

1 BENNINGTON SELECT BOARD
2 MEETING HELD REMOTELY VIA ZOOM
3 BENNINGTON, VERMONT 05201

4 APRIL 27, 2020

5 MINUTES

6 **SELECT BOARD MEMBERS PRESENT BY VIDEOCONFERENCE:** Donald Campbell-Chair; Jeannie
7 Jenkins-Vice Chair (out at 7:40pm and back in at 7:47pm); Jeanne Conner; Jim Carroll; Bruce
8 Lee-Clark; and Sarah Perrin.

9 **SELECT BOARD MEMBERS ABSENT:** Bill Scully.

10 **ALSO PRESENT BY VIDEOCONFERENCE:** Stuart Hurd-Town Manager; Daniel Monks-Assistant
11 Town Manager and Planning Director and Director of the COVID-19 Response; Attorney Jason
12 Morrissey; Attorney Merrill Bent; Thomas Dee-SVHC CEO; Stephen Majetich-SVHC CFO; Megan
13 Herrington-Dept. of Health District Director-Bennington Office; Dr. Trey Dobson-SVHC Medical
14 Director; Barbara Lasoff; Sam Restino; Mike Bethel; Nancy White; Mike Cutler-CAT-TV; and
15 Nancy H. Lively-Secretary.

16 At 6:00pm, Chair Donald Campbell called the meeting to order and explained that, due
17 to the COVID-19 Pandemic State of Emergency declared by Governor Scott, and pursuant to
18 Addendum 6 to Executive Order 01-20, Act 92, this public body is authorized to meet
19 electronically. There is no physical location to attend this meeting, however, the public may
20 view it on CAT-TV and call in at 1-646-558-8656 and enter the meeting ID, 93416510810, when
21 prompted to do so. The call in information will be periodically posted on the screen and the
22 process for calling in was explained. If technology fails us, the meeting will be continued at a
23 time and place to be determined and all votes that are not unanimous will be done with a roll
24 call vote in accordance with the law.

25 **1. CONSENT AGENDA**

26 **A. MINUTES - APRIL 13, 2020**

27 **B. WARRANTS**

28 **C. LIQUOR LICENSES**

29 *Bruce Lee-Clark moved and Jeannie Jenkins seconded to approve the Consent Agenda*
30 *as submitted. The motion carried with Bill Scully absent.*

31 **2. SVHC BUILDING SALE**

32 Attorney Jason Morrissey, on behalf of the SVHC, explained the following concerning the
33 future operation of the Centers for Living and Rehabilitation (CLR) facility on the hospital
34 campus:

- 35 • The real estate related to the SVHC campus is actually a combination of many legally
36 separate and distinct parcels of land.
- 37 • The land where CLR exists was conveyed by Mary and Edwin Chandler in 1919 to the
38 Village of Bennington in trust for the benefit of the Henry M. Putnam Memorial
39 Hospital.
- 40 • "Trust" means that the Town is the "Owner" of the property and the hospital is the
41 "Beneficial User".
- 42 • The land may only be used for the delivery of health care services and the Town could
43 not convey the property to a third party or otherwise allow the land to be encumbered
44 (for example, with a mortgage for financing purposes).
- 45 • Times change and in approximately 2010, the Select Board and Board of Trustees at the
46 hospital met to modify the terms of the "Trust" to accommodate the demands of the
47 operation of what was now a "full medical campus" and not only a "hospital".
- 48 • In 2012, a "cy pres" action was filed in the local Probate Court. "A "cy pres" action is the
49 legal procedure used to alter the terms of trust agreements created for charitable
50 purposes when the original terms become impracticable or wasteful."
- 51 • The public interest was represented in this "cy pres" action as the Attorney General of
52 the State of Vermont is a party to such an action.
- 53 • In 2013, the Court Order issued altered the Trust terms so it was now possible for the
54 Town and SVHC - as the "legal" and "beneficial" owners, respectively, could convey
55 property rights in these parcels if approved by the Select Board and if the conveyance
56 mandates the property will be used exclusively "for the delivery of health care services
57 for the benefit of the community".
- 58 • In 2020, an opportunity has arisen to convey the area of the hospital campus to a third
59 party to own and operate what we know as CLR.

