set FY17 Property Tax Rates. Elwell said that the Board was asked to set the Property Tax Rates for Fiscal Year 2017 in accordance with the materials and memo dated August 3, 2016 from Finance Director John O’Connor. Elwell reviewed the proposed tax rates and their impacts. There was a very brief discussion. Gartenstein summarized that the FY17 residential tax rate would be \$2.8126 per \$100 assessed value, which was \$0.025 less than FY16 due in large part to a one-time drop in the education rate, and the non-residential tax rate would be \$2.6768 per \$100 value, which was slightly higher than last year.

**MOTION BY DAVID GARTENSTEIN TO APPROVE A MUNICIPAL TAX RATE OF \$1.1907 PER \$100.00 OF ASSESSED VALUATION FOR GENERAL FUND OPERATIONS, AN ADDITIONAL \$0.1357 PER \$100.00 OF ASSESSED VALUATION FOR THE DOWNTOWN IMPROVEMENT DISTRICT, AN ADDITIONAL \$6.6535 PER \$100.00 OF ASSESSED VALUATION FOR THE TRI-PARK SPECIAL ASSESSMENT, AND TO RATIFY THE STATE MANDATED EDUCATION RATES AT \$1.6219 PER \$100.00 OF ASSESSED VALUATION FOR HOMESTEAD PROPERTIES AND \$1.4861 PER \$100.00 OF ASSESSED VALUATION FOR NON-RESIDENTIAL PROPERTIES. MOTION CARRIED 5-0.**

Consider Settlement with Kingsbury Construction – Gartenstein said this matter was added to tonight’s agenda after the Board discussed the settlement agreement in executive session this prior to the public meeting. He discussed the Town’s wastewater treatment upgrade project over the past few years, which consisted of rebuilding the wastewater treatment plant, improvements to the Spring Tree pump station, and elimination of the pump station on Black Mountain Road in favor of a gravity fed sewer line. He said that the contractor, Kingsbury Construction, encountered difficulties in connection with the Black Mountain gravity sewer line and changes had to be made to the project and lines. He said that last year Kingsbury submitted a change order in the amount of \$605,000 which led to an extended period of dispute between Kingsbury and the Town, and Kingsbury subsequently filed a lawsuit. He said that a proposed settlement had been reached earlier in the week through mediation sessions and a copy of the proposed Settlement Agreement was provided to the Board, along with a summary of the history, costs and lessons learned. He discussed the proposed settlement, some remaining matters, and lessons learned throughout the process. Dale Joy asked if damages sustained by businesses at Black Mountain Plaza during a rain storm that occurred while construction was underway were covered in the Agreement. Gartenstein said that businesses could assert damage claims but Kingsbury could not assert a claim against the Town. There was a brief discussion.

**MOTION BY DAVID GARTENSTEIN THAT THE TOWN OF BRATTLEBORO APPROVE THE SETTLEMENT AGREEMENT OF THE *KINGSBURY COMPANIES V. TOWN OF BRATTLEBORO* LITIGATION MATTER AS SET FORTH IN THE SETTLEMENT AGREEMENT, AND ADOPT THE BLACK MOUNTAIN GRAVITY SEWER PROJECT HISTORY, COSTS, AND LESSONS LEARNED HANDOUT AS PRESENTED, BOTH TO BE INCLUDED WITH THE MINUTES. MOTION CARRIED 4-1 (ALLEN OPPOSED).**

Authorize Grant Application and Approve Local Matching Grant – Public Hearing, VCDP Planning Grant, Westgate Housing, Inc. Jon Hoever (Community Director for Westgate Housing) and Julie Maloof (President of Westgate Housing, Inc.) were present and introduced other Westgate Board members who were present in the audience – Sandra Pechillo, Nancy Barber, Connie Snow (Chair for WWHT), Lynn Martin, and Byron Stookey. Elwell disclosed that this item and the next agenda item contained a relationship with Windham-Windsor Housing Trust (WWHT) and that his wife was employed by WWHT. Gartenstein disclosed that 13 to 15 years ago when he was in private law practice, he may have represented Westgate Housing but had no recollection of the business and did not believe that a conflict existed. Maloof spoke of the Westgate Housing community, which consisted of 98 apartments, and the expectation that Westgate Housing, Inc. (“Westgate”), would become the owner of the properties in 2018 as a tenant-lead community. She said that Westgate had partnered with WWHT with the intent that “the future holds strong for affordable housing at Westgate.” Hoever discussed the debt structure of Westgate, various sources of funding for the restructuring project, the partnership between Westgate and WWHT, and other aspects of the restructuring project. He asked the Selectboard to authorize the submission of a Planning Grant application in the amount of \$27,000 to the Vermont Community Development Program to support the Westgate Housing Restructuring Project. He said that if the Board approved the submission of the application, he also asked that the Board approve a Town grant in the amount of \$3,000 from Program Income to Westgate Housing, Inc., to be paid only if VCDP approved the requested \$27,000 planning grant.

Gartenstein opened the public hearing.

Lynn Martin said that she was 81 years old and a resident at Westgate. She said she was grateful for a safe and affordable place to live and said that the Town should be proud that it offered this type of affordable housing.

Connie Snow, Executive Director of WWHT, spoke of the partnership with Westgate since Westgate was purchased from a private entity 15 years ago. She said that Westgate was a special place, different from other housing communities in that the residents were very involved and took the lead in the quality of life in their community. She thanked the Board for its past and future support.

