

**MINUTES OF THE SHAFTSBURY SELECT BOARD
AUGUST 6, 2007
COLE HALL
SHAFTSBURY, VERMONT**

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

Others Present: **Mike Gleason (Bennington Banner), Chris Williams (Planning Commission), Bob Carter (PC), Craig Bruder (PC), Carol Ann Peacock, Brent Peacock, Tom Dailey, Trevor Mance (TAM), Art Whitman (Economic Development Committee), Phylis Porio (DRB and EDC), Michael Bidy, Tony Zazzaro (Zoning Administrator), Aaron Chrostowsky (Town Administrator), Susan Swasta (Recording Secretary)**

1. Call Meeting to Order:

Chairman Wynn Metcalfe called the meeting to order at 7:04 PM. He asked if any Board member needed to recuse him/herself from any matter on the agenda. None did.

2. Minutes:

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July 30, 2007 Water Board minutes

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July 30, 2007 Select Board minutes

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It was decided to postpone approval of minutes because all Board members have not had a chance to read them.

3. Warrants:

The following warrants were presented for approval:

AP #5 -	\$ 11,719.92	General Warrant (includes sidewalk project,
paving)		
PR #5 -	\$ 9,472.82	Payroll Warrant
Warrant #5R -	\$ 1,135.00	Retirement Warrant

Cinda Morse made motion to pay warrants. Karen Mellinger seconded. Motion carried 5-0-0.

Warrant #A1 -	\$ 38,046.87	Water Dept. Warrant (Water Dept. payment to
North Bennington)		

Ms. Morse made motion to pay Water Department Warrant A1. Lon McClintock seconded. Motion carried 5-0-0.

4. Public Comments:

Shaftsbury resident Brent Peacock addressed the Board concerning the zoning of his property on Airport Road. Mr. Peacock stated that when the permit for his storage and rental facility had been approved in 1995, the area had been zoned Commercial-Industrial. He said this had been changed to Roadside Commercial in 2001-2002, and that this zoning limits potential clients. He pointed out that the adjoining Dailey property to the north is zoned Industrial.

Mr. Peacock said that he knows he has to work with the Planning Commission on a zoning change back to Commercial-Industrial. He would also like the Select Board and Economic Development Committee (EDC) to take the matter under consideration. Mr. Peacock stated that he would also

like to get a variance from the sign ordinance in order to add additional signage letting people know what businesses are located at the facility.

Chairman Metcalfe stated that if any property had been rezoned in 2001-2002, it would have been done by vote of the Town at a special meeting, not by action of a Board. He noted that any variances must be issued by the Development Review Board (DRB), subject to stringent criteria, and not by the Select Board.

Chairman Metcalfe said that any zoning changes are to be presented to the Planning Commission, which then comes to the Select Board. Mr. Peacock replied that he had talked to Planning, and just wanted to put the Select Board on alert.

Chairman Metcalfe reminded Shaftsbury residents of the August 25 Hoe-Down. Anyone who wants to place ads in the brochure that will go out with the Bennington Banner needs to get them in by tomorrow. Forty volunteers are still needed, and anyone interested can sign up at the Country Store or at Cole Hall.

5. Trustee of Public Funds Announcement:

Chairman Metcalfe stated that Aaron Chrostowsky has put an ad in the paper seeking a Trustee of Public Funds. Anyone interested in the position should contact Mr. Chrostowsky for more information.

6. Public Hearing on Zoning Bylaw:

Planning Commission Chairman Chris Williams came to the table to discuss the zoning bylaw. He stated that there had been three main purposes for the revision:

1. to comply with state law Section 24, Chapter 117. This land use planning law has changed the way we do business.
2. to reflect local changes of going from a Planning Commission/Zoning Board to a DRB.
3. to craft a permanent solid waste zoning bylaw to replace the interim solid waste bylaw which has been in effect

Ms. Williams said that the Planning Commission has always proceeded with the assumption that they are not the decision making body; the Select Board is. He described their approach as one of quantifying the general language of the interim bylaw, just as the rest of zoning is quantifiable, by making language more specific and less arbitrary.

Mr. Williams noted that the Planning Commission had held several public hearings and had received lots of useful comment and harsh criticism. They had tried to consider and incorporate this input, and changed the document accordingly.

Mr. Williams said that it all boils down to the question of what is the effect on TAM. All comment to the Planning Commission has been on the impact to TAM, which applied for a business expansion in the middle of the zoning revision process.