60 Tom Dee, SVHC CEO, did the following presentation on the conveyance:

- 61 ➤ CLR is a 130-bed nursing home facility - one of the larger ones in the State.
- 62 ➤ On March 4, 2019, The New York Times wrote an article, "Nursing Homes Are Closing
63 Across Rural America Scattering Residents".
- 64 ➤ 200-300 nursing homes have closed in the area due to:
 - 65 ○ Declining or flat reimbursement not keeping pace with inflation
 - 66 ○ Workforce shortages
 - 67 ○ Aged and outmoded facilities with high renovation costs
 - 68 ○ Rapidly expanding regulatory oversight and administrative burden
- 69 ➤ We have been operating CLR for 30 years with the main issues being financial.
- 70 ➤ We are rated a 4 out of 5 for the services we provide.

- 71 ○ We are not immune from national trends
- 72 ○ Last major facility upgrade was more than 20 years ago
- 73 ○ Consistent staffing challenges (i.e., RN, LNA, Nutrition Assistant, House Keeping)
- 74 ○ Reimbursement does not cover costs
- 75 ○ Substantial financial losses last 5 years. In 2019, CLR lost over \$1M
- 76 ○ We looked for partners that were financially stable - both for-profit and not-for-profit - developed an RFP, and spoke to 7 or 8 businesses.
- 77
- 78 ➤ Path Forward: Allaire Health Services -
 - 79 ○ Have 4 successful nursing homes in New Jersey and Pennsylvania
 - 80 ○ Are family owned, well financed and have proven to be a quality operator
 - 81 ○ They have advanced programs beyond the usual nursing home programs (i.e., neurocare, geri-psych, respite care and dialysis)
 - 82
 - 83 ○ Because nursing homes are all they do, they have operational economies of scale
 - 84 ○ They are for-profit with a 5%-6% margin, whereas, the hospital struggles to have
 - 85 2%.
- 86 ➤ Allaire Partnership -
 - 87 ○ Allaire would be majority owner; SVHC minority owner for at least 5 years
 - 88 ○ Joint Quality Oversight Committee
 - 89 ○ Current workforce to transfer over to Allaire (99% retention rate)
 - 90 ○ Willing to partner with regional providers
 - 91 ○ Willing to invest in facility
- 92 ➤ Town of Bennington -
 - 93 ○ A "win-win" for the Town, the hospital, and Allaire
 - 94 ○ Sustains high-quality local nursing home care
 - 95 ○ Allaire will pay property taxes
 - 96 ○ Increases SVHC's financial stability. The COVID crisis has had a significant impact
 - 97 on the hospital.
 - 98 ○ Allows SVHC to invest in other projects
- 99 ➤ Select Board Review -
 - 100 ○ Terms of Deed of Trust requires Select Board certification
 - 101 ○ Request approval to sell CLR and minimal acreage to a for-profit entity
 - 102 ○ Adheres to 2013 Bennington Superior Court Order to maintain use for delivery of
 - 103 healthcare services
 - 104 ○ SVHC will retain the trail system property
- 105 ➤ Next Steps -
 - 106 ○ Requires subdivision of property
 - 107 ○ Project requires State approval
 - 108 ○ Normal Timeframe is 6-8 months. COVID may cause this to be longer.

109 *Comments/Questions:*

110 Mr. Majetich: Added that the Allaire negotiations are in the final stages and all of their nursing
111 homes have “done well” during the COVID crisis.

112 Attorney Merrill Bént: Reiterated that the Terms of the Judgement Order are going to be
113 incorporated in the Deed as part of the property description, gives the Town the right to
114 enforce the covenant to deliver healthcare services for the benefit of the community, and can
115 seek reimbursement for that enforcement. The covenant restrictions will also apply to any
116 subsequent purchasers of the property.

117 Barbara Lasoff: Will the purchase of CLR also include the purchase of the Center for Nursing and
118 Rehab (CNR) in Hoosick Falls? Mr. Dee answered that the plan is to have Allaire purchase CNR,
119 as well.

120 Sam Restino: Will the Emergency Room upgrade be delayed because of the pandemic? Mr.
121 Majetich answered that there may a brief delay with anticipated completion being the end of
122 2022 or the beginning of 2023. The plan is to complete the expansion, move patients in there,
123 renovate the existing space, and open the whole area up.

