

1 **BENNINGTON SELECT BOARD MEETING**

2 **130 RIVER STREET**

3 **BENNINGTON, VERMONT 05201**

4 **NOVEMBER 28, 2022**

5 **MINUTES**

6 **SELECT BOARD MEMBERS PRESENT:** Jeannie Jenkins-Chair; Jeanne Conner-Vice Chair; Bruce
7 Lee-Clark; Jim Carroll; Gary Corey; Sarah Perrin; and Tom Haley.

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

9 **ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Assistant Town Manager; Jonah
10 Spivak-Communications Coordinator; Isabelle Harper and David Bond-Bennington College;
11 Michael Lemieux; Donald Washum; Shawn Pratt; Al Bashevkin; John Lamson; 7 citizens; Josh
12 Boucher CAT-TV; and Nancy H. Lively-Secretary.

13 At 6:00pm, Chair Jeannie Jenkins called the meeting to order.

14 **1. PLEDGE OF ALLEGIANCE**

15 The Pledge of Allegiance was recited.

16 **2. VISION STATEMENT**

17 Ms. Conner read the Town’s Vision Statement that was adopted by the Select Board on
18 August 24, 2020:

19 “Bennington is a welcoming, engaged, inclusive, resilient community where everyone
20 regardless of identity shares in our vitality and benefits from an outstanding quality of life.”

21 **3. CONSENT AGENDA**

22 **A. MINUTES OF NOVEMBER 14, 2022**

23 **B. WARRANTS**

24 **C. LIQUOR LICENSES**

25 *Bruce Lee-Clark moved and Jim Carroll seconded to approve the Consent Agenda as*
26 *presented. The motion carried unanimously.*

27 **5. PUBLIC COMMENT**

28 The following Public Comment Practices to make the experience for all involved a
29 productive and informative use of the Public Comment period at Select Board meetings was
30 placed on the podium for those that wish to make Public Comments to reference:

- 31 1. Public Comment is to allow residents an opportunity to share information or make
32 announcements that benefit the community at large.
- 33 2. The topic should not be related to an agenda item. If a member of the public wants to
34 comment on an agenda item they can do so during the discussion of that item.
- 35 3. Comments should be 3 minutes or less.
- 36 4. You are required to state your real name and town of residence.
- 37 5. Sharing comments, announcements and concerns are encouraged rather than asking
38 questions. Public Comment is not a time for discussion. If you have specific questions it is best
39 to call the Town Manager to get a full explanation and accurate information.
- 40 6. If the topic requires much discussion the item will be considered as an agenda item at a
41 future meeting.

42

43 Michael Lemieux: Shared the following ideas:

- 44 • To accommodate parking needs for the Benn Hi project - make Pleasant Street 1-way
45 from Park Street to Main Street.
- 46 • At Upper Willow and the Splash Pad - put in bleachers and outhouses and keep the
47 outhouses unlocked for events.
- 48 • On North Street headed south after the red light - eliminate the 2 parking places on the
49 right where people are always dropping someone off.
- 50 • Offer \$1,000 reward for information on whoever vandalized the cemetery and he would
51 donate \$100 toward that reward.

52 Donald Washum: Shared the following:

- 53 • Public Comment is too early in the meeting without the agenda items being heard. *Ms.*
54 *Jenkins: Public comment is to comment on non-agenda items. The public may comment*
55 *on any agenda item during that agenda item.*
- 56 • Update the public on the Benn Hi project more frequently.

57 Shawn Pratt: Is the co-owner of the Bennington Martens basketball team, now in its 2nd year,
58 and is looking for more support. The team is a member of the American Basketball Association,
59 home games take place on Saturdays or Sundays at 3:00pm at the Middle School and tickets are
60 \$10/adult and \$5/children. Their schedule is on their website,
61 www.benningtonmartensaba.org. The next home games are on December 4th, December 10th,
62 and December 18th, and March 4th or 5th will be the last game of the season. One player is
63 now pro in Slovenia.

