

**BENNINGTON SELECT BOARD MEETING  
BENNINGTON FIRE FACILITY  
130 RIVER STREET  
BENNINGTON, VERMONT 05201**

***MONDAY, DECEMBER 08, 2014***

**MINUTES**

**BOARD MEMBERS PRESENT:** Greg Van Houten- Chair; Sharyn Brush-Vice Chair; Tom Jacobs; Michael Keane; John McFadden; Justin Corcoran

*Absent: Jim Carroll*

**ALSO PRESENT:** Stuart Hurd, Town Manager; Dan Monks, Zoning Administrator & Assistant Town Manager; Mike Harrington, Economic & Community Development Director; Patrick McArdle – Rutland Herald; Keith Witcomb - Bennington Banner; Linda E. Bermudez – Secretary; (25) Citizens.

At 6:00 P.M., **Greg Van Houten** called the meeting to order.

**1. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Greg Van Houten, recited by all.

*At this time Greg Van Houten introduced each member of the Board, the Town Manager and the Recording Secretary.*

**2. MINUTES – NOVEMBER 24, 2014**

There were no corrections for the minutes of November 24, 2014

**Motion:** **Sharyn Brush motioned and Michael Keane seconded to approve the Minutes of November 24, 2014 as submitted. Motion passed unanimously (Jim Carroll absent)**

**3. WARRANTS**

The next warrants of FY'15 were reviewed. Tom Jacobs questioned a payment for Great Escape tickets. The Manager stated this was an event the Town held every year through the Recreation Center. The Town purchases/reserves discounted tickets and resells them to the public at no additional charge. This is a complete wash for the Town; it is simply a benefit we offer. At the end of the season the Town then only pays for those tickets sold.

There were no further questions. Warrants were then circulated for signatures.

#### **4. CITIZENS**

Dr. Richard Dundas stepped forward. He is a member of the Bennington Oral Health Coalition and volunteers at the Bennington Free Clinic. Dr. Dundas would like to revisit the idea of fluoridating Bennington's water system. He feels the oral health of Bennington is deplorable and does not have to be. It is one of the biggest issues seen at the Free Clinic. Fluoridation has come before the Select Board several times in the past. It is important this issue be revisited.

Dr. Dundas asked the Board & Town Officials for their support to open this up for discussion again. He would like to have this be put on the ballot for a public vote in March 2015. Discussion continued with the history of Fluoride and when it was presented in Bennington.

Greg Van Houten discussed how when this was last presented to Bennington 12 years ago he was against it. With further research and new information he is beginning to feel differently. Mr. Van Houten asked if Dr. Dundas had a presentation prepared. Dr. Dundas stated he was ready and would like to be placed on the December 22<sup>nd</sup>, 2014 agenda. Mr. Van Houten agreed.

Chris Wright then stepped forward. He had many questions regarding the Barney Road Solar Project including the possibility of moving the water main. The Town Manager noted that the waterline would not be removed or moved, simply re-routed. Encore Development has agreed to pay the expenses to extend the water main to the East side of the property. This actually makes the waterline more accessible for the Town of Bennington when necessary. Mr. Wright stated he felt this made no sense since it would bring it closer to the river that took out that line in Hurricane Irene. Dan Monks noted that the area the waterline will be is out of the high-risk erosion zone. There should be no danger.

Mr. Wright continued his complaints noting that this project keeps changing and modifying. He feels it does not comply with Zoning Laws or the Town Plan. Mr. Wright also had many concerns regarding the decommissioning of the units and their cost.

Peter Lawrence stepped forward and identified himself as a resident of Apple Hill Association. They too are having a solar farm installed nearby. Their association had many questions and concerns. The Developer was contacted and met with the association several times. At this time most of their concerns will be met.

Mr. Lawrence feels there is limited opportunity for the public to participate in the development and approval process of these farms. He urged the Select Board to look closer at these farms within our town. His association has additional concerns of increased noise and wind due to forestry removal, a decommissioning plan and what remains thereafter.

