

**BRATTLEBORO SELECTBOARD
TUESDAY, NOVEMBER 19, 2019
EXECUTIVE SESSION – 5:30PM
REGULAR MEETING – 6:15PM
SELECTBOARD MEETING ROOM, MUNICIPAL CENTER
MINUTES**

Selectboard members present: Brandie Starr, Tim Wessel, Elizabeth McLoughlin, Daniel Quipp, and David Schoales.

Staff Present: Town Manager Peter Elwell, Assistant Town Manager Patrick Moreland, Town Attorney Robert Fisher, Fire Chief Mike Bucossi, Assistant Fire Chief Leonard Howard III, Police Captain Mark Carignan, Public Works Director Steve Barrett, Highway/Utilities Superintendent Dan Tyler, Recreation & Parks Director Carol Lolatte, Library Director Starr LaTronica, and Executive Secretary Jan Anderson.

Media present: Chris Mays representing the Brattleboro Reformer, Kevin O'Connor representing VTDigger, and BCTV staff and volunteers.

Others present: Wichie Artu, Nick Nickerson, George Harvey, Tim Berg, Ben Berg, HB Lozito, Rikki Risatti, "None So Fine," Adam Grinold, Jen Stromsten, Sarah Lang, Franz Reichsman, John LaTronica, ASL interpreters Elizabeth Fox and Karen Todd, and others who did not sign the attendance sheet.

Vice-Chair Tim Wessel called the meeting to order at 5:32pm.

MOTION BY TIM WESSEL TO ENTER INTO EXECUTIVE SESSION TO DISCUSS PENDING OR PROBABLE CIVIL LITIGATION OR A PROSECUTION TO WHICH THE PUBLIC BODY IS OR MAY BE A PARTY 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. INVITED INTO THE SESSION WERE THE TOWN MANAGER, ASSISTANT TOWN MANAGER, AND TOWN ATTORNEY. MOTION CARRIED 4-0 (STARR WAS NOT PRESENT AT THE TIME OF THE VOTE).

Chair Starr reconvened the meeting at 6:22pm.

APPROVE MINUTES

Starr asked the Board to approve the minutes from the November 5, 2019 meeting. There was no discussion.

MOTION BY ELIZABETH McLOUGHLIN TO APPROVE THE MINUTES FROM THE NOVEMBER 5, 2019 MEETING. MOTION CARRIED 5-0. (Author's note: The minutes were amended by motion at the end of the meeting.)

CHAIR'S REMARKS

None.

MANAGER'S COMMENTS

Town Manager Elwell reminded viewers that the polls were open until 7:00pm, located in Room 105 at the Municipal Center, in order to vote on matters related to the reorganization of the Windham Southeast School District.

SELECTBOARD COMMENTS AND COMMITTEE REPORTS

Schoales announced that the Community Workforce Development Committee would meet on Thursday so he expected to have a report at the next Selectboard meeting.

PUBLIC PARTICIPATION

George Harvey spoke about his perception that the world's climate change and energy matters were taking an "alarming turn" and global warming was moving much faster than previously expected. He said that efforts to address climate change were not working at the federal level so he suggested working on them at the local level.

UNFINISHED BUSINESS

Ordinance Amendments – Appendix C (Regulations Governing the Control of Traffic), Green Street, Second Reading and Public Hearing

(a) *Article II (Parking), Sections 16-100 (No Parking Areas) and 16-101 (Limited Parking Areas)*

(b) *Article XI (One-Way Street), Section 16-71 (One-Way Streets)*

Elwell said that the Board was asked to hold a second reading and public hearing on the proposed Amendments to Appendix C of the Brattleboro Code of Ordinances.

Chair Starr opened the public hearing.

Starr said that the amendments would formalize parking and practices on Green Street near the school during the school day. Elwell said that the amendments would also align the one-way traffic regulations with the procedures actually taking place on the street during student drop-off and pick-up times. He said that the Traffic Safety Committee reviewed the ordinances after hearing from multiple departments and the school leadership, and the amendments before the Board were recommended by the Traffic Safety Committee. He said that the Board held the first reading of the proposed amendments at its meeting two weeks ago, and now was asked to approve the changes. Starr read the times from the proposed ordinance where vehicular traffic would travel one-way. There was no further discussion.