124 *Board Comments/Questions:*

125 Ms. Conner: Because Allaire is for-profit, would the demographics of the patients change? Mr.
126 Dee stated that the demographics are the demographics of our region. We expect to remain at
127 over 80% Medicaid with the hope to have more Medicare patients.

128 Ms. Conner: Will the inpatient rehab facility remain? Mr. Dee answered that we anticipate that
129 this will expand which will also contribute to more Medicare patients.

130 Ms. Conner: Will the transition be seamless? Mr. Dee noted that we have contracted with
131 Allaire now for consultation services at both CLR and CNR so, yes, the transition will be
132 seamless for patients and employees.

133 Ms. Perrin: Asked about employee retention and the seamless transition for the patients. Mr.
134 Dee reiterated that Allaire has a 99% employee’s retention rate and the seamless transition for
135 the patients. There has been a lot of correspondence with the patients.

136 Mr. Carroll: Who will be the owner of CLR? Mr. Morrissey answered that the Town will no
137 longer own the property, but that property must be used exclusively “for the delivery of health
138 care services for the benefit of the community”.

139 ***Bruce Lee-Clark moved and Jeanne Conner seconded to approve the sale of the***
140 ***property described to us as The Center for Living and Rehabilitation to Allaire Health Services***
141 ***or an Allaire Affiliate formed for the purpose of real estate holding with all of the appropriate***
142 ***required language from the 2013 Order that is found in the Draft Deed shared with the Select***
143 ***Board, and to authorize the Town Manager to sign documents consistent with this motion.***
144 ***The motion carried with Bill Scully absent.***

145 **3. COVID-19 UPDATE AND LETTER OF THANKS**

146 *Updates from Dr. Trey Dobson, SVHC Medical Director and Megan Herrington, Dept. of Health*
147 *District Director-Bennington:*

148 Dr. Dobson -

- 149 ✓ Hospital staff is resilient, they have all of the right equipment, and are thankful for all of
150 the community support.
- 151 ✓ COVID-19 is a new virus that we are learning more about every day.
- 152 ✓ The hospital is safe and, even though telemedicine has been implemented, he
153 encourages the non-COVID-19 patients to utilize the emergency room as they would
154 have before the pandemic. Urgent cases have been taken care of all along as the
155 procedures than can wait have been on hold.
- 156 ✓ Hospitals throughout the State are doing a phased approach of scheduling
157 appointments, surgeries, etc. to begin on May 18th.
- 158 ✓ All precautions remain in place, i.e., wearing masks, social distancing, etc., as we remain
159 in the Readiness Mode.

160 Ms. Herrington -

- 161 ❖ In the last 3 months, Bennington County has seen 40 cases of COVID-19 with 9 residents
162 testing positive in the last 2 weeks.
- 163 ❖ We're just starting to see a reduction in cases statewide, we have a health care system
164 that is able to respond, the State is able to test everyone that has symptoms, and is able
165 to implement active monitoring of those cases with contact tracing.
- 166 ❖ We have a team checking in with the 800+ residents statewide who have tested
167 positive to accumulate data for the future.

168 *Board comments/questions:*

169 Ms. Jenkins: Resources available? Ms. Herrington noted food resources from various
170 organizations in the community such as the GBEC pantry, Council on Aging food deliveries. The
171 Vermont Food Bank and the National Guard will be doing an MRE (Meals Ready to Eat)
172 distribution for a week on Thursday at the airport. UCS has set up a Warm Line for those with
173 pandemic mental health coping problems and BROCC has set up a Coordinated Entry program
174 for anyone with housing issues.

175 Ms. Conner: Laundry services? Ms. Herrington not sure but will find out. Possibly Johnny SUDS
176 or the Council on Aging would be helpful for this.

177 Ms. Conner: Testing at SVHC? Dr. Dobson stated that SVHC is able to test 25 people/day, 7 days
178 a week and an individual must be referred for a test from their Primary Care Provider (PCP) or
179 the Department of Health. And, if they don't have a PCP, they can call the hospital COVID-19
180 hotline.

181 Ms. Conner: Support groups for patients? Dr. Dobson noted that UCS is working on organizing
182 support groups through telemedicine.