Mary Morrissey asked if after Encore's presentation if the public would be allowed to ask questions. Greg Van Houten stated that this was not set up as a public hearing. This was to be an informational presentation only. However they will now allow for a short question and answer period after the Select Board finishes their questions.

#### **5. ENCORE REDEVELOPMENT – BARNEY ROAD SOLAR FARM CONTRACT**

Dan Monks reviewed the project briefly. He noted that the contract was approved approximately one year ago. There have been a few minor changes. He then introduced Derek Moretz of Encore.

Mr. Moretz noted there had been substantial progress in this project. Engineering and design are nearly complete. They expect there to be not only local benefits but also regional as well.

There have been some recent regulatory changes that would have an economic impact on the Town under the original contract. Therefore Encore has proposed to change their contract to eliminate that impact. One of those changes would require extending the original contract from 20 years to 25 years. The equipment is warranted for 25 years and is very durable.

Mr. Moretz continued by noting the current waterline bisects the site. They have been working with the Town regarding the 50-foot setback requirements. Access is currently difficult for the Town's crews as the waterline is at an approximate depth of 15 feet. The area has many feet of debris and fills on top. Encore will reroute the waterline to clear area and greater accessibility for the Water Department's maintenance. This location will also avoid conflict with the project.

Discussion continued with construction costs and "soft costs" for the project (designs, engineering etc). There is no grant money available for this project. Decommissioning costs were then approached. Mr. Moretz noted there are no actual funds set aside in the decommissioning plan. The money in recycling of the steel on sight alone justifies the removal cost.

Further discussion continued in the wording of the rerouting of the waterline. Encore presented covering the cost "up to" a particular amount. Several Board members were not comfortable with an "up to" clause. Although a quote had been made for just under that amount, Board members are not comfortable with an "up to" amount. Dan Monks noted that Terrance A. Morse, Water Resources Superintendent and the Town's Engineers both reviewed the quote and were comfortable with the amount.

Sharyn Brush asked to clarify the waterline portion. The Manager stated they would not be removing the waterline. There would be a tap into the water main and reroute the water. The original/existing line will be isolated yet intact. It may be accessed and re-used at any time.

Michael Keane asked Mr. Moretz to give an overview of the company. He reviewed their history, experience in such projects including solar farm projects in Burlington, Essex and Randolph. Mr. Moretz explained the changeover in name from Infinity to Sun Edison and noted it was not through bankruptcy.

Several Select Board members had more questions about the rerouting of the waterline. Dan Monks noted that if we are able to "piggy-back" with the SVC Waterline project as a change order this can save a considerable amount of money. It was asked what kind of timeframe the work would require. Dan Monks noted it should only be a couple of months beginning to end including close out paperwork.

Mary Morrissey stepped forward with a list of questions for the Developer. She asked that the answers be made available for review by the public at the Town Office. He agreed.

Chris Wright again stepped forward with questions and concerns. He noted that previously the public had access to the river for swimming, fishing etc. It has now been blocked off. The Manager noted that access is still granted and available for pedestrians. The Town had placed boulders only to prevent vehicular access.

Marilyn Weglarz stepped forward stating she was the manager of the White Birches Mobile Home Park. She too had concerns regarding access to the river. It was again explained the river is open to pedestrian access. Ms. Weglarz then stated that she wants to keep Bennington looking like Bennington. This farm will look ugly.

Robert Ebert asked if the scrap metal value was being held as collateral for the decommission plan or if there was actual money in a fund. Mr. Moretz again stated there was no

actual money in a fund, however they are required by law to have a decommissioning plan in place.

John McFadden asked about maintenance costs. Mr. Moretz noted there is little maintenance required. The land will be cut however, of shrubbery and greenery approximately every two years to avoid overgrowth.

Diana Lezer stepped forward and asked if this process took a couple of years why don't more town people know about it. Greg Van Houten stated that this is a problem with many issues in town. If the public does not read the paper, watch local CAT-TV or listen to the local radio station, short of sending an individual letter to every resident about every subject they will not get informed. The Town struggles with people not getting informed about a variety of different things.

