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**Selectboard Meeting**  
**Large Conference Room – Town Offices**  
**Tuesday, October 25, 2016**  
**Meeting Minutes**

Members Present: Brian Carpenter, Victor Nuovo, Donna Donahue, Heather Seeley, Nick Artim, Laura Asermily and Susan Shashok.

Also present members of the community. The meeting was televised on MCTV by Dick Thodal.

**1. Call to Order**

Chair Brian Carpenter called the meeting to order at 7:00 p.m.

Carpenter recognized Town employee, Yvon Pouliot, who is retiring after 20 years of service. Pouliot has been known for his beautiful gardens downtown and at the Recreation Park, so Carpenter assured everyone they would figure out a way to keep these gardens going.

**2. Approval of Minutes of September 27, 2016 & October 11, 2016**

Laura Asermily moved, seconded by Susan Shashok, to approve the minutes of September 27, 2016 with the following corrections:

Lines 10, 52, 174 and 197 - correct Seely to Seeley.  
Line 199 – Change to read “done at the dealer”.  
Line 155 – Change to read “they will be the owners...”

The motion carried with 7 in favor, none opposed. **MOTION PASSED.**

Victor Nuovo moved, seconded by Nick Artim, to approve the minutes of October 11, 2016 with the following corrections:

Line 29 – Remove one “Approval of the Minutes”.

The motion carried with 5 in favor, 2 abstained (Nuovo and Seeley). **MOTION PASSED.**

**3. Approval of Agenda**

Carpenter said there were two amendments to the agenda:

#7, Director of Planning and Zoning Jennifer Murray would not be presenting as the FY15 audit was not complete to accompany the grant request.

48  
49 #9, the award of the winter sand bid would be delayed until the next meeting to allow  
50 the Infrastructure Committee to review it and provide their recommendation.

51  
52 Also, an Executive Session would be added at the end of the regular meeting to discuss  
53 personnel and contractual negotiations.

54  
55 Shashok moved to approve the agenda as amended. Asermily seconded. The motion  
56 carried with 7 in favor. **MOTION PASSED.**

57  
58 **4. Citizen Comments**

59  
60 Alpine Bingham spoke on various items.

61  
62  
63 **5. Vermont Coffee Company's Request for an Outside Consumption Permit**

64  
65 Paul Ralston, from Vermont Coffee Company, joined the Board and explained the need  
66 for an Outside Consumption Permit to allow customers to move from the Café to the  
67 Playhouse with their alcoholic beverages. He said they had both police and fire  
68 inspections and there had been a question on how fire resistant the stage curtain is. He  
69 said he has a Certificate from the company they purchased the curtain from verifying  
70 they are flame retardant.

71  
72 Asermily moved to approve the Vermont Coffee Company's application for an  
73 Outside Consumption Permit for its café at 1197 Exchange Street. Seeley  
74 seconded. The motion carried with 7 in favor. **MOTION PASSED.**

75  
76 **6. Nomination of Candidates to Fill Two Parks & Recreation Committee Vacancies**

77  
78 Asermily moved to nominate Mark Wilch to the Parks and Recreation Committee.  
79 Seconded by Shashok. The motion carried with 7 in favor. **MOTION PASSED.**

80  
81 This still leaves one vacancy on the Parks and Recreation Committee and the Energy  
82 Committee has two vacancies as well.

83  
84 **7. Director of Planning and Zoning Jennifer Murray Regarding the FY2017**  
85 **Municipal Planning Grant Program (POSTPONED)**

86  
87  
88 **10. \*\*Report on Infrastructure Committee Meeting of October 13, 2016, including**  
89 **Recommendation on Award of Contract for Middlebury River Flood Resiliency**  
90 **Project Management Services**

91 *\*\* Item taken out of order*

92  
93 Susan Shashok reported to the Board that an RFP for Project Management of the  
94 Middlebury River Flood Resiliency Project went out, and the two proposals submitted

95 were from Amy Sheldon of Landslide Natural Planning and Kevin Russell of Community  
96 Development Services. She said both were solid proposals and of similar costs. Upon  
97 review of the proposals by herself, Town Manager Kathleen Ramsay and Tim Bouton  
98 from Addison County Regional Planning, they recommended Landslide Natural  
99 Resource Planning to the Infrastructure Committee, because of Amy Sheldon's  
100 knowledge and familiarity of the project and because she is local. The Infrastructure  
101 Committee approved this recommendation currently before the Board for approval.  
102 Shashok said once the Project Manager is on board, they hope to be able to update the  
103 Selectboard and Infrastructure Committee on the intricacies of this project.

