



## Select Board

Town of Hinesburg  
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### Meeting Minutes – February 11, 2019

- Draft -

**Attending the Meeting:** Phil Pouech, Aaron Kimball, Merrily Lovell, Tom Ayer, Andrea Morgante, Renae Marshall, Joy Dubin Grossman, and attached list.

Meeting called to order at 7:03 p.m.

Phil advised there was no executive session needed.

#### Agenda changes and Public Comment

There were no changes to the agenda or public comment.

#### Discussion and Select Board Decision Regarding Lot 15

Phil explained the Select Board through Town council issued a motion to stay to the environmental court and the motion has been rejected. The issue being discussed tonight is concerning the DRB's denial of the applicants permit on three issues. One issue is not meeting the Town map. This issue was then passed on to the Select Board. There was a 120-day time limit on deciding to proceed through eminent domain. We are now at that 120-day point and so the Select Board will be deciding today on how to proceed.

Andrea made the following motion:

#### TOWN OF HINESBURG

NOTICE OF PUBLIC HEARING FOR THE PURPOSE OF ACQUIRING LAND AND INTERESTS IN LAND FOR THE PUBLIC PURPOSE OF PROTECTING THE WATER QUALITY OF PATRICK BROOK AND THE PREVENTION OF FLOODING ON TOWN AND STATE ROADS AND AN ENHANCEMENT TO THE EXISTING CANAL WALK ON A PORTION OF LAND ON "LOT 15" IN THE COMMERCE PARK SUBDIVISION

Notice is hereby given that the Town of Hinesburg Selectboard will hold a public hearing and conduct a site visit on Oct 7, 2019, for the purpose of inspecting lands and hearing

testimony and comment, regarding the necessity for acquiring land and rights in land in connection with The Official Map that so designates that one of the purposes could be for protecting water quality that is in the public interest on Lot 15 in the Commerce Park subdivision. At this hearing, the Selectboard will also hear testimony and comment regarding compensation to be paid to the landowners for acquiring such lands and rights in land. The lands to be inspected are a portion of Lot 15, which parcel of land is located southerly and easterly of Commerce Street and northerly of Mechanicsville Road in Hinesburg. The property is further depicted as 'LOT 15' on a subdivision plat entitle "Bernard and June Giroux, Victor and Ramona Giroux, 15 Lot Commercial Subdivision, Hlnesburg, Vermont, Site Plan West" Sheet 3 of 6, prepared by Phelps Engineering Inc., dated April 23, 1986, and recorded in Map Slide 108 of the Town of Hlnesburg Land Records.

The hearing will begin at 5 PM on October 7, 2019, at Town of Hinesburg Town Office, 10632 Vermont Route 116, Hinesburg, Vermont. The Select Board will conduct a site visit.

The motion was second by Merrily.

Frank Koss asked what the motion meant. Does delaying things until October mean there will be no decision on eminent domain tonight? Andrea explained the process that is laid out in Vermont Statute is that they need to begin by identifying the Town has an interest in finding out more about the parcel and state that publicly.

Len Duffy asked about compensation for the landowners, the Town is tying up the land and will the landowner be paid for that time? Andrea said there are many other issues before the court and by waiting till October it gives time for those issues to be resolved. Len then said this is all about Hannaford, Andrea responded that it is about the fact that the Town has an opportunity now but could make this decision at another time as well. Len said if Hannaford is denied the Town probably will not go through with this. Andrea said we might as it is on the official map for a reason.

Tom asked for clarification of who is Andrea referring to in using the term we? Andrea responded she made the motion from her beliefs and it is up to the Select Board to decide if they agree or not.

Kate Myhre stated that Board member Morgante lives across the street from lot 15 and could be considered an abutter and has actively testified against Hannaford's application, could this be considered a conflict of interest. Could she vote on this issue given what appears to be bias against the current applicant? If she does vote is the Town opening itself up to future litigation by the applicant or landowner? Phil said the Board has received legal advice which said Andrea could vote on the question of moving this process forward but would need to abstain from any final decision. Andrea noted she has stated at several meetings that when she testified she was doing so as a citizen with her knowledge of the canal walk not as a neighboring landowner.

Bill Baker spoke of his personal experience with eminent domain concerning loss of land by his family for what was considered to be a special trail needing to be protected for the citizens of the United States. He went on to say that Lot 15 is not a unique property and there is plenty of open space in Town to establish a park. He feels this is not the appropriate use of eminent domain. He believes this is

not about establishing a park but wanting to stop Hannaford's application. He is against use of resident's tax dollars to support this.

