

1 **BENNINGTON SELECT BOARD AND PLANNING COMMISSION JOINT MEETING**

2 **BENNINGTON FIRE FACILITY**

3 **130 RIVER STREET**

4 **BENNINGTON, VERMONT 05201**

5 **JANUARY 8, 2018**

6 **MINUTES**

7 **SELECT BOARD MEMBERS PRESENT:** Thomas Jacobs-Chair; Donald Campbell-Vice Chair; Jim Carroll; Carson
8 Thurber; Jeannie Jenkins; Chad Gordon and Jeanne Conner.

9 **SELECT BOARD MEMBERS ABSENT:** None.

10 **ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator and Assistant Town Manager;
11 Jim Sullivan-BCRC; Lynn Green-Grow Bennington Initiative; Peter Lawrence; Laura Block; Dianna Leazer; Bob
12 Cabelia; Joe Schoenig; Joey Kulkin; Sam Restino; Robert Ebert; Daniel Malmborg; 20 citizens; CAT-TV; Jim
13 Therrien-Bennington Banner and Nancy H. Lively-Secretary.

14 At 6:00 pm, Chair Thomas Jacobs called the meeting to order.

15 **1. PLEDGE OF ALLEGIANCE**

16 Recited by all present.

17 **2. CONSENT AGENDA**

18 **A. MINUTES OF DECEMBER 19, 2017 AND DECEMBER 27, 2017**

19 **B. WARRANTS**

20 *Donald Campbell moved and Jim Carroll seconded to approve the Consent Agenda as submitted. The*
21 *motion carried unanimously.*

22 **3. PUBLIC HEARING, BENNINGTON TOWN PLAN AMENDMENT, ENERGY ELEMENT**

23 Mr. Monks explained that the Bennington Town Plan Energy Element, approved by the Planning
24 Commission on November 6, 2017 was in response to Act 174. The town's goals are:

- 25 • Reducing our dependence on non-renewable and imported energy sources;
- 26 • Promoting energy conservation and efficiency in residential, commercial, and industrial
27 structures and operations;
- 28 • Reducing energy consumption in all taxpayer funded buildings and operations; and
- 29 • Developing sustainable, local renewable energy resources.

30 These goals are consistent with Vermont's energy goals and policies, including:

- 31 ➤ Obtaining 90% of energy for all uses from renewable sources by 2050;
- 32 ➤ Reducing greenhouse gas emissions to 50% below 1990 levels by 2028 and 75% by 2050;
- 33 ➤ Relying on in-state renewable energy sources to supply 25% of energy use by 2025;
- 34 ➤ Improving the energy efficiency of 25% of homes by 2020;

- 35 ➤ Meeting the Vermont Renewable Energy Standard through renewable generation and energy
36 transformation.

37 The first section of the Plan consists of statistics in all areas - residential, municipal, commercial and
38 industrial - while the second section offers suggestions on renewable resources to achieve our goals, such as
39 biomass, hydro and solar. "This is a comprehensive energy plan."

40 Mr. Sullivan added that the BCRC had developed a regional energy plan that was determined by the
41 State to be compliant with the Act 174 standards which allows them to approach individual towns.
42 Bennington was the first town to submit a Town Plan Amendment to the BCRC for approval, however, other
43 towns in the region, as well as, throughout the State will be doing so in the future. It is important to
44 remember that this is part of the Town Plan and not a stand-alone document.

45 *Board questions/comments:*

46 Ms. Conner: The table on Page 10 doesn't include the recent installation of new windows, and Mr.
47 Sullivan agreed. The text, however, does indicate the savings from those upgrades.

48 Mr. Carroll: There has been a substantial decrease in propane use at the Recreation Center and will this
49 follow in other facilities, and Mr. Hurd answered that the focus had been the Rec Center and the Waste Water
50 Treatment facility because they were the highest energy users but energy improvements have also been done
51 at the Senior Center with insulation and window upgrades as much as is allowed in our historic buildings.

52 Mr. Carroll: Reiterated his request to get cost numbers on geothermal for some of our buildings. Mr.
53 Sullivan stated that the capital cost of geothermal is very high and is most competitive on new construction
54 and well insulated buildings.

