

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

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

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

Media present: BCTV staff and volunteers.

Others present: Dan Ingold, Peter Boemig, Michael Cersosimo, Sandy Walther (at site visit only), Jeff Morse (at site visit only), ASL interpreter 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. He reported that requests from property owners on Bittersweet Lane had been received asking the Board to re-consider its Decision, dated August 25, 2016, where it was decided that the Town would not take over Bittersweet Lane and make it a public road, so the Board agreed to hold another site visit and public hearing. He said that one member of the Board would not be present at this meeting but that he could watch the video of the public hearing and then be able to participate in the discussion and decision.

RECESS

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

SITE VISIT – Bittersweet Lane

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

RECESS

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

RECONVENE AT MUNICIPAL CENTER FOR PUBLIC HEARING

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

Gartenstein opened the public hearing.

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

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

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

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

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

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

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

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

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

- (a) *Survey of the Site*
- (b) *Right-of-Way Agreement*

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

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

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

There was no further business.

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

David Schoales, Clerk