Starr closed the public hearing.

MOTION BY DANIEL QUIPP TO APPROVE AMENDMENTS TO APPENDIX C OF THE BRATTLEBORO CODE OF ORDINANCES (REGULATIONS GOVERNING THE CONTROL OF TRAFFIC), AS PRESENTED. MOTION CARRIED 5-0.

Authorization for Town to Join in Multi-Jurisdictional Opioids Litigation and Ratification of Attorneys' Retainer Agreement. Town Attorney Robert Fisher said that the Board was asked to consider three items at this meeting. The first item was whether to join in multi-district litigation and lawsuit brought about by the Town of Bennington. He said that Brattleboro could name defendants that it chose, including manufacturers of opioids, distributors, pharmacy managers, national pharmacies, and local pharmacies. He spoke briefly about some of the allegations in the suit and studies pertaining to addiction. He noted that some national pharmacies did not fulfill their duty to report suspicious prescriptions and that may have led to addiction and the opiate epidemic. He said that the Brattleboro Police Department had been asked to investigate local pharmacies and they did not find any criminal complaints at the local level. He said that the second matter that the Board was asked to act upon was to ratify his execution of a Retainer Agreement with the litigation attorneys (Sanford Heisler Sharp, LLP, and The Cicala Law Firm PLLC) in connection with the multi-district suit. He said that the Agreement had to have been executed by a specific date, so the Town Manager authorized him to sign it. He noted that the attorneys at Cicala Law Firm had been very responsive to his inquires. Fisher said that the third item for the Board to consider was whether to opt-out of a nationwide class action lawsuit described in a letter dated November 1, 2019, from Vermont Attorney General T.J. Donovan. He said that all towns and counties would become a part of the suit unless they opted out of it. He said that any settlement in the national class action suit would require a settlement vote by 75% of the participants and that any recovery could likely be awarded per capita and consequently the larger cities would likely receive a larger portion of the settlement, He noted that the Town could enter into both suits but that double recovery from the same defendant was not allowed. Members from the audience, Franz Reichsman and HB Lozito, asked several questions and provided their comments. There was substantial discussion by the Board. Quipp spoke of

responsibilities of pharmacies and others in connection with the distribution of controlled substances. He noted that the national Walgreens chain had many lists of suspicious orders but claimed it did not have the staff to pursue remedies. He added that the Rite Aid chain had entered into \$5 million settlement in several counties for violations and was required to enter into a compliance plan to insure compliance with CSA (Controlled Substances Act) and applicable DEA (Drug Enforcement Administration) regulations to prevent diversion of controlled substances. McLoughlin noted that several national pharmacy chains had been engaged in improper dispensary practices but there was no such evidence for local pharmacies, so, in her opinion, they should be excluded as defendants in the suit at this time. She noted that they could be added later if further evidence surfaced. She said she was in favor of continuing in the first lawsuit because of the personal relationship that had been established with the attorneys. Starr read some quotes from the Bennington lawsuit regarding the willful disregard of responsible distribution of oxycodone (pages 92 and 116). She said that she was uncomfortable including local pharmacies in the suit if there was no proof of wrongdoing, but wanted to retain the right to bring them into the suit if evidence was later provided. She stated that she did not believe the Town would benefit from the second lawsuit. Wessel agreed that the Bennington lawsuit contained “appalling examples” of wrongdoing by national pharmacy chains. He stated that the Selectboard was not an investigative unit and such investigations were not in the Board’s prevue. He said it would be irresponsible to name a pharmacy in the suit without evidence against them. He noted that the second lawsuit was very vague. Schoales agreed with other Board members that there was no basis to include local pharmacies in the legal process. Elwell confirmed that the Police Department searched the database and did not find complaints pertaining to local pharmacies; however, he said that he could not responsibility state that evidence did not exist at the federal level or within regulatory agencies. He agreed that if evidence later surfaced regarding a local pharmacy they could be added as a defendant at that time.