55 Mr. Campbell: Stated the Board had received a letter today from Thomas M. Melone, President and
56 Senior General Counsel for Allco Renewable Energy Limited that criticizes many aspects of the proposed
57 energy amendment with one comment being that "the energy amendment and siting map are a product of
58 unconstitutional discrimination". Mr. Campbell asked for an explanation of their process and Mr. Monks
59 noted that the State had identified the following environmental constraints that are not even able to be
60 considered:

- 61 • Class 1 and 2 wetlands, vernal pools, and hydric soils;
- 62 • Mapped river corridors and FEMA-defined floodways;
- 63 • Natural communities and rare, threatened, and endangered species;
- 64 • Federal wilderness areas;
- 65 • "Primary" and "Statewide" significant agricultural soils;
- 66 • FEMA-defined special flood hazard areas;
- 67 • Lands protected for conservation purposes;
- 68 • Deer wintering areas; and
- 69 • State-identified high priority "Conservation Design Forest Blocks".

70 In addition, we then applied our local criteria, such as, to protect historical areas and not visually appealing
71 areas that brought us to 348 acres of preferred sites.

72 Mr. Sullivan added that Act 174 requires documentation to backup any local restraints that have been
73 applied to properties and Bennington would be required to contribute 25 megawatts of generated capacity to
74 the region by 2050. The total capacity in the Plan exceeds 100 megawatts.

75 The letter from Allco will be made available to the public within the next two weeks.

76 Ms. Jenkins: Thanked everyone for their work and is pleased that Bennington is the first with an Energy
77 Plan.

78 Mr. Gordon: Thanked everyone for the report.

79 Mr. Jacobs: Noted that a significant number of the sites are in industrial zones and asked what
80 percentage that is. Mr. Monks agreed that it was a substantial number but did not know the exact number.

81 Mr. Jacobs: Is 40% of the preferred sites controlled by the Town, and Mr. Monks answered that one of
82 the sites is the landfill with substantial acreage but thought the 40% included public and state owned lands, as
83 well.

84 *Public questions/comments:*

85 Laura Block: Supports the Plan and encouraged the Board to adopt it. *(Applause from the public.)*

86 Dianna Leazer: Thanked everyone for their work on the project.

87 Bob Cabelia: Stated that he has a solar farm on his 4 acres of steep property which would normally
88 take up 5 acres. He also has other steep property that he feels should be considered for solar panels.
89 Apparently it has not been considered because he is located in a "rural conservation" area, but the property
90 he is offering is not able to be farmed and is not visible. Mr. Monks noted that the Planning Commission
91 determined that rural conservation areas were not preferred sites for large scale solar but the Board may
92 reverse that if they wish.

93 Joe Schoenig: Feels that we could maximize the productivity of the solar panels if they were placed at a
94 steeper angle, and Mr. Sullivan agreed that this was a good point but was not addressed, per se, within the
95 Plan.

96 *At 6:47 pm, the Public Hearing, Bennington Town Plan Amendment, Energy Element was closed.*

97 -----
98 Mr. Hurd read a statement to the Board and community concerning the construction of the salt shed
99 this fall. He apologized to everyone for his decision to go forward with this construction prior to receiving the
100 wetland's permit to do so. The building is entirely on what was a paved parking lot and no wetlands were to
101 be disturbed. Conversations with the wetlands division began in May 2017 and in September 2017 we were
102 concerned with the lengthy permit process and believed that it would be coming imminently. We had
103 competitive bids for the work and contractors were making purchases. We had a tight timeline to complete
104 the project hoping to use it this winter, and had we postponed the project, we would have lost the savings of
105 \$60,000-\$75,000 on the bids that we had. The building actually provides an additional buffer to the wetlands.
106 No salt or sand will be put in the shed until all conditions of the recently issued permit have been satisfied.
107 The wetlands permit was issued on January 3, 2018.

108 Mr. Jacobs stated that the Board was “disappointed” that they were unaware of this construction
109 taking place. “Dice were rolled that shouldn’t have been rolled” and we should have waited until we had
110 permits in hand. The Board will be addressing this issue with Mr. Hurd in Executive Session.

111 Mr. Carroll asked why Mr. Hurd didn’t go to the Governor, and Mr. Hurd answered that he will stand
112 by his statement.

113 **4. CITIZENS COMMENTS**

114 Joey Kulkin congratulated Mr. Campbell and Mr. Carroll for running for re-election and asked about the
115 budget and TIF bond. Mr. Jacobs answered that the Board is still having budget meetings and it is premature
116 to discuss either at this time. Mr. Campbell added that it isn’t appropriate to campaign during Citizens
117 Comments.