104  
105 Shashok moved to award the contract project management services for the Middlebury  
106 River Flood Resiliency Project to Landslide Natural Resource Planning, for a total cost  
107 of \$30,800. Seconded by Nuovo.

108  
109 Artim asked what the proposal from Community Development Services had been.  
110 Shashok and Ramsay reported it was approximately \$28,000, but the proposal was in  
111 two phases with Phase II being open ended pending the completion of Phase I.

112  
113 Motion carried with 7 in favor. **MOTION PASSED.**

114  
115  
116 **11. \*\*Discussion of Inquiry from David Silberman**  
117 **Regarding VLCT's Municipal Policy**

118 *\*\*Item taken out of order.*

119  
120 Carpenter said that Silberman is looking for clarification of the Town's position on a bill  
121 before the State Legislature. Carpenter asked Town Manager Ramsay to explain the  
122 VLCT's position on this bill to the Board.

123  
124 Ramsay said in 2015 and 2016 the proposed VLCT legislative platform included a  
125 proposal opposing the legalization of marijuana and expansion of current exemptions to  
126 Act 76 of 2015. She said each year the Selectboard appoints a voting delegate to  
127 represent the Town at the VLCT Town Fair in October. At that time the proposed VLCT  
128 legislative policy is distributed to the Board so they can review it and give direction to  
129 the delegate should any part of it be contrary to the Town's position. Ramsay said since  
130 she had received no input from the Board she had voted the policy as presented in both  
131 years.

132  
133 Ramsay said the VLCT Public Safety Committee recommended towns study other  
134 areas that have legalized marijuana, particularly the costs associated with implementing  
135 the legalization.

136  
137 Asermily thought the process seemed clean and asked if Silberman had provided any  
138 information on what his opposition is. She said she would be interested in what  
139 residents in town felt about this issue and wondered if it could be something the Public  
140 Safety and Health Committee could look into, and maybe a poll at Town Meeting.  
141 Nuovo said the 2016 Doyle poll had shown that Middlebury respondents to the question

142 on the legalization of marijuana showed 44% against it, 42% in favor of it and 15%  
143 undecided, and in an earlier poll there had been a larger margin in favor of  
144 decriminalizing the possession of a small amount of marijuana. He went on to say it is a  
145 very serious matter and if we need to address it, we need to be very careful.

146  
147 Carpenter said one of Silberman’s criticisms had been whether Ramsay’s vote, as the  
148 Board’s voting delegate, to support the VLCT’s policy was representative of the Board  
149 or Town of Middlebury position. Nuovo said the Manager had provided the Board with  
150 the League’s Policy for review and perhaps the Board should have been more diligent in  
151 reviewing it to see if there were issues they would not want to support. Nuovo said  
152 having previously served on a committee that created similar policies, that unless the  
153 Board is specific on a position then he has to assume the delegate is using their best  
154 judgment, and he felt Ramsay had done this.

155  
156 Shashok said there is a whole breadth of information the Board receives that may not  
157 be obvious to others, so suggested sending out an e-mail blast next year to let people  
158 know this will be coming up on the agenda and this makes them responsible for  
159 reviewing it and coming to the Board if there is something that’s an issue for them. She  
160 said there are so many Town issues to deal with, so she doesn’t feel the need to take  
161 on State issues as well.

162  
163 Donahue said Ramsay represented the Board exactly as she expected her to, so she  
164 felt there is no issue with that. She said the legalization of marijuana is a divided issue,  
165 so it may be worth looking into again, but in this particular instance VLCT’s  
166 recommendation to oppose legalization.

167  
168 Asermily said she concurred with Shashok, but felt that in the future when this item  
169 comes up, perhaps the agenda could be more descriptive so residents would know  
170 what the policy items are so they could come to the Board in case they had issues with  
171 anything.