Mr. Van Houten then asked what the next step was. Dan Monks noted that the Board would decide at the next meeting if they would like officials to continue to negotiate the contract. Mr. Van Houten then stated that the Select Board would like to hear any comments from the public. They may mail a letter to the Town Offices or send an e-mail to [selectboard@benningtonvt.org](mailto:selectboard@benningtonvt.org) with their comments.

## **6. FY '14 AUDIT PRESENTATION – LOVE, CODY & COMPANY**

Steve Love stepped forward to present. His organization feels the independent auditors all complied with the regulations in place. He described the Town's funds as divided between Governmental Activities and Business Activities. Business Activities can be described as the Water, Sewer and Parking funds. FY' 14 had an increase in assets which translates to a "good year".

As a whole the Town's activities were \$33 million dollars. Liabilities as a whole were approximately \$11 million dollars. This leaves the Town with a net equity of approximately \$22 million dollars.

Mr. Love noted that the General Fund has been operating under a deficit of approximately \$2 million dollars since Hurricane Irene. There is still a large amount however being negotiated for reimbursement by FEMA.

In review of the Town's Budget from proposed amounts and actual spending there is no significant variance.

## **7. JOINT MUNICIPAL SURVEY COMMITTEE RESOLUTION**

The Manager noted that the resolution was presented to the Board for review at the last meeting. It is required if we wanted to move forward in exploring an alliance. Every Town interested in forming the alliance will sign the same resolution. With the new regulations coming forward regarding waste management there would only be two ways to move forward to make them manageable. To form an alliance with other towns, this would be an inter-municipal agreement for Waste Management, or to designate a district, in which case we would be on our own dealing with the new regulations. At this time an alliance is the best way to move forward.

There are currently 13 towns interested in participating in the alliance. It is a great time to see what savings can be made. Bennington and Manchester are the biggest players in this alliance. The details of how decisions will be made and a governing board are still being developed.

**Motion: Sharyn Brush motioned to waive the reading of the resolution and to approve and sign the resolution as presented. Michael Keane seconds the motion.**

*Discussion:*

John McFadden asked about how some of the current costs are handled. The Manager stated that garbage is currently priced per bag or per pound and incurred by the individual as they go. Recycling, metal waste, wood and hazardous waste are paid for through the taxpayers. This could be dispersed amongst the different towns now and lessen the cost to the taxpayer. Mr. McFadden asked if we did not like the way the alliance goes could we pull out. The Manager noted the contract still has to be written but he believes that “outs” are commonly written in.

The Manager again reminded the board that as the regulations become more difficult, as they are expected to in the coming years, they would be much easier to deal with in an alliance than on our own.

**VOTE: Motion passed unanimously (Jim Carroll absent)**

## **8. DELINQUENT TAX PENALTY DISCUSSION**

The current Real Estate Tax Late Payment Penalty was reviewed. If a payment is made late 8% penalty is assessed the very next day.

**Motion: Tom Jacobs motioned to have the Real Estate Tax Payment Late Payment Penalty be 3% the next day and increase for 1% per month for no more than (5) consecutive months thereafter. Justin Corcoran seconds the motion.**

*Discussion:*

Justin Corcoran asked if there was a breakdown of perpetually late payers. The Manager stated that was not easily broken out. Most late payers are a one-time only because they learn from the penalty or they are recurrent. The amount recovered by penalty has now become a part of the revenue stream for the Town. If the Board moves forward with altering the percentage it will create a loss in revenue. This will then need to be made up by the taxpayers.

The Manager continued by noting that the Town’s software, which is approved by the State of Vermont and used by 80% of the towns in Vermont, cannot handle a sliding scale penalty system. Its design can only handle a flat percentage. In addition, the Board’s decision the last two years to adjust the Homestead penalty to a flat dollar amount has created a considerable amount of lost work hours. The Collections office must calculate and adjust each individual account by hand. Although this is a separate penalty issue, the Manager recommends moving forward that the Select Board either leaves the Homestead Penalty as set by the State or adjust to a flat percentage (%) rate (not dollar amount). Again because the software can only handle flat percentage rates, not adjusted dollar amounts or sliding percentage rates.