Mr. Williams stated that he had sent out a memo today detailing the impacts of the zoning bylaw on TAM. The two areas that are still controversial are lot size and setback. Mr. Williams noted that the EDC has been very critical of their approach, and that the Planning Commission considered substituting performance standards for area and distance requirements.

The problem is that enforcement of performance standards is difficult and technical, and might require investment in equipment and training. Setback and lot size seemed more practical. Mr. Williams acknowledged that this continues to be controversial.

Mr. Williams stated that the Planning Commission sees the next step in this process as looking at zoning map changes. They believe that the town landfill, zoned Residential, and possibly two small adjoining residential properties, should be rezoned. The Harrington pit, also zoned Residential, might also be a candidate for rezoning. Possibly Light Industrial zoning, or a tweaking of Commercial-Industrial zoning, could be looked at.

Art Whitman, chairman of the EDC, came to the table to give the Committee's position on the zoning bylaw. This was distributed to the Board and public in written form. He asked how close they are to the new Town plan that has to be voted on by townspeople. Mr. Whitman said that he thinks this may have to be voted on in March 2008, because to wait until 2009 may make it one day late.

Bill Pennebaker stated that he does not think the Town plan is invalidated if it expires that way, as long as it is updated as soon as possible. Chairman Metcalfe said that there had been a major problem last time. Mr. Chrostowsky will check on the timing.

Mr. Whitman said that the EDC suggests changes to the bylaw that they believe would conform better to Chapter 117. He referred to Section 6.4.2.2.4, which lists what can be done in an Industrial zone, and stated that Chapter 117 says the Town may not specifically rule out an activity. This section would seem to do so, and therefore violates Chapter 117.

In particular, Mr. Whitman said that it seems to rule out slaughterhouses. He has received email from a person who would like to have an operation slaughtering 20-40 animals a day. Mr. Whitman noted that there is a big need for this in Vermont, in order to get locally grown meats to restaurants.

Mr. Whitman cited Section 6.4.3, which sets a maximum building height of thirty feet in an Industrial zone, the same as in a Residential zone. He noted that industrial buildings are typically larger and require more height. To get a variance adds another bureaucratic step. The EDC recommends a height of at least forty feet.

Karen Mellinger noted that one section of the bylaw sets a height of thirty-five feet, and Mr. Williams said that this height is just for solid waste facilities, not all industrial facilities. Mr. Whitman stated that the EDC would like to see more uniform standards that apply to all industrial uses.

Mr. Whitman said that their biggest concerns with the bylaw are lot size and setback requirements. He noted that Section 7.11.1 would require a solid waste facility to change the location of its building or buy more land if tonnage increases. Mr. Whitman said they can't ask a business to tear down or move a million-dollar building or buy more scarce Industrially-zoned land.

He added that this requirement assumes there will be odor, and also assumes that moving a building back farther will solve an odor problem. Mr. Whitman noted that a transfer station is a through-put industry, and that stuff comes in and out quickly, which may not cause odor. In addition, this restriction requires a business to predict what its future volume will be, and that can't be predicted.

Mr. Whitman added that not all solid waste is stinky garbage, using the examples of cardboard or phone books, but setbacks are mandated regardless. Future technology may mitigate odor, so why not just go with a sniff test instead of setback. Mr. Whitman said that the EDC believes using valuable industrial land as a buffer is a mistake, and that it is not practical to link tonnage to lot size and setback.

Mr. Whitman next referred to Section 7.11.7, paragraph two, on Host Town Agreement. This section concerns the levying of fees by the Town for negative impacts on surrounding Residential zones. Mr. Whitman said that it is not the Town's responsibility to collect money and distribute it to

adjoining properties. That is a civil court matter.

Lon McClintock noted a recent Supreme Court case stating that if an activity causes diminished property value compensation may be required. Mr. Whitman replied that the problem is that this is specific to solid waste activities. It should apply to all industries.

There was discussion of the fact that Host Town Agreements are specific to solid waste activities. Ms. Mellinger stated that the passage Mr. Whitman read on Host Town Agreements comes directly from the Town Plan, which was voted on. Mr. Whitman replied that, wherever it comes from, the EDC does not think it is right.

Mr. Whitman next discussed setbacks. The EDC would like to increase required setbacks between industries and Village Commercial and Residential zones. They feel that large setbacks are not required between industrial properties.

