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Selectboard Meeting
Community Meeting Room – Ilsley Library
Tuesday, September 11, 2018
Meeting Minutes

Members Present: Brian Carpenter, Laura Asermily, Lindsey Fuentes-George, Victor Nuovo, Nick Artim, Heather Seeley and Farhad Khan.

Staff Present: Town Manager Kathleen Ramsay and Director of Public Works Planning Dan Werner.

Others Present: State Representatives Amy Sheldon and Robin Scheu, and Becky Dayton and Karen Duguay (arrived later) of the Economic Health Committee. Senator Chris Bray arrived later in the meeting.

The meeting was televised on MCTV by Jim Corbett.

1. Call to Order

Brian Carpenter called the meeting to order at 7:01 pm.

2. Approval of Agenda

Asermily moved to approve the agenda, seconded by Seeley. Carpenter noted that the item regarding the Economic Health Committee would be moved until later in the meeting to accommodate an earlier meeting for Karen Duguay. The motion carried with 7 in favor. The agenda was approved. **MOTION PASSED.**

3. Approval of Minutes of August 28, 2018 Selectboard Meeting

Nuovo made the motion to approve the August 14, 2018 minutes, and Artim seconded the motion.

Changes to the minutes:

Line 148 – Asermily seconded the motion.

Line 236 – Asermily wanted to add the suggestion she made to consider benches with chargers downtown to be friendlier for gathering and WiFi.

The motion to approve the minutes as amended carried with 6 in favor, 1 abstention (Seeley). **MOTION PASSED.**

4. Citizen Comments

There were no citizen comments.

49 **6. Dan Werner, Director of Public Works Planning, with an update on the**
50 **Infrastructure Committee Meeting of August 30, 2018**

51 (Item taken out of order)

52
53 **6.a. Recommendation on next steps on Creek Road**

54
55 Werner said Town Manager Ramsay did an excellent summary on the background of the
56 situation on Creek Road, and some of this was discussed at the last Infrastructure Committee
57 meeting. He said the Committee had recommended doing some minor repairs to the road
58 within the \$40,000 in the budget, but he said unfortunately that isn't enough to help the road
59 much. He said the Board needs to visit Creek Road to see what has changed since the 2015
60 closure of the road, and suggested the Board meet at 5:00 p.m. on October 9th to tour the
61 area prior to their regular meeting. The Board agreed and Carpenter thought it was a good
62 idea to go and see all that has changed prior to discussing it.

63
64 Asermily said one thing to think about in terms of the future use of the road, is should it be a
65 all-season or seasonal access for cars, or should it be a bike-pedestrian path with limited
66 access for farmers and residents and for emergency access. Seeley said Sheriff Keeler had
67 mentioned a Supreme Court decision that states in some cases the property owners own the
68 property under the road, so that may need to be taken into consideration when determining
69 the status of the road. Asermily asked about our obligations to keep it open, and Seeley said
70 by Statute we are required to keep it open. Carpenter said these legal questions would need
71 to be determined by the Town Attorney. Nuovo asked what constituted "keeping the road
72 open." Werner said Creek Road is a Class 3 road, so it could be reclassified Class 4, so not
73 as much maintenance needs to be done to it, but then we wouldn't receive any State funds to
74 maintain it. He said there are many options, such as discontinuing only a portion of it due to
75 flood damage.

76
77 Carpenter said it's a complex situation and after taking a look at it, the Board needs to talk
78 about what do with it and then get a legal opinions on our concerns and obligations. Seeley
79 said she had asked the Town Manager earlier about how much legal costs would be in this
80 process, and Ramsay said Town Attorney Benj Putnam had estimated around \$2,500.