MOTION BY DAVE SCHOALES TO AUTHORIZE THE TOWN ATTORNEY AND TOWN STAFF TO TAKE ACTIONS NECESSARY FOR THE TOWN OF BRATTLEBORO TO JOIN IN THE OPIOIDS RELATED LITIGATION FILED ON BEHALF OF THE TOWN OF BENNINGTON, STYLED AS “MDL 2804 Case No. 1:17-md-2804-DAP,” WITH THE EXCEPTION THAT THE LAWSUIT WILL NOT NAME LOCALLY OWNED PHARMACIES AS DEFENDANTS AT THIS TIME. MOTION CARRIED 5-0.

MOTION BY ELIZABETH McLOUGHLIN TO RATIFY TOWN MANAGER ELWELL’S DECISION FOR TOWN ATTORNEY FISHER TO EXECUTE A RETAINER AGREEMENT WITH SANFORD HEISLER SHARP, LLP, AND THE CICALA LAW FIRM, PLLC. MOTION CARRIED 5-0.

MOTION BY TIM WESSEL TO OPT-OUT OF THE NATIONWIDE CLASS ACTION LAWSUIT DESCRIBED IN THE LETTER DATED NOVEMBER 1, 2019, FROM VERMONT ATTORNEY GENERAL T.J. DONOVAN. MOTION CARRIED 5-0.

NEW BUSINESS

Financial Report – Monthly Report, October. Town Manager – Peter Elwell discussed the monthly financial report for October 2019. He said that the report was fairly routine for this early in the fiscal year. However, he noted that the first quarterly payment after implementation of the 1% local option sales tax had been received from the State and was in the amount of \$202,496.60. He said the amount was somewhat of a surprise and that future revenue could not yet be accurately projected. There was some discussion by the Board.

NO ACTION TAKEN.

Potential Settlement of Penny Witherbee v. Town of Brattleboro. Elwell said that the Board was asked to authorize settlement this lawsuit in accordance with the Settlement Resolution contained in the back-up materials. He read a prepared statement into the record (copy contained in the back-up materials) and the terms of the Settlement Resolution. McLoughlin stated that it had been her duty to represent the Selectboard and participate in negotiations in the lawsuit, and it was her opinion that the Town was more

than fair to the plaintiff, as reflected in the relatively low settlement amount. She also noted that the settlement dismissed individual parties and that it was good judgment to bring the matter to a close without expending further time and resources. Elwell noted that a confidentiality agreement was in effect and no further information would be made available. There was no discussion.

MOTION BY ELIZABETH McLOUGHLIN TO APPROVE THE SETTLEMENT [OF THE PENNY WITHERBEE V. TOWN OF BRATTLEBORO LAWSUIT]. MOTION CARRIED 5-0.

Application for FY21 VTrans Better Roads Grant – Department of Public Works. Public Works Director Steve Barrett and Highway/Utilities Superintendent Dan Tyler were present. Tyler said that the Board was asked to approve an application in the amount of \$128,000 for an FY21 Better Roads Grant from the Vermont Agency of Transportation to promote better management practices for erosion control and other maintenance techniques along municipal roads, as set forth in his memo dated November 6, 2019. There was no discussion by the Board.

MOTION BY DAVE SCHOALES TO APPROVE AN APPLICATION IN THE AMOUNT OF \$128,000 FOR AN FY21 BETTER ROADS GRANT FROM THE VERMONT AGENCY OF TRANSPORTATION. MOTION CARRIED 5-0.

Southeastern Vermont Economic Development Strategies (SeVEDS) – Update and Request for FY21 Funding. Representatives from the Brattleboro Development Credit Corporation (BDCC), Adam Grinold (Executive Director), Sarah Lang (Town Specialist), and Jen Stromsten (Director of Programs), were present. Grinold provided an overview of projects and accomplishments by BDCC over the past year. He also said that at Representative Town Meeting in March 2019, the members requested that BDCC provide an economic report for the Town, so copies of the report entitled “Brattleboro Economic Update,” dated November 2019, were included in the Board’s back-up materials. Lang spoke of some BDCC programs, including recruitment efforts, an internship program, and Young Professionals group with workshops, trainings, and events. She said that in January she would manage the Southern Vermont Economy Project around capacity building in economic and workforce developments. Grinold also spoke about the BDCC Annual Report that would be provided to various towns when BDCC staff visited several communities so they could understand the needs of the communities. Stromsten spoke about much of the data provided in the Brattleboro Economic Update. Members from the audience, Rikki Risatti, HP Lozito and Wichie Artu, asked questions and provided their comments. There was much discussion and many questions asked by the Board, including about wages and opportunities, the connection between BDCC and SeVEDS, use of SeVEDS’ municipal funds, collaborative efforts with Downtown Brattleboro Alliance (DBA) and Brattleboro Area Chamber of Commerce (BACC), staffing, and the annual funding request. The Board agreed to add the funding request to a later meeting when budget matters were being discussed.