Keith Roberts thanked the Board for what they are doing, there are disagreements in Town but he feels residents assume the Board is doing what they feel is in the best interest of the Town. He referred to the term he used last Monday night at the meeting that this action is catastrophically irresponsible. He compared this with the Bissonette Field project where there was a clearly identified need for a very long time but it was never thought to take property by eminent domain and development of the property has been primarily by private fund raising. This cannot be done regarding eminent domain. Keith asked for clarification on the process, asking if at the end of the meeting the Board will vote on the motion and Phil said it will. Keith addressed the legal characteristics of eminent domain. Phil said the Board has discussed the legal issues Keith mentioned.

Carl Bohlen urged the Board to take the first step as it is not locking the Town into anything but not taking it could remove the official map as a tool for the community. The Board can opt out at any time. He asks that the Board not spend a lot of money and wait on an appraisal, take this time to update information and studies. Do what would give the most flexibility.

John Lyman asked if the Select Board has the power to take the land by eminent domain or will it be a public vote. Phil said eminent domain is one of the powers the Board has. Using it for the purpose of the planning tool of the Town map probably has not yet been challenged. Andrea said it does not preclude having a Town wide vote as it would require spending tax dollars. Phil said to move forward with eminent domain question is a Board vote but to spend tax dollars to acquire the property would be a Town vote.

Ruth Ayer asked if the Giroux's were advised when the Town map was prepared if that lot was going to be on the map. One of the Giroux family members in the audience said they were not. Ruth continued by stating the Town has spent over \$69,000 on this and will be much more if the Town tries to take the land and she cannot support that.

Sam Hemmingway asked how much of Lot 15 is the Town trying to obtain by eminent domain. Andrea replied approximately 2 acres and the remaining 3 acres will be available to develop. If this is such an important issue, Sam asked why it is only now that eminent domain is being brought up. He feels this is just a way of preventing Hannaford. Phil advised the developer went to the DRB and the first time the DRB decided the language included in the application complied with the public use noted in the Town map. The second time the developer came before the DRB the language was changed on how they would comply with the Town map and this time the DRB decided it did not meet the intent of the Town map and that is what has sent the issue to the Select Board. Sam went on to say taking Hannaford out of the picture it is still taking a taxable property away and the Town needs more taxable properties, this action seems wrong and he hopes the Board defeats the motion.

Paul Lamberson stated he appreciates the concern about stormwater. He does not feel we need to spend money on more parks till existing areas of recreation are improved. He does think Hannaford is proposing some things around stormwater that have not been tested and he hopes regardless of the decision tonight the Board continues to fight to protect the stormwater regulations.

Jeff French, planning commission member, said the planning commission spent a lot of time putting together the Town Plan and map and sent it to the Select Board which held public hearings and passed the plan. His concern is, if the official map is gone on this project each following developer will not have a map they need to follow. Jeff addressed the new stormwater regulations and the point that if Hannaford builds it will be according to the old regulations in effect when their application was submitted.

Gil Coates said he does not know exactly how much property the Town owns but he wonders how much of that was taken by eminent domain and he doubts any of it was. He feels it is a very serious step to use eminent domain to take someone's property. It is not Yosemite or the Everglades just a 5 acre commercial lot.

Deirdra Erb said she understands the piece of property has been on the market for a long time, Phil said yes for about 30 years. Deirdra is confused about the "taking" of the land. Phil said if this goes forward there is process of appraising the land and some negotiating and the court makes the final decision. Phil said he is on record saying if anything were to happen he wants to see the Giroux family made whole.

Rob Bast said he was on the Select Board when Commerce Street was created by the Giroux family and in part by the Select Board working together to have the Giroux's build the bridge over the canal so it would become a through road. It is a viable commercial area and with compact commercial development allowing residents to work in Town and because of that we have a volunteer Fire Department and people who can support public needs. Developing a piece of land for a business is difficult with all the permitting requirements. Providing services such as sewer and water makes it easier and this location does that. He urges the Board to keep in mind this is just as an important aspect of the Town's future as it was 30 years ago.

Marie Ayer said this would be a message that she would not want Hinesburg know for if the vote approves eminent domain. The Town plan has plenty of green spaces marked and she feels the message sent to the landowners is that the Town is going to hold your land hostage and so sends a message that Hinesburg is not open to businesses unless you are the business we want. By putting parts of peoples land on the Town map for green space prevents them from being able to develop it.

Greg Munsell said Brian Busier shared with him about 15 or 20 years ago that he wanted to move his store to the front of where the NRG building is but was stopped by not being able to get a right-of-way to access the property he wanted. Greg asks if Lot 15 is broken up will the land left be accessible to the commercial market. Andrea replied the land the Town would have would not prevent access from the Commerce St extension road.

John Little asked if the Board votes yes tonight does that immediately at this time open the Town to a lawsuit. Phil replied probably that process would start too.