81
82 Khan made the motion to warn a Selectboard site visit to Creek Road to discuss proposed
83 repairs for 5:00 p.m. on Tuesday, October 9, 2018. Nuovo seconded the motion. The motion
84 carried with 7 in favor. **MOTION PASSED.**

85
86 **6.b. Recommendation on award of bid for**
87 **Engineering for Pump Station Improvements**

88
89 Werner said he had requested proposals from engineering firms for improvements at
90 wastewater PS 6 (Seminary St.), PS 13 (Halpin Rd.), PS 14 (Painter Hills). He said the low
91 bidder was Otter Creek Engineering for a total cost of \$93,600. He said the work involves
92 converting these pump stations to submersible pump stations, along with some other
93 necessary work.

95 Seeley made the motion to award a contract to Otter Creek Engineering for engineering
96 design services for improvements to three sanitary sewer pump stations, for a total cost of
97 \$93,600. Khan seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**

98
99 Asermily said she was happy to see this work being done, since pump stations use a great
100 deal of electricity.

101 **6.c. Recommendation on award of bid for Fencing for Chipman Hill Reservoir**

102
103
104 Werner said this is a requirement the State has asked the Town to take care of this year. He
105 said two bids were received and the low bidder was 802 Fence Company, LLC, for a total
106 cost of \$14,735. The other bid was from Cedar Ledge Fence and Property Care for \$19,825.

107
108 Seeley made the motion to award a contract to 802 Fence Company for construction of a
109 perimeter fence around the Chipman Hill Reservoir at a total cost of \$14,735. Nuovo
110 seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**

111
112 Seeley suggested before and after photos of the project to display at Town Meeting for
113 citizens to see all the work done in that area this year.

114 **6.d. Recommendation on engineering amendment for** 115 **Pump Station #9 Overflow Monitoring**

116
117
118 Werner said this is for the design and bid phase for construction of an overflow monitoring
119 structure at Pump Station #9 on Weybridge Street. He said this is part of the Overflow Plan
120 submitted to the U.S. Environmental Protection Agency in April 2016 to improve monitoring
121 and control of Combined Sewer Overflow (CSO) events going into Otter Creek.

122
123 Seeley made the motion to award a contract to Aldrich & Elliott (A&E) for final design and bid
124 services for an overflow metering structure at Pump Station #9, at a cost of \$5,900. Khan
125 seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**

126 **6.e Recommendation on award of bid for repairs to Public Works Building**

127
128
129 Werner said he requested bids to make some repairs and to replace the wood fascia of the
130 Public Works building, along with some of the doors that have deteriorated due to the
131 moisture problem within the building. He said the only bid received was from D.H. Cameron,
132 of North Ferrisburgh, who has a good deal of experience with Butler Buildings such as the
133 Public Works facility. He said since the bid exceeds the amount budgeted; they are now only
134 looking at replacing the wood fascia and trim with metal and replacement of the North
135 workshop door and frame to remain within budget of \$14,300.

136
137 Seeley made the motion to award a contract to D.H. Cameron Construction Company for
138 repairs to the Public Works building, at a cost of \$14,300. Khan seconded the motion. The
139 motion carried with 7 in favor. **MOTION PASSED.**

140
141 Asermily said she understood some repairs needed to be made while they are looking at the
142 Public Works Facility in whole, but asked how that study was going. Ramsay said they are

143 working on the adaptive reuse of the existing structures at the old Wastewater Facility to take
144 care of the storage issues first, and then work can begin on looking at the Public Works
145 Facility. Seeley said she doesn't feel the investments in this building are wasted.

146
147 Khan asked a question regarding Item 6.b. on why there was such a large discrepancy,
148 almost \$100,000, between the highest bid and the low bid. Werner said he wasn't sure, but
149 thought some contractors are just throwing these high numbers out there and also the high
150 bidder was located quite a distance away and it could be due to travel times.

151
152 **5. Fred Kenney, Chair Middlebury Economic Health Committee, with an update on**
153 **recent discussions about the Committee's charge and a request to Selectboard for an**
154 **extension of the timeline for the Committee's work**

155
156 Economic Health Committee members Becky Dayton (and Karen Duguay who arrived later)
157 were filling in for Fred Kenney who had a family emergency.

