

**MINUTES OF THE SHAFTSBURY SELECT BOARD WORKING SESSION  
DECEMBER 6, 2007  
COLE HALL  
SHAFTSBURY, VERMONT**

**Board Present: Wynn Metcalfe, Chairman, Bill Pennebaker, Lon McClintock, Cinda Morse, Karen Mellinger**

**Others Present: Mike Gleason (Bennington Banner), Chris Williams (Planning Commission), David Mance (DRB), Fritz Ludwig (DRB), Phylis Porio (Economic Development Committee), Art Whitman (Economic Development Committee), Tom Dailey, Trevor Mance, Mary Beth Maguire, Joe Maguire, Susan Swasta (Recording Secretary)**

1. Call Meeting to Order:

**Chairman Wynn Metcalfe called the meeting to order at 7:10 PM. He thanked members of the subcommittee who have been working on a compromise on the solid waste bylaw.**

**Chairman Metcalfe said that tonight's working session will be on bylaw sections 7.11.1 and 7.11.2, on lot size and setbacks. Each Committee or Board that wants to offer a proposal will be allowed time to do so. The working session will close at 8:00 PM.**

**The bylaw will go from here back to the Planning Commission, which will hold a public hearing before sending it back to the Select Board. The Select Board will hold a last public session before voting on the bylaw.**

**Lon McClintock stated that he is concerned that they will not end up with a specific proposal to send back to the Planning Commission. Chairman Metcalfe said that the best they can do is hope to agree in the end on a specific proposal. If that does not happen, the bylaw still goes to the Planning Commission.**

**Cinda Morse stated that the goal is to reach consensus on the two areas that are still unresolved. If they don't reach consensus they could hold a vote, but people could still go back to the Planning Commission with the same stuff.**

**Chairman Metcalfe noted that any vote taken tonight would be non-binding. Mr. McClintock reiterated that it is important to send something specific back to the Planning Commission.**

**Karen Mellinger stated that she is uncomfortable with the conflict of interest for one person at the table. Chairman Metcalfe replied that he can see two or three others who would also have conflicts of interest. He said that this is not about TAM, but about a solid waste bylaw. Ms. Mellinger repeated that she is very uncomfortable and that she thinks others would be too.**

**Art Whitman, Economic Development Committee (EDC) chairman, presented the EDC's proposal, which had been emailed to everyone. (Copies were now made for those who did not have them.) Mr. Whitman stated that the Planning Commission version specifies that lot size would increase incrementally with each additional 1000 tons of solid waste processed per year. The EDC proposal takes the same approach, but with bigger steps that end up with smaller lot size.**

**Mr. Whitman explained that the EDC proposes a minimum five acre lot size that would be good for up to 20,000 tons. For over 20,000 and up to 30,000 tons, eight acres would be required. After that, an additional three acres would be required for each 10,000 tons over 30,000. The proposal states that the Development Review Board (DRB) may require a larger lot size, or consider reductions in lot size.**

**Mr. Whitman next explained the EDC proposal on setbacks. A setback of 150 feet would be required from a public highway, and this would apply only to the main building, not the scale**

house or employee parking area. The minimum setback from an Industrial zone would be 50 feet, and from a Residential or Roadside Commercial zone setback would be 500 feet. The DRB would be able to increase or decrease setbacks by up to 30%.

David Mance, representing the DRB, stated that the DRB agrees with the EDC proposal on lot size. He noted that the Bennington transfer station processes 25,000 tons per year on less than six acres and does not seem to have problems. The DRB also recommends 150 foot setback from roads and 500 feet from Residential zones, but not from Roadside Commercial because the latter may permit industrial uses.

Mr. Mance stated that Chris Williams of the Planning Commission had attended last night's DRB meeting, and had explained the Commission's proposal to rezone the Town landfill, the two 1/4-acre parcels, and the little triangular piece owned by Dailey's.

Mr. McClintock next presented his proposal. He stated that he is comfortable with the EDC proposal on lot size with one exception. He would not permit the DRB to increase or decrease lot size because there is no limitation on possible reduction, and there are no criteria.

On setbacks, Mr. McClintock recommends 175 feet from public highways. He is open to discussion on that, and noted it is not substantially different from 150 feet.

Mr. McClintock stated that there needs to be a minimum isolation distance to protect Residential and Roadside Commercial zones. He thinks 900 feet is required to do that.

He recommended that the DRB be allowed a percentage of decrease if they can identify specific measures such as hours of operation, specific technologies, or limited kinds of waste. Mr. McClintock said that he feels strongly about criteria because even if the DRB can handle a situation, if it would go to an environmental judge that person would have unfettered discretion in the absence of criteria.

Chairman Metcalfe opened the discussion to comments and questions on the proposals from others at the table.