118 -----
119 Sam Restino asked if a sidewalk could be built between Molly Stark and Applegate, and Mr. Monks
120 answered that all of the paperwork is in process to go from Molly Stark to Applegate and Willow Brook with
121 the hope for completion to be in time for the next school year.

122 Mr. Restino also encouraged everyone to adopt a fire hydrant to keep them clear of snow and visible
123 for the fire department.

124 **5. GROW BENNINGTON INITIATIVE**

125 Ms. Green shared the following highlights on the Grow Bennington Initiative:

- 126 • Everyone benefits and can contribute to a thriving Downtown.
- 127 • The Internet and Amazon.com have presented different challenges to downtowns everywhere.
- 128 • We need to attract visitors and millennials and provide a place to walk with our families.
- 129 • The Initiative began about a year ago with ideas from business owners that were together for a
130 different reason.
- 131 • Research has shown that out of 20,000 cities and towns in the country, all but 1,000 have
132 populations under 40,000.
- 133 • We have started with the following changes:
 - 134 ➤ Create a Sense of Arrival with pole banners.
 - 135 ➤ Increase our footprint with gas lamps over time.
 - 136 ➤ Put winter string lighting on 30-35 trees downtown and up lighting in the summer. We
137 already have some of the winter lights because Home Depot arranged for the purchase
138 and Enterprise volunteered to drive to Philadelphia to get them.
 - 139 ➤ A presence of perpendicular signs on as many buildings as possible with work to be
140 done to be sure they conform to our sign ordinances.
 - 141 ➤ Extend building thresholds and streetscapes with artful displays and façade planters.
 - 142 ➤ Improving and expanding our wayfinding signs and shop window placards.
 - 143 ➤ Build a small downtown playground.
 - 144 ➤ All ideas are welcome.
- 145 • Our fundraising goal is \$101,000 and the Downtown Alliance is our fiduciary agent so we are a
146 501c3. There is a page on the Downtown Alliance website and donations can be made online.

147 Several local businesses and individuals have already contributed with cash and/or in kind
148 services. As of today, we're already at \$25,000.

149 Mr. Jacobs noted Ms. Green's enthusiasm and will keep that in mind during budget discussions.

150 Mr. Gordon offered the volunteer help of the football players and his January Select Board check of
151 ~\$100 as a donation with the challenge to the community that, if we have \$1,000 of donations by the end of
152 January, he would also donate his February check.

153 Ms. Conner will up the challenge and donate her January and February Board checks, as well.

154 **6. CHARTER COMMITTEE REPORT DISCUSSION - SECTION 1. POWERS OF THE TOWN, SECTION 2. OFFICERS,**
155 **SECTION 3. SELECT BOARD**

156 Mr. Jacobs explained the Bylaw change process in that the Charter Review Committee has presented
157 their change recommendations to the Select Board; the Select Board will review those changes and tweak or
158 suggest other changes and decide what is to be presented to the voters for their vote; and what is accepted by
159 the voters then goes to the Legislature for their approval.

- 160 ✓ *The Preamble* - recommendation to add "and to improve the operation of Town government" because
161 this was specifically mentioned as the charge of the Committee in the §806. Charter Review
162 Committee.
- 163 ✓ *Subchapter 1 - Section 102 - Additional Town Power* - was combined with Section 302. Additional
164 Powers of the Select Board. This recommendation was approved by the Committee's Charter Counsel,
165 Jim Barlow.
- 166 ✓ *Subchapter 1 - Section 104(b) - Recall* - remove the requirement of "within 15 calendar days of its issue"
167 because it was an unclear deadline.
- 168 ✓ *Subchapter 2 - Section 202(a) - Appointive Officers* - remove the requirement of a Constable because
169 we haven't had a Constable in years and the State now requires that a Constable be certified as a law
170 enforcement officer, and we have a Police Department so certified.
- 171 ✓ *Subchapter 3 - Section 302(2) - Additional powers of the Select Board to adopt ordinances* -
172 recommendation to incorporate the waste removal powers enumerated in Section 102 and the
173 statutory definition of "solid waste" to clarify the power of the town.
- 174 ✓ *Subchapter 3 - Section 302(5) - Additional powers of the Select Board to adopt ordinances* -
175 recommendation that powers enumerated in Section 102 relating to construction be incorporated into
176 Section 302 and that limitations on this power not be limited to mere hazard or danger.
- 177 ✓ *Subchapter 3 - Section 302(9) - Additional powers of the Select Board to adopt ordinances* -
178 recommendation that the Select Board have the power to regulate intrusive technologies, including
179 drones that may intrude upon the interests of its citizens to provide the right balance between
180 recreational interests, commercial opportunity, law enforcement and the protection of fundamental
181 rights of citizens.
- 182 ✓ *Subchapter 3 Section 303(1) Further powers of the Select Board* - looking to the future, when there may
183 be a need to pay certain members of the fire department, the Committee wanted to write language
184 into the Charter that would allow the Select Board to pay volunteers, if necessary, and at the same
185 time keep the autonomy of the Fire Department. Mr. Ebert added that it has been his experience that
186 volunteer fire departments may reach the point when they need to pay people such as drivers to be at
187 the station 24/7. This language is the result of multiple meetings between the Committee and the Fire