Justin Corcoran asked how many people are delinquent. The Manager noted for the last 20 years it has been pretty steady at a 6% rate the very next day. Within 6 months however, this drops to approximately 4%.

Tom Jacobs stated if a grace period was given, then most would use it. There is no incentive to pay by the date. He does not agree that the Town should rely on the penalty as part of an income stream. Justin Corcoran and John McFadden also feel that should not be part of an income stream.

Greg Van Houten felt the current 8% was too harsh. Michael Keane agreed it was also too harsh. Mr. Van Houten suggested it be cut in half and see how that goes.

**AMENDMENDED Motion: Tom Jacobs motioned to set the Real Estate Tax Late Payment Penalty to a flat 4% with no additional change in interest rate. Michael Keane seconds the motion.**

*Discussion:*

Justin Corcoran questioned what would be deterrent verses what's reasonable. He noted that if the Board does change the rate they will still get phone calls, e-mails etc. No one wants to pay a penalty. If it were to be changed he would like to see what the outcome is and revisit next year.

The Manager wanted to clarify for the Board. This would change the next real estate tax year (payment in November 2015). This would not be retroactive to this current year's penalties. He also wanted to remind the Board that this must go before the voters for approval. The Board cannot simply change the penalty. What they approve will go on the ballot in March 2015. If the voters do not approve the change it will remain at 8%.

**AMENDMENDED Motion: Tom Jacobs motioned to place on the Ballot of March 2015 to adopt a commission by Statue not to exceed 4% penalty for Late Payment Penalty of Real Estate Taxes to the Town of Bennington with no additional change in interest rate. Sharyn Brush seconds the motion.**

**VOTE:**        **Motion passed unanimously** (*Jim Carroll absent*)

## **9. MANAGER'S REPORT**

The Manager stated that he brought the item of increasing fees for the use of the Firehouse before the Board at the last meeting. There had been questions regarding current costs. The current fees are \$10 for Volunteer groups and \$25 for Non-profit groups. The increase would be to \$25 for Volunteer groups and \$50 for Non-profit groups. The Manager is seeking approval for these increases.

Justin Corcoran felt he did not have enough information. He would like to see a memo with complete detail for the increase. He would like a comparison of everything currently and all proposed for the next agenda. Michael Keane would like to see a clear definition of the differences between the two groups targeted.

The Manager then asked the Board to approve the declaration submitted in their packet. It is a "*Declaration of Intent to Reimburse Expenditures from Bonded Funds*". This simply

means that current Water Funds are being spent in preparation for and in anticipation of the Water Tank project. These funds shall be reimbursed when bond monies are received.

**Motion: Justin Corcoran motioned to approve the Declaration of Intent to Reimburse Expenditures from Bonded Funds. Sharyn Brush seconds the motion. Motion passed unanimously (Jim Carroll absent)**

The Manager then noted that the Charter change information requested was also in the packet for the Board's review.

The Manager then announced for the public that Bennington in Bloom designed an alternate plan to Walmart's for the proposed rotary on Northside Drive. The State of Vermont liked Bennington in Blooms design noting it was lower maintenance and held more native plantings.

Greg Van Houten discussed the Charter change information. Two public hearings must be held for a Charter Change. The first must be held no later than February 1<sup>st</sup>. The second can be the Annual Town Meeting held the night before the vote.

## **10. OTHER BUSINESS**

Michael Keane announced that the Town Manager's Job Description and Performance Appraisal formats have been finalized. They will be distributed to all Select Board members in the next packet for the December 22<sup>nd</sup>, 2014 meeting. He thanked the other Board members who served on that committee.

Greg Van Houten announced that Saturday December 13<sup>th</sup>, 2014 the Live Holiday Radio show would again be held. It will be at the Old Castle Theatre at 7:00pm with Robert Ebert. This is a new tradition and hopes it continues, as it is a great event.

Mr. Van Houten also wished safe preparations for the holidays for everyone, as well as safe traveling.

There was NO need for Executive Session.

**Motion: Michael Keane motioned to close the meeting. Justin Corcoran seconds the motion. Motion passed unanimously (Jim Carroll absent)**

Respectfully submitted,

Linda E. Bermudez  
Secretary