158
159 Carpenter said the Economic Health Committee had been having some discussions and are
160 requesting a change in the Charge and the timeline.

161
162 Dayton said originally the Committee had felt that the Charge was rather vague, but after
163 discussing it further they determined it was actually very specific, and had suggested some
164 changes to the wording. She said they also felt the timeline was too short to adequately
165 address the issues they'd been asked to address, and felt they needed a "modest" budget for
166 some expenses that might be needed.

167
168 Carpenter felt the Committee's discussion had flushed out what was needed and made the
169 Charge better, so he supports the amendments. He said he had been concerned about the
170 extended timeline, but if the Committee is supportive of it, it keeps the conversation going,
171 while still providing the Selectboard with more specific recommendations as the Committee
172 finds something the Board can act on sooner.

173
174 (Karen Duguay joins the meeting.)

175
176 Seeley asked if the Board could request progress reports at specific times, rather than just
177 have it open-ended. It was suggested the Committee could report quarterly to begin with and
178 adjust as needed, and Duguay said she thought that was totally appropriate. Nuovo said the
179 minutes provide the progress the Committee is making.

180
181 Artim said he was in favor of the recommended changes and felt the original timeline was set
182 to not burden the people who agreed to be on the Committee and had no problem with the
183 timeline if it takes more time to do it right. Seeley said the timeline was also made shorter in
184 hopes of getting something to implement sooner rather than later. Duguay said they can take
185 back to the Committee that they need to be setting incremental goals that the Board can
186 begin to use. Seeley said she wants to begin implementing something sooner than waiting
187 two years for the Committee to issue their report. Khan said the Committee had discussed
188 when they reached a benchmark; they would bring it to the Board. Carpenter recommended
189 supporting the changes as amended and to express the urgency to the Committee to bring
190 things to the Board as they're decided.

191
192 Duguay said the Committee would be meeting twice a month, which demonstrates the
193 Committee's commitment. There was more discussion on the timeline and the Committee's
194 wish to spend the two years to explore all options, and Carpenter expressed thanks to the
195 Committee for their commitment.

196
197 Khan made the motion to approve the revised Economic Health Committee charge, as
198 presented. Artim seconded the motion. The motion carried with 7 in favor. **MOTION**
199 **PASSED.**

200
201 Carpenter said the Committee is requesting a \$1,500 budget and Ramsay said this money
202 could come from the remaining Middlebury Business Development Fund that currently has
203 just over \$82,000. Ramsay said the Committee should come up with a line-item budget
204 showing anticipated expenses, since anything over \$500 would require a purchase order.
205 Any larger request for funds would need to come to the Board.

206
207 Khan made the motion to approve a \$1,500 Committee budget to be used for conducting
208 research relevant to its charge, with all expenditures to be approved by Town Manager
209 Kathleen Ramsay. Asermily seconded the motion. The motion carried with 7 in favor.
210 **MOTION PASSED.**

211
212 **7. Review and Discussion of the Vermont League of Cities & Towns' Legislative**
213 **Platform for the Upcoming Legislative Session in preparation for VLCT's Annual**
214 **Business Meeting on Wednesday, October 3, 2018**

215
216 Ramsay said the notice was sent out to the Town's list of over 700 e-mail addresses and two
217 replies were received; one from Victoria DeWind regarding the publication of notice for public
218 meetings and from Jack and Chip Mayer about incorporating the 350 Resolution in its entirety
219 into the VLCT Municipal Policy.

220
221 John Flowers, speaking on behalf of the Vermont Press Association as past President and
222 interim Board member, they are opposed to the proposed increase from 5 to 10 days for
223 posting of draft minutes; and the provision regarding legal on-line notices bypassing print
224 notices. He said there are people who may not use computers, but faithfully look to that
225 portion of the newspaper for hearing notices. Carpenter asked why the objection to the 10
226 days for draft minutes, and Flowers said that many papers with limited staff can't cover all the
227 town meetings, so they rely on the town websites and the minutes for basic information.
228 Artim asked why the VLCT was proposing extending it, and Flowers said that some small
229 towns have limited staff and limited hours to produce the minutes in the 5 days, but he said
230 they could post the highlights of motions and items that were approved and then submit a
231 complete set of minutes later. Seeley said when she did minutes for the DRB, they used to
232 produce "mini-minutes" first and then a complete set later on.