Gartenstein closed the public hearing.

There was no further discussion.

**MOTION BY KATE O’CONNOR TO AUTHORIZE THE SUBMISSION OF A PLANNING GRANT APPLICATION IN THE AMOUNT OF \$27,000 TO THE VERMONT COMMUNITY DEVELOPMENT PROGRAM IN SUPPORT OF THE WESTGATE HOUSING RESTRUCTURING PROJECT. MOTION CARRIED 5-0.**

**MOTION BY KATE O’CONNOR TO APPROVE A GRANT IN THE AMOUNT OF \$3,000 FROM PROGRAM INCOME TO WESTGATE HOUSING, INC., CONTINGENT UPON A \$27,000 PLANNING GRANT BEING AWARDED TO THE TOWN OF BRATTLEBORO FROM THE VERMONT COMMUNITY DEVELOPMENT PROGRAM IN SUPPORT OF THE WESTGATE HOUSING RESTRUCTURING PROJECT. MOTION CARRIED 5-0.**

Authorize Enhancement Request – VCDP Scattered Site Grant, Windham-Windsor Housing Trust. Gartenstein said that the Board was asked to authorize the submission of an enhancement request to increase the existing 2013 VCDP Scattered Site Grant by \$394,237 to support Windham & Windsor Housing Trust’s Home Repair Program and Counseling Advocacy Services program. Representatives from Windham-Windsor Housing Trust (WWHT) Elizabeth Bridgewater (Director of Home Ownership) and Bruce Whitney (Lending and Special Projects Manager) were present. Bridgewater thanked the

Board for its past support in connection with the previous grant which helped support the Home Repair and Counseling Advocacy Services programs. She asked for additional support of the enhancement grant which would provide additional funds and extend the grant end-date to September 30, 2017. She said that the State recommended an enhancement grant in order to extend the grant timeline and provide additional funds, rather than to seek a new grant. She discussed the financial breakdown of the grant, spoke about intended use of the funds, and discussed elements of the Counseling Advocacy Services afforded to income-eligible homeowners. Whitney spoke about the critical health and safety home repair project afforded to homeowners, as well as the application and payment processes. There were many questions and much discussion by the Board, including the amount requested for program management, existing balance in the loan pool for capital funds, loan requirements, repayment of debt by homeowners, the lending and affordability process, and anticipated funding for next year.

**MOTION BY DAVID SCHOALES TO AUTHORIZE THE SUBMISSION OF AN ENHANCEMENT REQUEST TO INCREASE THE EXISTING 2013 VCDP SCATTERED SITE GRANT BY \$394,237 TO SUPPORT WINDHAM & WINDSOR HOUSING TRUST'S HOME REPAIR PROGRAM AND COUNSELING ADVOCACY SERVICES PROGRAM. MOTION CARRIED 5-0.**

Comprehensive Review of Town Operations (CRTO). Town Manager Elwell presented the draft Comprehensive Review of Town Operations that had been completed by the Town's management team. He provided a general overview and discussed various aspects of it. He suggested that it would be a guiding document to move forward and improve town operations and was intended to be fluid and would change with the passing of time and changing circumstances. He said it was intended to improve town operations and services to the community, save money in some areas, and invest monies in other areas when necessary to achieve improvements. He said there were fifty specific action items in the CRTO, some of which had been accomplished, some which were in progress, and others that were short-term, medium-term and long-term actions. He suggested that Board members contact him individually to discuss the CRTO and invite the public to submit comments and suggestions by September 9 so that a revised document could be provided to the Board for further discussion and adoption. There was some discussion by the Board about the document, and it was agreed that the Board members would contact Elwell directly and then discuss a revised document at the September 20 and/or October 4 meetings.

**NO ACTION TAKEN.**

Committee Appointments. Gartenstein said that the Board was asked to appoint members to the ADA Committee (for a one-year term) and the Brattleboro Housing Partnerships Board of Commissioners (for a five-year term). There was no discussion.

**GARTENSTEIN NOMINATED RUEBEN TAMPLER (SCHOTTLAND) TO THE ADA COMMITTEE FOR A ONE-YEAR TERM ENDING JUNE 30, 2017; AND**

**LAURIE FAVREAU TO THE BRATTLEBORO HOUSING PARTNERSHIPS BOARD OF COMMISSIONERS FOR A FIVE YEAR TERMING ENDING JUNE 30, 2021.**

**NOMINATIONS CARRIED 5-0.**

Gartenstein announced that the Board would enter into deliberative session and then reconvene in public session but that no further action would be taken.

**MOTION BY DAVID GARTENSTEIN AT 7:55PM TO ENTER DELIBERATIVE SESSION TO FOLLOW UP ON SITE VISITS AND PUBLIC HEARINGS HELD ON JUNE 28, 2016 WITH RESPECT TO MINSHALL STREET, BITTERSWEET LANE, AND WICKOPEE HILL ROAD / GULF ROAD. THE TOWN MANAGER AND TOWN ATTORNEY WERE INVITED TO ATTEND. MOTION CARRIED 4-0 (SCHOALES WAS NOT PRESENT AT THE TIME OF THE VOTE).**

Gartenstein reconvened the public meeting at 8:40pm.

There was no further business.

**MOTION BY JOHN ALLEN TO ADJOURN AT 8:40PM. MOTION CARRIED 5-0.**

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David Schoales, Clerk