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

DRAFT

Subject to approval by the Selectboard

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.**

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4. Citizen Comments

There were no citizen comments.

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

(Item taken out of order)

6.a. Recommendation on next steps on Creek Road

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

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

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

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

6.b. Recommendation on award of bid for Engineering for Pump Station Improvements

Werner said he had requested proposals from engineering firms for improvements at wastewater PS 6 (Seminary St.), PS 13 (Halpin Rd.), PS 14 (Painter Hills). He said the low bidder was Otter Creek Engineering for a total cost of \$93,600. He said the work involves

97 converting these pump stations to submersible pump stations, along with some other
98 necessary work.

99
100 Seeley made the motion to award a contract to Otter Creek Engineering for engineering
101 design services for improvements to three sanitary sewer pump stations, for a total cost of
102 \$93,600. Khan seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**
103

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

106 107 **6.c. Recommendation on award of bid for Fencing for Chipman Hill Reservoir** 108

109 Werner said this is a requirement the State has asked the Town to take care of this year. He
110 said two bids were received and the low bidder was 802 Fence Company, LLC, for a total
111 cost of \$14,735. The other bid was from Cedar Ledge Fence and Property Care for \$19,825.
112

113 Seeley made the motion to award a contract to 802 Fence Company for construction of a
114 perimeter fence around the Chipman Hill Reservoir at a total cost of \$14,735. Nuovo
115 seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**
116

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

119 120 **6.d. Recommendation on engineering amendment for** 121 **Pump Station #9 Overflow Monitoring** 122

123 Werner said this is for the design and bid phase for construction of an overflow monitoring
124 structure at Pump Station #9 on Weybridge Street. He said this is part of the Overflow Plan
125 submitted to the U.S. Environmental Protection Agency in April 2016 to improve monitoring
126 and control of Combined Sewer Overflow (CSO) events going into Otter Creek.
127

128 Seeley made the motion to award a contract to Aldrich & Elliott (A&E) for final design and bid
129 services for an overflow metering structure at Pump Station #9, at a cost of \$5,900. Khan
130 seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**
131

132 **6.e Recommendation on award of bid for repairs to Public Works Building** 133

134 Werner said he requested bids to make some repairs and to replace the wood fascia of the
135 Public Works building, along with some of the doors that have deteriorated due to the
136 moisture problem within the building. He said the only bid received was from D.H. Cameron,
137 of North Ferrisburgh, who has a good deal of experience with Butler Buildings such as the
138 Public Works facility. He said since the bid exceeds the amount budgeted; they are now only
139 looking at replacing the wood fascia and trim with metal and replacement of the North
140 workshop door and frame to remain within budget of \$14,300.
141

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

145
146 Asermily said she understood some repairs needed to be made while they are looking at the
147 Public Works Facility in whole, but asked how that study was going. Ramsay said they are
148 working on the adaptive reuse of the existing structures at the old Wastewater Facility to take
149 care of the storage issues first, and then work can begin on looking at the Public Works
150 Facility. Seeley said she doesn't feel the investments in this building are wasted.

151
152 Khan asked a question regarding Item 6.b. on why there was such a large discrepancy,
153 almost \$100,000, between the highest bid and the low bid. Werner said he wasn't sure, but
154 thought some contractors are just throwing these high numbers out there and also the high
155 bidder was located quite a distance away and it could be due to travel times.

156
157 **5. Fred Kenney, Chair Middlebury Economic Health Committee, with an update on**
158 **recent discussions about the Committee's charge and a request to Selectboard for an**
159 **extension of the timeline for the Committee's work**

160
161 Economic Health Committee members Becky Dayton (and Karen Duguay who arrived later)
162 were filling in for Fred Kenney who had a family emergency.

163
164 Carpenter said the Economic Health Committee had been having some discussions and are
165 requesting a change in the Charge and the timeline.

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

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

178
179 (Karen Duguay joins the meeting.)

180
181 Seeley asked if the Board could request progress reports at specific times, rather than just
182 have it open-ended. It was suggested the Committee could report quarterly to begin with and
183 adjust as needed, and Duguay said she thought that was totally appropriate. Nuovo said the
184 minutes provide the progress the Committee is making.

185
186 Artim said he was in favor of the recommended changes and felt the original timeline was set
187 to not burden the people who agreed to be on the Committee and had no problem with the
188 timeline if it takes more time to do it right. Seeley said the timeline was also made shorter in
189 hopes of getting something to implement sooner rather than later. Duguay said they can take
190 back to the Committee that they need to be setting incremental goals that the Board can
191 begin to use. Seeley said she wants to begin implementing something sooner than waiting
192 two years for the Committee to issue their report. Khan said the Committee had discussed

193 when they reached a benchmark; they would bring it to the Board. Carpenter recommended
194 supporting the changes as amended and to express the urgency to the Committee to bring
195 things to the Board as they're decided.

196
197 Duguay said the Committee would be meeting twice a month, which demonstrates the
198 Committee's commitment. There was more discussion on the timeline and the Committee's
199 wish to spend the two years to explore all options, and Carpenter expressed thanks to the
200 Committee for their commitment.