64 **5. RAIL CARS STORAGE**

65 Isabelle Harper and David Bond from Bennington College did the following presentation:

- 66 ➤ There is an inherent risk to having the LPG train cars on Rice Lane, they provide no
- 67 benefit and the Board can implement solutions to this problem.
- 68 ➤ For the last 5 years between 60-120 train cars have been parked on a neglected rail
- 69 track from Lake Paran to the Bypass from July-December.
- 70 ➤ Each tanker holds ~30,000 gallons of pressurized liquid petroleum gas and are parked
- 71 ~75' from homes on Rice Lane.
- 72 ➤ Earth Justice estimates that 20 LPG tankers contain the explosive power of a Hiroshima
- 73 sized bomb.
- 74 ➤ Though rare, when an explosion occurs it devastates the community they're in and
- 75 overwhelm emergency response efforts.
- 76 ➤ Blasts can do bodily damage up to a mile away and property damage runs into the
- 77 millions.
- 78 ➤ There have been two derailments locally - Hoosick Falls and North Bennington.
- 79 ➤ Federal law prevents cities and states from preventing interstate commerce by rail.
- 80 Trains in transit are under the explicit jurisdiction of the federal government.
- 81 ➤ Representative Welch and Senator Leahy spoke to the Federal Rail Administration who
- 82 said that the removal of the waybill removed these trains from being in "active
- 83 transportation" to "storage" whereupon the federal jurisdiction does not apply and the
- 84 cars in storage can be governed by applicable local regulations.
- 85 ➤ We feel these regulations includes health and safety ordinances issued by the Select
- 86 Board for the contents of the cars but not the cars themselves.
- 87 ➤ We would like to either see an ordinance that prohibits the storage of non-odorized
- 88 petroleum gas in quantities of over 25,000 gallons within 1,000 meters of homes,
- 89 schools, and hospitals OR preempts the storage of more than 10,000 gallons of
- 90 flammable gas without road access to include a fine of \$1,000/10,000 gallons of LPG
- 91 over the allowed amount/day.

92 *Board comments/questions answered by Ms. Harper and Mr. Bond:*

93 Mr. Lee-Clark: Have you found any ordinances like these that have worked? *No.*

94 Mr. Lee-Clark: Who at the Federal Rail Administration gave you the information on the
95 distinction between active transportation and storage and federal jurisdiction? *This came from*
96 *Representative Welch and Senator Leahy's office.*

97 Mr. Lee-Clark: Does anyone know if the waybill has been removed from those cars? *Yes, we*
98 *have photos of where they should be and they're not there.* Mr. Lee-Clark requested that the
99 photos of where the missing waybill should be, as well as any other information that you have,
100 be forwarded to the Town. *We will.*

101 Mr. Lee-Clark: Interstate commerce is federally preempted for a reason - so local municipalities
102 will not set up systems that discriminate against others from coming in or leaving. "While I

103 think it's being misused here, I agree that federal preemption in this area, in general, makes a
104 lot of sense."

105 Ms. Jenkins: If the purpose of storing them here is so they can be deployed quickly, are they
106 really not in transit, and Mr. Lee-Clark added that it is more technically related to the waybill.
107 *Also, there are regulations for the storage of LPG that involve them being in a facility, and*
108 *having them stored in our community the way they are, bypasses those regulations.*

109 Mr. Monks: Stated that the Town received the same e-mail last year and it continued to
110 reference significant case law that would limit us in regard to regulations. We still need to look
111 into it, but the last time we checked with our attorney, she said that they would need to see the
112 waybill, itself, and review the case law. We have requested the waybills from Representative
113 Welch's office.

114 Ms. Perrin: Is it accurate that the proper storage of these cars is in a yard? *The proper storage is*
115 *a facility with many safeguards and regulations attached.* Ms. Perrin: Thank you for your
116 research.

117 Ms. Jenkins: Is the next step to go to the federal delegation? *We go to the federal delegation*
118 *and they say to come to the municipality, and we come to the municipality and you say to go to*
119 *the federal delegation.*

120 Ms. Jenkins: We are all on the same page as to what we want to do, however, we have had no
121 indication that we can do what we are all wanting to do.