183 Mr. Carroll: Noted that the State will pay the cost of testing for anyone who needs to be tested.

184 Mr. Campbell: Immunity? Dr. Dobson stated that most viruses will have a period of immunity
185 after you have had them, however, we don't know how long that immunity may be with COVID-
186 19.

187 *Public comments/questions:*

188 Sam Restino: Warm Line number? UCS at 802-442-5491.

189 Sam Restino: How are the homeless handled? Ms. Herrington stated that the Economics
190 Services Division has issued motel vouchers for ~90 individuals that are also receiving food and
191 transportation from the motels.

192 Mike Bethel: Will the Select Board take measures to see that another homeless person doesn't
193 die from exposure this winter? Ms. Jenkins answered that the Emergency Services Division is
194 looking into emergency housing or overflow housing that can be set up in winter or in
195 emergency situations. We were at the point of meeting with Brattleboro, Middlebury, and
196 maybe Burlington to discuss how they had formulated their groups when the pandemic hit.
197 **(Ms. Jenkins transmission froze at 7:40pm)** Mr. Hurd added a system that has been in place for
198 quite some time is that anyone in need can go to the Police Station and they will be taken care
199 of.

200 *Town staff comments:*

201 Mr. Hurd and Mr. Monks reported -

- 202 ▪ The new guidelines now allowed in a workforce from 2 to 5 persons so we will be
203 ramping up our DPW and Grounds staff over the next few weeks.
- 204 ▪ 2 people are allowed per truck but we are maintaining 1 per truck.
- 205 ▪ All employees must complete a COVID-19 training by May 4th and it must be
206 documented.
- 207 ▪ All breakrooms and areas of gathering in facilities must be closed off, and an individual
208 must be appointed to be responsible that all safety measures are adhered to.
- 209 ▪ All town facilities, including the Senior Center and the Recreation Center remain closed,
210 however we are available by phone, e-mail, and mail.

211 *LETTER OF THANKS TO SVMC (AS AMENDED)*

212 *"We are writing with heartfelt gratitude for all Southwestern Vermont Medical Center does for*
213 *our community. We knew we were fortunate to have a wonderful hospital in our community,*
214 *but we didn't realize just how fortunate until now. SVMC's leadership during this crisis has been*
215 *extraordinary. They have reassured us again and again with their calm, honest, proactive and*

216 *focused approach to planning and the sharing of information. Thank you to everyone who has*
217 *had a role to play at SVMC during this crisis.*

218 *Part of having an effective medical system is working with the community to keep people*
219 *healthy. We applaud SVMC for the many things they do outside of the hospital to improve*
220 *community health. We also greatly appreciate all the organizations, businesses and not-for-*
221 *profits in our community who are providing essential services such as food, housing and*
222 *transportation to the community. Amazing work is being done to meet the needs of many, many*
223 *people. Your work has not gone unnoticed.*

224 *Now more than ever, the Bennington Select Board encourages everybody who is able to please*
225 *consider supporting SVMC and other organizations who are doing exceptional work and, in*
226 *many cases, risking their lives for us.*

227 *We are so grateful.*

228 *Bennington Select Board"*

229 ***Sarah Perrin moved and Jeanne Conner seconded to approve the above Letter of***
230 ***Thanks to SVMC as amended. The motion carried with Bill Scully absent.***

231 The letter will be sent to the Bennington Banner, SVMC, WBTN, and put on the Town's
232 website and Facebook page.

233 Mr. Carroll noted that another Letter of Thanks should go out to all of the other
234 essential workers, and Mr. Hurd added how the Move to Your Front Porch or Window at
235 7:00pm and make noise is also a show of appreciation to all front line people. Also, even
236 though the Battle Day Parade has been cancelled, there will be some sort of celebration
237 commemorating Battle Day, as well as, express thanks to everyone who has helped us through
238 the pandemic.

239 *Ms. Perrin and Mr. Carroll will draft a Letter of Thanks to the Essential Workers on behalf*
240 *of the Board for the Board's approval.*

241 **4. READOPT RULES OF PROCEDURE AND CONFLICT OF INTEREST POLICIES**

242 Ms. Conner stated that she is uncomfortable speaking to the press on behalf of the
243 Board, and it was recommended that, when speaking to the press, to state that she is speaking
244 as an individual and not on behalf of the Board. This topic, however, should not be part of the
245 Rules of Procedure Policy because that pertains to the meetings, themselves.