Mr. Pennebaker stated that the Planning Commission agrees with them on this, but felt it was too complex to include in this bylaw draft. Mr. Whitman said that it would need to be changed before Town Meeting.

Mr. Whitman stated that the last EDC comment on the bylaw concerns the vague definition of solid waste. They would like the Planning Commission to include the state definition in the bylaw, not just refer to it.

Referring to Mr. Whitman's comments on Section 7.11.1 and 7.11.2, Ms. Mellinger asked why a business would have to tear a building down -- couldn't they seek a variance as nonconforming? EDC and DRB member Phylis Porio replied that this would be the case only if the business is preexisting nonconforming.

She said that while this does apply to TAM, the EDC is focusing on the future, and the next company that comes in would have to comply. Mr. Pennebaker stated that they do have to make sure residential areas are not adversely affected -- it's necessary to look at both sides.

Ms. Porio came to the table to represent the position of the DRB on the zoning bylaw. She stated that the DRB had not addressed the bylaw at their last meeting, and would like a two-week continuance so that they may consider it at the next meeting.

Michael Bidy commented that clustering of industries, as has been done in Dorset, alleviates problems affecting residential areas. He noted that in Shaftsbury Industrial zones are sprawled along Airport Road. That might be considered in any rezoning.

Tom Dailey addressed the Board on behalf of TAM. He thanked the Planning Commission for their time and effort. Mr. Dailey noted that, because TAM is the only solid waste facility in town, this bylaw is about TAM. He stated that TAM has just gone through a 3-4 year permitting process and is now operating under the terms of the permit. He asked what is wrong with TAM that these new rules would correct, stating that the permitting process worked, and there are no deficiencies.

Mr. Dailey said that the numbers used in this bylaw are too arbitrary, and that if it passes TAM will be nonconforming on the required 250-foot setback. He conceded that TAM could apply for a variance, but said that this is "shaking the dice," and that the stability of the business cannot be assured. TAM is now at 15,000 tons, and to go to 20,000 tons would require 900-foot setback, which might be halved to 450 feet with mitigation.

Mr. Dailey said that these are huge distances for a magnitude that is not there. He said that 20,000 tons is a big number, but amounts to just four tractor trailers a day, one every two hours. Mr. McClintock asked Mr. Dailey if he could suggest a setback number, and he replied that he could not, but would say that what is there is sufficient.

Mr. Dailey stated that the solid waste zoning bylaw looks like a permit, and adds conditions to the

TAM permit. Therefore the Planning Commission takes authority away from the DRB and leaves the DRB no discretion.

Mr. Dailey recalled that some years back there had been rumors of a constriction and demolition dump to be put in by Dailey's. He noted that interim bylaw 9.1 had put a stop to it, and that under 9.1 TAM had been permitted and built. He advocated substituting 9.1 for 7.11.

Chairman Metcalfe stated that the next step will be for the Select Board to hold a working session to discuss the bylaw. Then the Board and Committee chairmen will be invited back for discussion, and then a final decision will be made. Tom Dailey asked if he may be invited, and was told that he will be included. Trevor Mance asked if the working session will be a public meeting. Chairman Metcalfe replied that it will, but that there will be no public comments until the end.

Art Whitman asked if there will be a line-item veto or voting on the bylaw as one unit. Chairman Metcalfe replied that consensus seems to work the best, and that probably someone will be unhappy no matter what.

Addressing Mr. Dailey, Mr. McClintock asked if there is not a danger of too much DRB discretion, which Mr. Dailey has stated that he supports. If rules are specific, an applicant knows if a permit will be approved; with DRB discretion, the applicant does not know. Mr. Dailey replied that there is a danger of too much discretion, but that the DRB can decide on conditions now, so it would be no more discretion than they have now.

Mr. McClintock noted that increased tonnage may not change odor, but may change number and size of trucks. Mr. Dailey replied that this was covered under road conditions and hours of operation. There is a danger in trying to include all details, and the DRB should continue to have discretion.

Mr. Whitman noted that Dailey's precast operation expansion had increased truck traffic, but the company had agreed to cross its own property to Route 7. This solution could not have been created if the number of trucks had been set. Things can be worked out in the absence of definitive rules.

Mr. McClintock noted that in Section 3.5.1 the Planning Commission requires that the bylaw be in accordance with the Town Plan, but that the Plan is broad-brush and zoning is meant to be specific. Doesn't this create ambiguity as to which has control?