Chuck Reiss addressed vision and scale for the Town and to him a building the size of Hannaford is the wrong scale. Phil reminded Chuck the discussion is about the Town map and eminent domain. Chuck addressed the intention of the Giroux family by quoting from the ACT 250 application "commercial/

industrial park intended for primarily local small scale and start-up businesses which are appropriate to the local scale of development". Chuck feels there could be a use for Lot 15 with mixed use.

Tim Barron asked who will pay for legal costs and research costs. Phil said the Town will need to pay those costs.

Jennifer P. addressed the precedent this would set. She feels businesses would not want to locate in Hinesburg the idea of taking land for something not essential is to her not what eminent domain is about. She asked in all the time this has been going on who has been paying the taxes and it is a presumption given a choice they would even consider selling to the Town, it is their property. She does not want her tax dollars used to subsidize this project if created in this manner.

Leroy Brace said the Board said if the Town were to buy this land there would be a vote. He noted Ruth Ayer said \$69,000 has already been spent, Leroy wanted to know how we get a reconciliation of that money that we as taxpayers are paying if not something the majority of the Town wants. Andrea pointed out funds were spent to defend the DRB's decision.

Len Duffy asked if tonight's meeting is the Public Hearing. Phil said it is a Select Board meeting open to the public. Len said he thinks passing the motion would be a big mistake and very costly.

Rolf Kielman member of the Planning Commission, the village district was expanded in trying to anticipate what the Town will look like in 50 years. The village district is approximately 700 acres with public land being less than 5% of that. He feels Lot 15 is not an appropriate location for a grocery store. Bob Thiefels urged the Board to go ahead with this and negotiate and work out the difficulties of eminent domain. He has attended Town meetings where we vote on highway and fire trucks all of which raise our taxes and we know we need those, in a sense Lot 15 is the Town's "Yosemite" and he wants the Board to go ahead with the process. He said money has been pledged that could be used. Phil asked the Board members to share their thoughts.

Tom said he has read all the emails and the response was 3 to 4 against this action to each one in favor. Eminent domain should only be used for necessary projects, he noted the attorney they have been meeting with said it is the most significant action any municipal body can take. In looking at what the best use of land is he believes it is commercial as originally planned. He has no intention of voting to continue this process beyond tonight.

Merrily thanked everyone for coming and expressed the care for the community that we all have. She noted this is not an issue about Hannaford and not about if we should have a park but this is an issue of rights. Landowners have rights, the municipal town also has rights and it is the Board's job to protect those rights. She feels eminent domain is a huge step to take, she regrets that in the creation of the Town map some landowners were not consulted. She spent a lot of time looking at the DRB denial of the application and is concerned about the water, Hannaford's plan for stormwater would destroy the natural ability of the land to collect and release water and so the application was denied, it was also denied for not following the Town map and for not adequately addressing traffic. She is going to trust the court decision on the DRB denial.

Aaron noted it can be hard to make these decisions without feedback and the residents have given that to them. Aaron said the attorney cautioned them about using eminent domain, it is unproven and potentially very costly. He is not in favor of moving forward with this motion tonight.

Andrea said her motion is based on information she has read and heard since 2010. She also stated in living across from this lot for 40 years she has learned how water moves and about different pieces of lands ability to absorb and filter water and this piece of land has prevented flooding. She addressed the reasons the lot was put on the official map. She referenced the need to support the DRB and other Town Commissions and Boards. Moving forward does not mean the Town will acquire the property but shows the Select Board sees the public value of the property and gives them time to investigate. The landowner needs to be fairly compensated and voters would need to approve the expenditure of funds.

Phil said a major concern of his is that he does want to honor the Town Plan and planning process including environmental concerns with the new stormwater regulations. He has heard that we should negotiate but the developer has not been willing to work with us. Phil said he cannot support moving this motion forward. He advised this does not make the Town Map go away.

Motion voted with Andrea in favor, Tom, Merrily, Aaron and Phil opposed. Motion failed.

### **Question / Answer Session for Residents Regarding the FY 20 Proposed Municipal Budget**

Renae reviewed the proposed amounts and explained increases.

Nancy Dunlap asked about Article 9 on the Town Warning. Phil explained traffic studies indicate that if the intersection of Charlotte Road/Route 116 were improved it could help traffic flow. He said the Town has been advised with the \$50,000 the intersection work can be done and then the State can change the traffic signal cycle. Phil also mentioned this is a requirement of Hannaford and if they are approved they will have to do the intersection improvement work.

### **CVSD Budget Presentation and Discussion**

Colleen MacKinnon took a moment to acknowledge the work and dedication of Andrea as a Select Board member for many years.

Colleen presented the budget. She addressed past, current and projected student numbers. Also shared assessment scores and how well Hinesburg students are doing.