233
234 Nuovo said he questioned #2 regarding local decision making and the voters being able to
235 adopt Charter changes without sending them to the State. He approves of local
236 independence, but he feels the Charter is the Constitution of the Town and the Town is not
237 sovereignty, it is a government within the State, so feels approval by the Legislature is

238 recognition of this fact. He said as it is he would not vote for this with that item in there and
239 feels it goes too far in local control.

240

241 Senator Bray joined the Board, and said he served 2 years on the Senate Government
242 Operations Committee and they reviewed dozens of charter changes, and in the time he's
243 been there none have ever been declined. He asked if Middlebury had every brought a
244 Charter change to the Legislature and have it declined. Ramsay said this is a VLCT Policy
245 that is being discussed now, and all Middlebury Charter changes submitted have been
246 approved. Bray said it's a major shift in the way Charter changes are made and he wonders
247 what prompted it. Nuovo said he feels it's a system that has been established and Charters
248 should be approved by a higher level of government, and finds the VLCT policy contradicts
249 that.

250

251 Representative Amy Sheldon had a concern about the statement in the Transportation
252 Section about not using Transportation Fund money for Agency of Natural Resource (ANR)
253 projects, and thought it wasn't clear. Ramsay said she thought that the VLCT position meant
254 that there were more transportation projects than the Transportation Fund can cover and that
255 water quality projects will need alternative sources of revenue.

256

257 Representative Robin Scheu said she was looking under Public Safety and Law Enforcement
258 and said the Legislature has passed some bills in the last few years regarding fair and
259 impartial policing and systemic race issues, and it would be nice if somewhere those issues
260 were addressed in the VLCT Policy.

261

262 Senator Bray referred to Section 5.01:3 regarding a statewide authority for collection of per
263 parcel fees for implementation of clean water projects, and said in previous testimony
264 regarding a similar separate collection authority for another agency, it was determined that
265 there was no advantage to establishing a separate authority when you already had a fully
266 staffed agency to handle it.

267

268 Ramsay ran through the comments and suggestions made:

269

- 270 • Nuovo wanted to revise item #2 so it ended after the first comma, so it would read
271 simply "local decision-making;"
- 272
- 273 • Sheldon wanted clarity on what ANR projects means and what the intent of not using
274 Transportation funds for them is.
- 275
- 276 • Scheu is looking for ways to suggest VLCT to support fair and impartial policing and
277 address systemic race issues.
- 278
- 279 • Bray says there's no advantage to setting up statewide authority for centralized
280 collection of impervious surface per-parcel fees.
- 281
- 282 • Flowers was opposed increasing the deadline for posting minutes to 10 business days
283 and bypassing the requirement for a printed form of notice.
- 284

285 Carpenter said he can't figure out why VLCT can't get the draft policy to towns sooner to
286 allow more time for review and comment to make sure the policy actually mirrors how we
287 feel. He said he'd like to propose that if they can't agree to amend those items we have
288 concerns with or pull them out for this year, we would abstain from voting in hopes we could
289 be more participative in the future with better notice.

290
291 Asermily said she supported Carpenters proposal, and that she really did appreciate all that
292 VLCT does for towns and what a wonderful resource they are. She also had some
293 recommended language changes. She suggests in Education, on page 2, 1.01:1 where it
294 says *"a simple and transparent education finance system that reduces and reforms the*
295 *property tax burden over the long term and that more closely links voters' actions in*
296 *approving budgets to the taxes they pay to fund their school districts,"* be changed to read *"a*
297 *transparent education finance system that closely links voters' actions in approving budgets*
298 *to the taxes they pay to fund their school districts;"*

299
300 Asermily also was looking for an addition in Section 3.05 Safe Driving Initiatives, regarding
301 multiple users of the road and support for standards for safe commuting for all road users,
302 such as better shoulders, better road stripping standards, so thought it might be a point to
303 bring up. Bray thought that was already covered in another section.