201
202 Khan made the motion to approve the revised Economic Health Committee charge, as
203 presented. Artim seconded the motion. The motion carried with 7 in favor. **MOTION**
204 **PASSED.**

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

211
212 Khan made the motion to approve a \$1,500 Committee budget to be used for conducting
213 research relevant to its charge, with all expenditures to be approved by Town Manager
214 Kathleen Ramsay. Asermily seconded the motion. The motion carried with 7 in favor.
215 **MOTION PASSED.**

216
217 **7. Review and Discussion of the Vermont League of Cities & Towns' Legislative**
218 **Platform for the Upcoming Legislative Session in preparation for VLCT's Annual**
219 **Business Meeting on Wednesday, October 3, 2018**
220

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

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

238
239 Nuovo said he questioned #2 regarding local decision making and the voters being able to
240 adopt Charter changes without sending them to the State. He approves of local

241 independence, but he feels the Charter is the Constitution of the Town and the Town is not
242 sovereignty, it is a government within the State, so feels approval by the Legislature is
243 recognition of this fact. He said as it is he would not vote for this with that item in there and
244 feels it goes too far in local control.
245

246 Senator Bray joined the Board, and said he served 2 years on the Senate Government
247 Operations Committee and they reviewed dozens of charter changes, and in the time he's
248 been there none have ever been declined. He asked if Middlebury had every brought a
249 Charter change to the Legislature and have it declined. Ramsay said this is a VLCT Policy
250 that is being discussed now, and all Middlebury Charter changes submitted have been
251 approved. Bray said it's a major shift in the way Charter changes are made and he wonders
252 what prompted it. Nuovo said he feels it's a system that has been established and Charters
253 should be approved by a higher level of government, and finds the VLCT policy contradicts
254 that.
255

256 Representative Amy Sheldon had a concern about the statement in the Transportation
257 Section about not using Transportation Fund money for Agency of Natural Resource (ANR)
258 projects, and thought it wasn't clear. Ramsay said she thought that the VLCT position meant
259 that there were more transportation projects than the Transportation Fund can cover and that
260 water quality projects will need alternative sources of revenue.
261

262 Representative Robin Scheu said she was looking under Public Safety and Law Enforcement
263 and said the Legislature has passed some bills in the last few years regarding fair and
264 impartial policing and systemic race issues, and it would be nice if somewhere those issues
265 were addressed in the VLCT Policy.
266

267 Senator Bray referred to Section 5.01:3 regarding a statewide authority for collection of per
268 parcel fees for implementation of clean water projects, and said in previous testimony
269 regarding a similar separate collection authority for another agency, it was determined that
270 there was no advantage to establishing a separate authority when you already had a fully
271 staffed agency to handle it.
272

273 Ramsay ran through the comments and suggestions made:
274

- 275 • Nuovo wanted to revise item #2 so it ended after the first comma, so it would read
276 simply "local decision-making;"
277
- 278 • Sheldon wanted clarity on what ANR projects means and what the intent of not using
279 Transportation funds for them is.
280
- 281 • Scheu is looking for ways to suggest VLCT to support fair and impartial policing and
282 address systemic race issues.
283
- 284 • Bray says there's no advantage to setting up statewide authority for centralized
285 collection of impervious surface per-parcel fees.
286

- Flowers was opposed increasing the deadline for posting minutes to 10 business days and bypassing the requirement for a printed form of notice.

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

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

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

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

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

8. Approval of Check Warrants

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

9. Town Manager's Report

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

10. Board Member Concerns

Nuovo wanted to commend Angelo Lynn's editorial in the last Addison Independent and the positive nature of the editorial about looking for opportunities to improve the Town as a result of this project. He said he proposed some examples of how this might be done, such as

335 keeping the temporary road that's been constructed as an access to behind Battell Block as a
336 pedestrian access to the Creek. He said ideas like that could be turned into something very
337 useful for the Town and urged the public to come forward with ideas to improve the
338 downtown.

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

345
346 Asermily said that the Governor was in town today and announced the grant opportunity for
347 electric charging stations. She said there would a check-in with the Transportation Task
348 Force at the Regional Planning office on September 20th and they'll be looking at bus usage
349 and on-demand service and the rail platform.

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

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

359
360 Asermily further moved that the Board enter into Executive Session to discuss contracts and
361 pending litigation, under the provisions of Title 1, Section 313(a)(1) of the Vermont Statutes.
362 Khan seconded the motion. The motion carried with 7 in favor. **MOTION PASSED.**

363
364 The Board entered Executive Session at 8:27 p.m.

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

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367
368 The Board exited Executive Session with no further action at 8:52 p.m. upon motion by
369 Asermily, seconded by Khan.

370 **13. Adjourn**

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372
373 The meeting adjourned at 8:53 p.m. upon motion by Asermily, seconded by Artim and
374 unanimously approved.

375
376 The next regular meeting of the Middlebury Selectboard will be on Tuesday, October 9, 2018
377 at 7:00 p.m. in the Town Offices at 77 Main Street. There will not be a meeting on
378 September 25, 2018.

379
380 Respectfully submitted,
381 Beth Dow