172  
173 Carpenter said he would respond to Mr. Silberman’s letter and explain the process and  
174 that the Board supports Ramsay’s vote because they had not taken a position and it  
175 supports VLCT policy. Asermily said he could also let Silberman know he could bring a  
176 proposal to the Public Safety and Health Committee if he wanted to.

177  
178  
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181 **8. Public Hearing on the Adoption of an Ordinance to Regulate Commercial**  
182 **Activity on Public Property**

183  
184 Chair Carpenter opened the hearing. He said this draft ordinance, prepared by the  
185 Policy Review Committee, is a comprehensive update of the Town’s existing “Ordinance  
186 to Regulate Street Vending, Peddling, Soliciting and Other Commercial Activities on  
187 Public Property.” As such, it shifts the focus from current ordinance language regulating

188 the conduct of certain types of street-level commercial activities to a general prohibition  
189 against all commercial activity of any kind all public property and rights-of-way within  
190 Middlebury's geographic boundaries. As noted by Selectboard and Policy Review  
191 Committee member Donna Donahue at the September 27th meeting, while the  
192 proposed ordinance is intended to make clear the Town's position regarding the use of  
193 public spaces for commercial activity specifically, it does not regulate such activity on  
194 private property nor does it preclude the Selectboard from writing and adopting future  
195 ordinances to address allowable uses of Town-owned land.

196  
197 Carpenter asked Donahue if she had any comments as a member of the Policy Review  
198 Committee. She said that there had only been one comment presented and that  
199 involved the new Park which is privately owned so it wouldn't fall under this Ordinance.  
200 She said the Committee wanted the language to be clear that this is to protect public  
201 safety on public property.

202  
203 Shashok asked if sidewalk sales were limited to the ones allowed for through BMP or  
204 could any merchant apply for a sidewalk sale. Donahue said the intent was that only  
205 the BMP sidewalk sales held twice a year were permitted under this ordinance and she  
206 wasn't sure what any other sidewalk sale at a different time would fall under. Donahue  
207 said this was about establishing a rule that's fair to everyone and whoever wanted a  
208 sale has two opportunities a year to have it. Nuovo questioned that it was limiting it to  
209 those sponsored just by the BMP and not just downtown merchants. He would like to  
210 see the tie to BMP eliminated, since it is the right of the Town to permit these.  
211 Donahue was afraid that by striking this from the Ordinance it would undo the attempt to  
212 keep it fair for everyone and eliminate the possibility of any appearance of  
213 discrimination.

214  
215 After further discussion, it was agreed to strike Section 302 from the Ordinance. Any  
216 sidewalk sale or event, such as Farmer's Market, would need to apply for an  
217 Assemblage Permit, and not fall under this Ordinance.

218  
219 There were no further changes and Carpenter closed the public hearing.

220  
221 Artim moved to warn the amended Ordinance with changes for a public hearing on  
222 November 15, 2016. Seconded by Nuovo. The motion carried with 7 in favor.

223 **MOTION PASSED.**

224  
225  
226 **9. \*Award Contract for Winter Sand**

227 *\*Postponed until November 15, 2016*

228  
229 **12. Year-to-Date Budget Reports**

230  
231 Ramsay reported that the General Fund is tracking pretty much as last year and is in  
232 the black. Public Works has some vacancies so they are under budget, but winter  
233 overtime could change that. Police could be impacted by overtime on special  
234 investigations as well. The Equipment Fund is up because of some purchases early in

235 the budget year. The Water and Sewer Funds are down because of the timing of some  
236 debt service payments, but the meter program is up because they have begun  
237 purchasing the new meters.

238  
239 **13. Approve Rural Business Development Grant Agreement for Marketing and**  
240 **Technical Assistance to Downtown Businesses During Bridge Construction**  
241

242 Carpenter said this was before them earlier in the year and now they are looking to  
243 authorize Town Manager Kathleen Ramsay to sign the Rural Business Cooperative  
244 Service Financial Assistance Agreement, committing the Town to \$18,860 in matching  
245 funds relative to a recently-awarded Rural Business Development Grant.