NO ACTION TAKEN.

Chair Starr called for a recess at 8:11pm. She reconvened the meeting at 8:19pm.

FY21 Proposed Budget

- (i) *Capital Projects*
- (ii) *Capital Equipment*

Town Manager Elwell invited viewers to review the FY21 proposed budget that was posted on the Town’s website. He provided a summary of the FY21 Capital Requests for Projects and Equipment, the 5-year plan for capital projects, and the 25-year plan for replacement of vehicles and other major equipment. He then spoke in detail about the FY21 Capital Requests for projects and vehicles/equipment, including requests for 2 hybrid police cruisers, as set forth in the memo from Police Chief Fitzgerald, and a fire truck (to replace a 25-year-old fire truck), as set forth in the memo from Fire Chief Bucossi and Assistant Fire Chief Howard. He also referenced the purpose of the 25-year Capital Equipment Replacement Program.

Police Captain Carignan, Fire Chief Bucossi, Assistant Fire Chief Howard, Public Works Director Barrett, and Recreation & Parks Director Lolatte answered questions about their departments' capital requests. Rikki Risatti requested using best sustainability practices in replacement of vehicles. Wichie Artu inquired about the plan for vehicles that were taken out of use. Schoales asked for information regarding the replacement of the pool house. Quipp suggested considering a policy to remove dependence on fossil fuels when considering long-term replacement of vehicles, equipment, and facilities. There was much discussion and many questions asked by the Board.

NO ACTION TAKEN.

Brownfields Grant. Elwell said the Board was asked to approve an application in the amount of \$200,000 for a Brownfields Assessment Grant from the U.S. Environmental Protection Agency to inventory, characterize, assess and conduct planning and community involvement related to brownfield sites. Elwell explained that the Town was previously awarded a brownfields grant for petroleum site assessments and general brownfields matters. He said that that the Town was very successful in utilizing the general brownfields funds but not the petroleum funds, so this request would focus on the general hazards portion of the grant. McLoughlin, a former member of the Planning Commission, applauded Planning Director Sue Fillion for her skills in implementing the previous brownfields funds. There was no discussion by the Board.

MOTION BY TIM WESSEL TO APPROVE AN APPLICATION IN THE AMOUNT OF \$200,000 FOR A BROWNFIELDS ASSESSMENT GRANT FROM THE U.S. ENVIRONMENTAL PROTECTION AGENCY. MOTION CARRIED 5-0.

Committee Appointments. Starr said that the Board was asked to appoint volunteers to the Cemetery Committee, Energy Committee, and Fence Viewer position.

**DANIEL QUIPP NOMINATED THE FOLLOWING PEOPLE:
RAYMOND DOYLE TO THE CEMETERY COMMITTEE
MILLICENT COOLEY TO THE ENERGY COMMITTEE
NICHOLAS BIDDLE AS A FENCE VIEWER.
NOMINATIONS CARRIED 5-0.**

Other Business

Executive Secretary Anderson said that Rikki Risatti asked the Board to amend the November 5 minutes. She said that under "Public Participation" at the November 5 meeting, Risatti spoke about a tree on the property owned by Abbiati Monuments. The minutes incorrectly state that Risatti asked that the tree be added to the "endangered" tree list, but Risatti said it should read the "treasured" tree list. The Board agreed to amend the minutes as requested.

MOTION BY DAVE SCHOALES TO AMEND THE NOVEMBER 5 MINUTES TO REFLECT THAT CHANGE. MOTION CARRIED 5-0.

There was no further business.

MOTION BY ELIZABETH McLOUGHLIN TO ADJOURN AT 9:15PM. MOTION CARRIED 5-0.

Elizabeth McLoughlin, Clerk