David Mance asked if Mr. McClintock or the Planning Commission had analyzed what a 900-foot setback does with regard to available Industrial land. He showed those at the table a map he had prepared using 900 feet from Residential areas.

Mr. Whitman stated that it would be impossible to use a five acre lot unless it were deep in the industrial zone. David Mance said that Industrial land surrounded by Residential would require 83 acres if a 900-foot setback is used.

Ms. Morse stated that the intent of 900-foot setbacks is to prevent a solid waste business. She said this is a legitimate point of view, whether you agree with it or not. Mr. McClintock disagreed that the intent is to prevent a business, saying that it is to provide protection from impacts.

Ms. Morse said that these two unresolved issues (lot size and setback) represent very significant differences in how the Town Plan is to be interpreted in terms of business growth. One thing that kept coming up in subcommittee meetings was that solid waste is being treated differently from other industrial uses. Some feel that all business in an Industrial zone should be treated the same whenever possible.

Ms. Morse said that it seems inappropriate that Peckham can grow as much as it wants without comment from anyone, but potentially its impacts are as large as a solid waste facility. She said that some of us see different treatment as inappropriate. People will continue to butt heads as long as this issue is unresolved.

Mr. Whitman said that they had done a lot of research on the Bennington transfer station. The

closest proximity to a Residential zone is 150 feet, and the value of those homes has increased to the same extent as other Bennington homes. Mr. Whitman said that one homeowner had contested his taxes because of proximity, and had lost.

Bill Pennebaker stated that one of the key differences between the Bennington and Sunderland transfer stations is that Bennington closes at night, and Sunderland does not. He said that if a transfer station does trucking extra area should be required over the minimum five acres. David Mance noted that Bennington does begin to send trucks out early in the morning, before opening to the public.

Ms. Morse stated that she finds David Mance's map distressing and believes 900 foot setbacks limit industrial uses. Ms. Mellinger said that thinks it's just fine to have only two transfer stations. She would like to see more diverse industry. She reminded people that Shaftsbury residents had presented petitions in the past and were alarmed at large-scale solid waste operations.

Ms. Mellinger stated that Peckham has brought a tremendous amount to this town. She said that TAM seems to be running just fine. 900 foot setbacks do not bother her at all.

Chairman Metcalfe opened the session to comments from the floor.

Representing TAM, Tom Daily said that he thinks the agenda of many people is to make sure this transfer station goes out of business or can't get any bigger. He said it's wrong to discuss more transfer stations coming in because there is no evidence that more are coming. Mr. Dailey said that nothing went wrong with the TAM permit process, and that it is a perfect example of us governing ourselves.

Mr. McClintock asked Mr. Dailey if he thinks there should be no criteria to guide the DRB in adjusting lot size or setbacks. Mr. Dailey replied that he thinks there was ample criteria in the process TAM went through without tying the hands of the DRB.

Mr. McClintock asked if he is confident a judge would be able to exercise sufficient discretion. Mr. Dailey replied that if it a judge has to rule it means they have failed to govern themselves.

Trevor Mance asked where they came up with 900 feet. Mr. Pennebaker and Mr. Williams said that is not from the Planning Commission, which feels that setbacks should be scaled. Mr. McClintock said he had come up with 900 feet using physical measurements from residences. He said he is not wedded to that number. They can use reduction criteria to come up with a minimum setback.

Trevor Mance asked how they had reached this disconnect with these numbers. He noted that Mr. Pennebaker and Mr. McClintock had visited TAM and witnessed the level of noise, odors, and activity. How did they get from there to 900 feet?

Mr. McClintock replied that with the Planning Commission's approach it would be 1300 feet for 30,000 tons. He had asked people how close they would want to be from a solid waste facility, and they had said nowhere near as close as in Bennington.

Trevor Mance said that he feels like it's hysteria building on hysteria building on hysteria with regards to solid waste. Mr. McClintock asked what numbers he thinks are fair. Mr. Mance stated that the process they went through worked well and should be kept.

Ms. Morse asked Mr. McClintock if he could live with the EDC proposal on lot size if the sentence about DRB discretion to decrease lot size were removed. He said that he could.

Mr. Pennebaker suggested removing the last two EDC sentences, dealing with both increase and decrease of lot size, leaving fixed lot size, clean and simple. He stated that the DRB has control over site plan, which includes implicit authority to require change in lot size.

David Mance noted that the DRB had done that with regard to that exact site, by denying a garage when the drainage could not be made to work. He agreed with Mr. Pennebaker that a site plan will prove if a lot's size is adequate.

Mr. McClintock noted that a site plan does not stand in isolation, but also includes performance standards. He concurred with Mr. Pennbaker's suggestion to remove the last two sentences on lot size.

Ms. Morse stated that they can tentatively all live with the first EDC sentence, and get rid of the last two. She said they are still far apart on setbacks, and asked what minimum and maximum with reductions should be.