246  
247 Ramsay said the Town had submitted this grant application with the help of Community  
248 Liaison Jim Gish and the Addison County Economic Development Corporation. We  
249 recently heard that we were awarded the grant and there are some very interested in  
250 businesses who want to participate. Businesses are asked to contribute \$100 to be part  
251 of the program and this will go towards the \$18,860 matching funds needed, so to date  
252 there has been \$1,200 received.

253  
254 Asermily moved to authorize Town Manager Kathleen Ramsay to sign the USDA Rural  
255 Business Development Grant agreement to provide marketing and technical assistance  
256 to downtown businesses during the Bridge Construction Project and to reconfirm the  
257 Town's commitment to provide \$17,660 (\$18,860 less the \$1,200 received from  
258 businesses) in matching funds. Shashok seconded. The motion carried with 7 in favor.  
259 **MOTION PASSED.**

260  
261 **14. Resolution Regarding Adoption of PACE Program Description and Guidelines**  
262

263 Ramsay said that the Town approved the Property Assessed Clean Energy (PACE)  
264 program to help homeowners make energy improvements back in 2012. The Town  
265 has been working on the grant agreement since then, and is now ready to approve the  
266 description and guidelines to allow homeowners to approach lenders for the money.

267  
268 Seeley asked if there were administrative costs associated with these applications.  
269 Ramsay said there were some, but the Town is asking for a \$100 application fee to help  
270 cover these costs. Asermily said Middlebury is the first to charge a permit fee and she  
271 would ask that we not do that, since she feels we won't get many applications and it's  
272 just one more obstacle in the process for these homeowners and we really want to be  
273 encouraging them to take advantage of it. She said the Middleburyenergy.org website  
274 has a link to all the different options that homeowners can pursue for energy efficient  
275 home improvements and ways to finance them.

276  
277 Shashok suggested waiving the \$100 fee for the first five applicants to encourage  
278 people to apply, but hesitated to waive the fee altogether in case enough people applied  
279 and the program become a burden on the Town. Asermily said Efficiency Vermont has  
280 stepped up and is carrying most of the administrative burden for this program. Ramsay

281 said Town Attorney Benj Putnam came up with the \$100 fee to cover what he saw as  
282 the cost to the Town for the title work involved. Carpenter thought building a fee  
283 schedule into a program is easier than having to add it later.

284  
285 Shashok moved to approve the resolution regarding the adoption of the PACE Program  
286 description and guidelines amended to allow waiving the fee for the first five applicants  
287 before June 30<sup>th</sup>, 2017. Artim seconded.

288  
289 Asermily pointed out that the \$100 application fee is not part of the program description  
290 or guidelines.

291  
292 Shashok amended her motion to approve the resolution regarding the adoption of the  
293 PACE Program description and guidelines. Artim seconded. The motion carried with 7  
294 in favor. **MOTION PASSED.**

295  
296 Carpenter said the Board's intent is to waive the application fee stated on the  
297 application form for the first 5 applicants through June 30, 2017 and then the Board will  
298 reconsider the fee. It was also noted the attorney should keep track of how long it  
299 takes and also the staff time as well, so the fee accurately reflects the Town's cost.

#### 300 301 **15. Proclamation of Small Business Saturday on November 26, 2016**

302  
303 The Town has been approached once again by a representative from the Small  
304 Business Saturday Coalition and Women Impacting Public Policy (WIPP) requesting the  
305 Selectboard's participation in the national Small Business Saturday initiative by  
306 proclaiming Saturday, November 26, 2016 "Small Business Saturday" in Middlebury.  
307 According to the information provided by WIPP:

308  
309 Small Business Saturday was created in 2010 in response to small business owners'  
310 most pressing need: more customers. Falling between Black Friday and Cyber Monday,  
311 it's a day to support the local businesses that create jobs, boost the economy and  
312 preserve neighborhoods around the country. It has since become a nationwide, well  
313 known celebrated event on the national calendar with support from elected officials,  
314 public and private organizations.