122 Ms. Jenkins: Have you heard from other communities with this issue? *Yes, other communities in*
123 *Vermont, Albany, NY, and up and down the east coast.* Ms. Jenkins added that it makes sense
124 to start forming a coalition of communities that are interested in this issue across the country.

125 Ms. Jenkins: Why did you choose the amounts you chose for the ordinance? *We wanted it to be*
126 *per gallon and not per car, and what the value was on the cars.*

127 Ms. Conner: Would imagine there are many ordinances and procedures in many departments
128 of the federal government that err on the side of safety and health, but this one doesn't.

129 Mr. Lee-Clark: If we take this on it isn't the Federal Rail Administration that we will be fighting.
130 It will be the rail companies and the gas companies and they've got deep pockets.

131 *Public comments/questions answered by Ms. Harper and Mr. Bond"*

132 Al Bashevkin: This is not only a Bennington issue, it's a national issue. We should play "the long
133 game" and put pressure on our elected officials in Congress to look at this as a national public
134 health issue.

135 John Lamson: Questions can be posed to an attorney in different ways. The Town should
136 approach our attorney saying that we want to take this on with an ordinance and want support

137 for this position instead of asking for their opinion. *Mr. Monks added that when the Town*
138 *worked with our attorney last year, he was very interested in getting the waybills and we were*
139 *unable to get them last year because they “fell through the cracks”. We will attempt to get*
140 *them again this year and will only create an ordinance that is enforceable.*

141 Ms. Jenkins stated that next steps are to look at the waybills, pursue “the long game”
142 with our elected officials in Congress, and reach out to other communities similarly impacted.
143 Thank you to Ms. Harper and Mr. Bond for bringing it up again as it is a shared goal. Ms. Harper
144 added that if Bennington were to take this on with an ordinance, it could be used as a model to
145 other communities across the country.

146 **6. IMPLEMENTING THE TOWN VISION**

147 There was nothing new to report at this time.

148 **7. MANAGER’S REPORT**

149 Mr. Hurd did the following report:

150 Three Water System Project - (Tier Two Projects) The final South End project to address
151 pressure deficiencies in our system, a Gage Street water main replacement project, and the
152 Settlers Road/Springhill Road water main extension project are all coming to fruition and have
153 met the requirement to be funded. The South End and Gage Street project will require a bond
154 vote in March 2023 for \$3M and are potentially 90%-95% reimbursable. The Settlers
155 Road/Springhill Road project is 100% reimbursable by the State.

156 River Walk Redesign and Upgrade - This project for which we have received a State grant is
157 moving forward to formal design and bidding for the next construction season. The project will
158 feature a wider, paved pathway and improved lighting. Over time new benches and other
159 amenities will be added. Ms. Conner will relay this information to Kelly Carroll.

160 Benmont Avenue/County Street Sewer Line Replacement - The portion of the project within
161 Benmont Avenue is completed. Paving was scheduled for November 22nd. An additional 60’ of
162 sewer main has been extended up County Street towards Depot Street and Casella plans to
163 extend the remainder of the sewer main to Depot Street before Christmas.

164 **8. UPCOMING AGENDA**

165 December 12, 2022 - Green Mountain Express

166 December 12, 2022 - Bennington Free Library

167 December 12, 2022 - Dr. Trey Dobson COVID Update

168 December 19, 2022 - 2nd December Select Board Meeting

169 December 19, 2022 - Benn Hi Update

170 January 9, 2023 - MSK Presentation on Bond Vote Projects

171 January 7, 2023 - Budget Meeting

172 January 14, 2023 - Budget Meeting

173 January 21, 2023 - Budget Meeting (if necessary)

174 **9. OTHER BUSINESS**

175 Mr. Lee-Clark: Even though the Rail Trail is open, will we have a formal opening? Mr. Monks
176 stated that will be in the spring.

177

178 *At 7:03pm, it was moved and seconded to adjourn the meeting. The motion carried*
179 *unanimously.*

180

181

182 Respectfully submitted,

183 Nancy H. Lively

184 Secretary

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