Chairman Metcalfe said that if they go with 900 feet and give the DRB 40% either way, they are real close to agreement. Mr. Pennebaker said that he agrees 900 feet is unrealistically high because there is not that much space in the Industrial zone. He suggested 500 feet with no ability by the DRB to reduce setback.

David Mance said that a 500 foot setback still requires a huge lot; five acres would not work. He thinks there needs to be some flexibility and suggested 500 feet with 20% reduction possible. Mr. McClintock asked how 500 feet could be too much, and Mr. Mance replied that it would be if remediation is eliminated.

Ms. Morse asked if the Planning Commission had intended to ensure that existing transfer stations would not grow, and that no others can come in. Mr. Williams replied that that was not the intent. He said the Commission had taken a practical approach of how much space you would need if you were living next door.

Trevor Mance asked if they had ever mapped it out, like David Mance had done. Mr. Williams replied that they had, many times.

Ms. Morse noted that a 150 foot setback versus a 175 foot setback should be easy to resolve. Mr. McClintock agreed that it would. He also said that the 900 foot setback is not set in stone. His prime concern is standards for remediation.

There was discussion of these standards. The wording on remediation from the EDC document and from Mr. McClintock's proposal were read aloud. Mr. McClintock stated that the difference between the EDC language and his is that the steps for analysis are spelled out in his. He believes that not all DRB members have that capacity for analysis, so he suggests spelling them out.

Referring to Mr. McClintock's steps for analysis, Chairman Metcalfe (also a member of the DRB), said that this is not unlike what the DRB does now. He also noted that Mr. McClintock's language on remediation does not really say anything different from what the EDC says. It just uses more words.

Chairman Metcalfe asked Trevor Mance what Residential setback numbers he would use. Mr. Mance stated that he would use a 700 foot setback with a possible 50% reduction based on Mr. McClintock's criteria.

Mr. Pennebaker said that he could live with 600 feet with a 25% reduction. That would be 450 feet minimum, 750 feet as the upper limit. Chairman Metcalfe stated that he had no problem with that. Mr. Pennebaker confirmed that this setback would apply to Roadside Commercial as well as Residential.

Ms. Porio said she would prefer 600 feet with a 30% reduction, which would yield a 420 foot minimum. Ms. Mellinger said she would not go lower than 450 feet.

David Mance said that this setback would certainly give a larger potential for use of Industrial

property. Mr. Pennebaker said it would work for the Town landfill if the Harrington property were rezoned.

Chairman Metcalfe stated that the proposals are for 600 feet with 30% reduction and 600 feet with 25% reduction. Mr. McClintock brought the zoning maps to the table to look at.

Chairman Metcalfe asked for the wishes of the Boards and Committees. David Mance replied that he has great confidence in current DRB members' ability to study and understand site plans. He recommends 600 feet with 30% reduction.

Ms. Mellinger disagreed, stating that this is a long way from the original Planning Commission recommendation. Chairman Metcalfe asked Mr. Williams which he could live with. Mr. Williams replied that it's just rhetoric, not fact-based, and that people's opinions have hardened. He noted that the character of the DRB changes from year to year. Chairman Metcalfe said that if things start getting out of whack it can be brought back to the Select Board for correction.

Mr. McClintock said he could support 600 feet with 25% reduction. Chairman Metcalfe said that he could too. Mr. Williams said that either way TAM gets its expansion, which is really the issue, so what's the point. Chairman Metcalfe said they are trying to be theoretical.

Chairman Metcalfe asked if anyone will say no to 600 feet with 25% reduction. Mr. McClintock asked if this includes his criteria, and was told that it does. No one objected.

Mr. McClintock asked about 150 versus 175 feet from roads. Mr. Williams said they could live with 150 feet. Mr. Pennebaker said this should not include auxiliary buildings to house loaded trailers, which is an environmentally sound practice. All agreed that Mr. Pennebaker can come up with wording on this.

All agreed that the 600 foot setback would be from Roadside Commercial as well as Residential. Ms. Porio said the setbacks should apply to all industries.

Trevor Mance said he would like the word "area" to come out or be clarified. Mr. Williams said a compost pile would be objectionable. Tom Dailey asked if would include paper or cardboard piles.

Ms. Mellinger asked how far TAM is from the road, and Trevor Mance replied 175-180 feet. Ms. Mellinger said a 150 foot setback would allow TAM to be closer, and she is more comfortable with 175 feet. Mr. Pennebaker suggested using 175 feet with an escape clause for buildings for covered trailers. Mr. McClintock agreed.

Chairman Metcalfe thanked everyone for their efforts. He asked Mr. Williams to let them know when the public hearing will be. This will require a 15-day warning.

The meeting adjourned at 9:00 PM.

**Respectfully Submitted,**  
**Susan Swasta**