246 Ms. Perrin requested that the topic of talking to the press be revisited, and Mr.
247 Campbell said that it would be.

248 Mr. Lee-Clark confirmed that questions on clarification during Public Comments will be
249 answered. Mr. Campbell agreed and questions that require exact data should be directed to

250 the Town Manager first for answers. If that hasn't been done, these answers may not be
251 known at the meeting.

252 *Jim Carroll moved and Bruce Lee-Clark seconded to readopt the Bennington Select*
253 *Board Policies and Rules of Procedures and Conflict of Interest Policy amended as follows:*

254 *Bennington Select Board Policies and Rules of Procedure*

255 *#7., Line 1, Change "At the beginning of each" to "At each"*

256 *#10., Line 4, Change "speaking. All" to "speaking and state their names. All"*

257 *The motion carried with Bill Scully absent.*

258 5. MANAGER'S REPORT

259 Mr. Hurd reported as follows:

- 260 ✓ PFOA Construction: Continues as it is considered essential work.
- 261 ✓ Household Hazardous Waste Collection Event: Postponed from May 9th at the MAU
262 Middle School from 9:00am to 1:00pm until August at the earliest. We are required by
263 law to have two a year. The second one will be in Sunderland or Dorset in the fall.
- 264 ✓ WWTF Upgrade: Substantial completion has not yet been formalized and the final punch
265 list items are on hold awaiting warmer weather. Kingsbury will be returning to finish
266 this project very soon.
- 267 ✓ Bennington County Solid Waste Alliance: This project is on hold awaiting the COVID-19
268 all clear. We are working with Casella to determine costs, placement and markets. The
269 Transfer Station will be the collection site, and a separate container will be installed.

270 In addition:

- 271 ✓ Casella has put their increase on hold until July 1st.
- 272 ✓ Hydrant flushing begins tomorrow and will last for 2 weeks.

273 6. UPCOMING AGENDA

274 May 4th - IACP Report at 6:00pm.

275 There will not be any further agenda scheduling so as not to schedule any controversial issues
276 when public comment is difficult to get.

277 7. OTHER BUSINESS

278 Mr. Carroll: Are unemployment benefits federally paid, and Mr. Hurd answered that they are
279 paid by the federal government through the states.

280 Mr. Carroll: Why isn't the Town eligible for the PPP dollars, and Mr. Monks responded that it is
281 because of the way the Statute is written and there isn't enough money in the CARES Act to
282 keep the states and municipalities whole.

283 Mr. Carroll: For those having difficulty receiving their unemployment payments, e-mail him at
284 jcarroll@leg.state.vt.us or call 802-733-2061 and give your first and last name, telephone
285 number, last 4 digits of your Social Security number, and your e-mail address. Mr. Campbell
286 also recommended contacting the Department of Labor. The State has been overwhelmed as
287 unemployment claims have gone from ~3,200 last year at this time to over 80,000 the past two
288 weeks.

289 **8. PUBLIC COMMENT**

290 Sam Restino stated that it was "unfair" for a vendor from Virginia coming to Tractor
291 Supply selling food, and Mr. Monks responded that this vendor has all of the necessary
292 permits/licenses and is not in violation of the Governor's orders. "This is no different than a
293 grocery store selling meat."

294 Nancy White asked why we continued to pay the YMCA when the Rec Center is closed,
295 and that the YMCA workers were given the option to go on unemployment. Mr. Hurd
296 answered that we also gave our employees the option to stay home if they felt they needed to
297 and the YMCA probably had done that with all of their employees nationwide, as well. Planning
298 is being done now for the summer programs plus we have a contract with the YMCA, and "we
299 always meet our contracts". Even if these were our employees at the Rec Center we would be
300 paying them as we are paying the Director of the closed Senior Center.

301

302 *At 8:30pm, Bruce Lee-Clark moved and Sarah Perrin seconded the adjournment of the*
303 *meeting. The motion carried with Bill Scully absent.*

304

305

306 Respectfully submitted,

307 Nancy H. Lively

308 Secretary