188 Department including its members. "It does not require any change." It just gives the Select Board
189 and Fire Department the tool to come to the table if change is needed.

- 190 ✓ *Subchapter 3 - Section 304(a) - Organization of Select Board* - recommendation to designate the Chair
191 of the Select Board as the head of Town government for ceremonial purposes as is done in a number of
192 Vermont towns. The intent is to set the expectation that the Chair will provide leadership and vision
193 for the town. The Committee had much discussion on the Strong Mayor, Weak (ceremonial) Mayor,
194 and Town Manager/Select Board forms of government. No one was in favor of the Strong Mayor so
195 we tried to adapt the public comments of more leadership and vision to our existing Town
196 Manager/Select Board form of government. The accountability of the Town Manager to the Select
197 Board is much better representation that assuming the person that is elected Mayor is qualified for the
198 job, or that the Town even has a stable of people that are.

199 There was discussion that "(a) The chair shall be the head of Town government for all ceremonial
200 purposes." put too much responsibility on the Chair, whereas, it doesn't say that the Chair has to attend all
201 events. As "the head of Town government" he/she could designate another Board member to actually attend
202 some events.

- 203 ✓ *Subchapter 3 - Section 304(g) - Organization of Select Board* - recommendation that the Select Board
204 create "Select Board Rules of Procedure and Conduct" and review annually.
- 205 ✓ *Subchapter 3 - Section 304(h) - Organization of Select Board* - recommendation that a Select Board
206 member who is absent from four consecutive warned Select Board meetings or 50% or more of
207 warned Select Board meetings in any 6-month period be removed from the Select Board. It is in the
208 best interest of the Town that all Select Board members be present, and this leaves it objective to the
209 Board that needs to enforce this Section. It is in the State statute that, if you phone in or skype, you
210 are considered present at a meeting.

211 The Charter Review Committee Report is on the Town's website and Committee Co-Chairs Sean-Marie
212 Oller and Robert Plunkett will be taped on CAT-TV on Wednesday, January 10, 2018, to go over the report and
213 explain the decision process for the changes.

214 **7. MANAGER'S REPORT**

215 The 2018 Certificate of Highway Mileage was circulated for signatures. No additional mileage was
216 added for this year.

217 Mr. Hurd explained that when there is a petition that could change the Charter, such as the Mayor
218 Form of Government petition, there needs to be two public hearings. The first one cannot be closer than 30
219 days before the vote, and the second one, must be within 10 days of the first one. Rob Woolmington has
220 drafted the notice for the public hearings for the Board's signatures.

221 ***Donald Campbell moved and Jeannie Jenkins seconded to hold Public Hearings for the Mayor Form of***
222 ***Government Petition on January 29, 2018 at 6:00pm and February 5, 2018 at 6:00pm, respectively. The***
223 ***motion carried unanimously.***

224 **8. OTHER BUSINESS**

225 Ms. Conner asked if the Board needed to take any action on the Bennington Housing Authority issue,
226 and Mr. Hurd said not at this time.

228 9. EXECUTIVE SESSION

229 A. PERSONNEL

230 *At 8:43 pm, Donald Campbell moved and Carson Thurber seconded finding that an Executive Session*
231 *be held on Personnel as premature public knowledge would place a person involved in the subject matter at*
232 *a substantial disadvantage. The motion carried unanimously.*

233

234

235

236 Respectfully submitted,

237 Nancy H. Lively

238 Secretary