Mr. Williams replied that Act 250 stresses this relationship. The Town Plan has the force of law and zoning should not conflict with it. He noted that this does create ambiguity and they would consider scratching it. Mr. Pennebaker noted that this had been added by the Bennington County Regional Commission (BCRC) to bring the bylaw into compliance with Chapter 117.

Shaftsbury resident Lucy Robinson said that setbacks or fences should be required for solid waste facilities; that they should not be seen from the road. Mr. Whitman asked why visual requirements should apply only to solid waste facilities. He feels they should apply to all industries.

Mr. Biddy stated that it wouldn't be bad to require performance standards for trash facilities. Technical remediation may be in order if setbacks don't work. Mr. Biddy also recommended looking at transportation infrastructure, especially the unsafe corner at Airport Road.

Chairman Metcalfe closed the zoning bylaw hearing.

7. Traffic Study:

Mr. Chrostowsky discussed possible use of Act 200 funds for a traffic study. He noted that the \$10,000 in BCRC funds are only available until the end of September. Ms. Mellinger stated that the Act 200 money might be claimed by the EDC.

Ms. Morse said that even if these funds are available, more money will be needed. She thinks they need to think bigger and longer term. Chairman Metcalfe agreed that if they are to do a traffic study, they need to do their homework and be specific about what they want. He said the state will not put in a light at the four corners, and a traffic study would not change this.

Ms. Mellinger noted that the BCRC money may not be available in the future. Board members agreed to discuss the traffic study at the next meeting and decide if they want to commit.

8. Salt:

Mr. Chrostowsky stated that the Town needs to lock in a salt supplier. Barrett bid \$53.85 per ton, and American Rock Salt (last year's supplier) bid \$50.79 per ton. Last year the Town used 347 tons at a cost of \$17,295.

Ms. Morse made motion to award the salt contract to American Rock Salt for \$50.79 per ton. Mr. Pennebaker seconded. Motion carried 5-0-0.

9. Roadside Trash:

Chairman Metcalfe stated that if a resident has a complaint about roadside trash, they should go to the state police barracks. The police may check on it, but it is not a high priority. The game warden may also be willing to look at roadside dumping. Town law-enforcement officers may also deal with roadside dumping, but they are reluctant to do so because the process is time-consuming and usually unsuccessful.

Ms. Morse stated that if the Town is going to have an ordinance, it should be enforced. Otherwise, get rid of the enforcement part of it. There was a discussion of how the trash ordinance might be better enforced. Board members decided that it may be possible to use the constables for enforcement.

10. Town Administrator Report:

Mr. Chrostowsky announced that there will be an Act 250 hearing on the Dailey's expansion on August 23 at 9:00 AM. This will be discussed at next week's meeting.

Mr. Chrostowsky announced that there will be a water quality basin plan meeting at the community college in Bennington on August 7 at 6:30 PM.

Mr. Chrostowsky reported that the TAM quarterly report has been received.

11. Other Business:

Mr. Pennebaker reported that he and Mr. Chrostowsky met with Buzz Surwillo and showed him the modeling for the methane remediation plan. They would like to actively pump the vent in the landfill cap. Mr. Surwillo will talk to Heindel and Noyes to see if they will hook pumps up to the vent instead of to wells. Mr. Pennebaker said that he had indicated that the Town would probably be willing to pay the Heindel and Noyes bill if they agree to this swap.

Ms. Mellinger reported that she had met with Mr. Chrostowsky and Joe Herman on the state-approved planning grant. They will present information to the Board, which must execute the grant, on August 20. Chairman Metcalfe said that the public should be made aware of this in advance. A letter to the editor will be submitted.

Ms. Morse asked if an Ancient Roads meeting has been set up, and Mr. Chrostowsky replied that he hopes to schedule one for the end of the month.

Mr. McClintock reported that he had met with DRB chairman Jim Carter on the zoning administrator job description. Mr. Carter wants to get materials from the Vermont League of Cities and Towns, so they may not be ready by the due date, but will be ready the following week.

Ms. Mellinger asked Chairman Metcalfe if he has heard from the Road Commissioner concerning the poor condition of Lake Shaftsbury Road. Chairman Metcalfe replied that he has not.

Meeting adjourned at 9:00 PM.

Respectfully Submitted,

Susan Swasta