315  
316 Donahue moved to proclaim Saturday, November 26, 2016 Small Business Saturday in  
317 Middlebury. Asermily seconded. The motion carried with 7 in favor. **MOTION**  
318 **PASSED.**

#### 319 320 **16. Approval of Check Warrants**

321  
322 Asermily reported that the total expenditures for the period 10/12/16 – 10/25/16 was  
323 \$3,331,304.35. The factors causing this high number was the reissuing of a bond  
324 payment, the ladder truck payment, the final payments on the Wastewater  
325 improvements and Creek Road project. She also noted the high jump in the Sports  
326 Center power bill that was due to the ice making equipment.

327  
328 Asermily moved to approve the check warrants. Artim seconded. The motion carried  
329 with 7 in favor. **MOTION PASSED.**

### 330 **17. Town Manager's Report**

331  
332  
333 Kathleen Ramsay reported on an e-mail exchange she'd had with Dayton and Sarah  
334 Wakefield regarding the increased noise in East Middlebury and their request for "no  
335 engine breaks" signs be posted along the right-of-way. They are looking for  
336 Selectboard support for their requests and she had also suggested it might be  
337 something for the Public Safety and Health Committee to take up.

338  
339 Shashok said that VTrans is very particular about what signs go up along their rights-of-  
340 way, and both main roads in East Middlebury are State highways. She said she liked  
341 the idea of posting "Quiet: Neighborhood Nearby" signs as suggested in one of the e-  
342 mails. While it isn't enforceable, it reminds truck drivers that they are entering a  
343 residential neighborhood. She would like to the Committee review it and see what they  
344 suggest. Shashok said she had noticed more truck traffic within the last year.

345  
346 It was felt it might be a long-shot trying to get VTrans to approve the signs, but it was  
347 worth a try.

### 348 **18. Board Member Concerns**

349  
350  
351 Seeley wanted to remind anyone listening that the Energy Committee has two vacant  
352 seats on their Committee for anyone who has any interest. They are looking into  
353 outreach within the community, so they are hoping to have someone with social media  
354 experience to help them with that area.

355  
356 Asermily said the next Public Safety and Health Committee meeting would be  
357 November 14<sup>th</sup> at 4:00 at the Middlebury Police Station. They'll review the East  
358 Middlebury noise sign and any other issues anyone has for them to look at.

### 359 **19. Executive Session - Contractual Matter and Personnel Matter**

360  
361  
362 In accordance with Vermont's Open Meeting Law requirements, Susan Shashok moved  
363 that the Board find that premature general knowledge of the consideration of a  
364 pending litigation, contractual matters and a personnel issue would clearly place the  
365 Selectboard at a substantial disadvantage because the Selectboard risks disclosing its  
366 litigation strategy if it discusses the pending litigation, contractual matter and personnel  
367 issue in public. Heather Seeley seconded. Motion carried with 7 members in favor.  
368 **MOTION PASSED.**

369  
370  
371 Susan Shashok further moved that the Board enter into Executive Session to discuss  
372 pending litigation, contractual matter and personnel issue under the provisions of Title 1,



373 Section 313(a)(1) of the Vermont State Statutes. Heather Seeley seconded. Motion  
374 carried with 7 members in favor. **MOTION PASSED.**

375  
376 The Board entered into Executive Session at 8:30 p.m.

377  
378 **20. Action on Matters Discussed in Executive Session**

379  
380 The Board exited Executive session at 10:00 pm.

381  
382 Artim moved to authorize Town Manager Kathleen Ramsay to sign the modified grant  
383 agreement with the Vermont Agency of Transportation to fund the Bridges Project  
384 Community Liaison position. Shashok seconded the motion. The motion carried with 5  
385 in favor and 2 abstaining (Nuovo and Donahue). **MOTION PASSED.**

386  
387 Artim moved to authorize Town Manager Kathleen Ramsay to sign the Finance and  
388 Maintenance agreement with Vermont Agency of Transportation. Asermily seconded  
389 the motion. The motion carried with 5 in favor and 2 abstaining (Nuovo and Donahue).  
390 **MOTION PASSED.**

391  
392 Artim moved to authorize \$5,000 for a third-party review of the bridge project plans.  
393 Donahue seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**

394  
395 **21. Adjourn**

396  
397 The meeting adjourned at 10:05 p.m.

398  
399