304
305 Artim made the motion to close discussion and to instruct Voting Delegate Kathleen Ramsay
306 to bring these recommended changes to the VLCT Annual Meeting. Khan seconded the
307 motion. The motion carried with 7 in favor. **MOTION PASSED.**

308
309 Ramsay said she would send all the recommended changes to VLCT in advance of the
310 October 3rd meeting.

311 312 **8. Approval of Check Warrants**

313
314 Fuentes-George made the motion to approve the total expenditures in the amount of
315 \$4,819,580.21, consisting of \$4,715,508.31 for accounts payable, and \$104,071.90 for
316 payroll, for the period August 29, 2018 through September 11, 2018. Seeley seconded the
317 motion. The motion carried with 7 in favor. **MOTION PASSED.**

318 319 **9. Town Manager's Report**

320
321 Ramsay said there would be a public input meeting on the proposed landscape designs for
322 Triangle Park and Printer's Alley on Wednesday, September 19, 2018 at 6:30 p.m. in the
323 Large Conference Room.

324 325 **10. Board Member Concerns**

326
327 Nuovo wanted to commend Angelo Lynn's editorial in the last Addison Independent and the
328 positive nature of the editorial about looking for opportunities to improve the Town as a result
329 of this project. He said he proposed some examples of how this might be done, such as
330 keeping the temporary road that's been constructed as an access to behind Battell Block as a
331 pedestrian access to the Creek. He said ideas like that could be turned into something very

332 useful for the Town and urged the public to come forward with ideas to improve the
333 downtown.

334

335 Artim said originally there was a crosswalk on the east side of the Shaw entrance and then it
336 was moved to the west of Shaw's, by the entrance to the Co-op. He said now there is a
337 crosswalk sign that has appeared where the old sidewalk used to be and it's creating
338 confusion for pedestrians, so suggested the need to clean up that area. Asermily said she
339 believes the sign is placed ahead of the sidewalk to warn drivers there is a sidewalk ahead.

340

341 Asermily said that the Governor was in town today and announced the grant opportunity for
342 electric charging stations. She said there would a check-in with the Transportation Task
343 Force at the Regional Planning office on September 20th and they'll be looking at bus usage
344 and on-demand service and the rail platform.

345

346 **11. Executive Session – Contracts & Legal Matters**

347

348 Asermily moved that in accordance with Vermont's Open Meeting Law requirements, I move
349 that the Board find that premature general knowledge of the consideration of contracts and
350 pending litigation would clearly place the Selectboard at a substantial disadvantage, because
351 the Select Board risks disclosing its litigation strategy if it discusses the contracts and
352 pending litigation in public. Khan seconded the motion. The motion carried with 7 in favor.

353 **MOTION PASSED.**

354

355 Asermily further moved that the Board enter into Executive Session to discuss contracts and
356 pending litigation, under the provisions of Title 1, Section 313(a)(1) of the Vermont Statutes.
357 Khan seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**

358

359 The Board entered Executive Session at 8:27 p.m.

360

361 **12. Action on Matters Discussed in Executive Session**

362

363 The Board exited Executive Session with no further action at 8:52 p.m. upon motion by
364 Asermily, seconded by Khan.

365

366 **13. Adjourn**

367

368 The meeting adjourned at 8:53 p.m. upon motion by Asermily, seconded by Artim and
369 unanimously approved.

370

371 The next regular meeting of the Middlebury Selectboard will be on Tuesday, October 9, 2018
372 at 7:00 p.m. in the Town Offices at 77 Main Street. There will not be a meeting on
373 September 25, 2018.

374

375 Respectfully submitted,

376 Beth Dow