### **Discuss Town Meeting Roles and Responsibilities**

Same format as last year and Phil will address questions on the warned articles.

## **Consider Approving Liquor Licenses**

Andrea moved to convene as the Board of Liquor Control, second by Tom and approved with 5 yes votes.

Andrea moved to approve first class liquor licenses for Travia's Restaurant, Good Times Café for indoor and outdoor, and Papa Nicks. Second by Tom and approved with 5 yes votes.

Tom moved to approve second class liquor licenses for VT 116 Wine and Spirits, KB Enterprises (Lantman's), Hinesburg Jolley and Kinney Drugs. Second by Merrily and approved with 5 yes votes.

Andrea moved to adjourn as the Board of Liquor Control, second by Tom and approved with 5 yes votes.

## **Consider Appointing Police Chief Search Committee**

Aaron said he, Merrily and Renae will head up the committee which will consist of a total of eight members. Suggested to the Board to be appointed to the committee are Terry Francis, Dawn Francis, Jon Trefrey, Jen McCuin, and Ray Nails.

Aaron moved to appoint Terry Francis, Dawn Francis, Jon Trefrey, Jen McCuin and Ray Nails to the Police Chief Search Committee. Second by Merrily.

Frank Koss suggested the need to have someone with law enforcement experience, perhaps reach out to another department and bring in a Police Chief. Aaron said that is good advice and he would be open to this. Andrea noted with the candidates brought forward there is a depth of experience and they could perhaps bring Frank in as an advisor. It was also noted that Ray Nails has been an active police officer and currently works in law enforcement. Phil suggested input from the Fire and Rescue Departments as the three departments work together.

Motion voted and approved with 5 yes votes.

## **Town Administrator Report**

- Renae said they have begun the tours of wastewater treatment plants.
- Interviews for the highway maintainer position continue.
- Town Report was sent to the printer.
- Village North sidewalk bids were opened last Thursday.

## **Select Board Forum**

Merrily was pleased with the report done by Doug Olufson showing the work done by the Police Department.

Tom said he attended the CVU girls basketball Calcutta and was proud to see that Hinesburg businesses were the major donor of prizes.

### **Review Minutes from February 4, 2019**

Aaron moved to approve the minutes from February 4, 2019 as amended, second by Tom and approved with 5 yes votes.

### **Consider Approving Warrants**

Aaron moved to approve the warrants, including payroll, as submitted by the Town Treasurer. Second by Tom and approved with 5 yes votes.

Andrea said she was thankful for the years of serving the community and working with other Board members as a team.

Board members shared their thanks to Andrea for her work with them on the Select Board.

Andrea moved to adjourn at 10:15 p.m., second by Tom and approved with 5 yes votes.

Respectfully submitted,  
Valerie Spadaccini, Clerk of the Board





# Selectboard Meeting

## Sign-in Sheet

### February 11, 2019

1. FRANK Koss

2. N. Dunlap

3. STEVEN GIBOUX

4. Sloan Schulman

5. Minton L. Jeffery

6. Gill Coates

7. Greg Munsel

8. Wendy Munsel

9. Kim Coates

10. [Signature]

11. John Little

12. Lily H. Brace

13. Art Thompson

14. Mary Jo Brace

15. Madeline Hughes

16. John Lyman

17. Dena Morabito

18. EM Allen

19. Dawn + Kevin Francis

20. Kate Myhre

21. Sue McGuire

22. Ed McGuire

23. Jen McGuire

24. Sylvie Vidrine

25. Joe B. Smith

26. Stephanie Brumetto

27. Anne E. Donegan

28. Mary Beth Bowman

29. Marie Ayer

30. Marlyn Crimmins

31. Mossy Cheney

32. Kevin Chung

33. Boeth Ayer

34. Maureen Barnard

35. Steve Barnard

36. Laura Carlson

Kathleen Newton

Paul Lamberson

JEFF FRENCH

PETER EAT

Barbara Vorderer

Leann Duffy

James Donegan

Deirdre Erb

Sam Hemingway

37. Rob Bast

38. Maggie Gordon

39. Johann White

40. Carl Bohlen

41. Jean Kiedaich

42. John Kiedaich

43. Quanta Kittell

44. Phil Kittell

45. Lenore Brad

46. Leann

David Newton

Matt Kiedaich

Susan Johnson

Keith Roberts

Kevin Perry

Alan Woods

Bam Russell

Nancy Norris

Bruce Busio

Bob Thielb.

Bill Baker

BOB KEUHAN

Polleen MacKinnon

Wayne Mayha ☺

Sally Reiss

Chuck Reiss

GADGE DORMAN

Jewell Rose

Catherine Goldsmith

TAM G.

Lain H. Price