

## **Minutes**

### **Town of Marlboro, VT Select Board Meeting Thursday, November 9, 2023**

#### **Call to Order @ 6:00pm**

Attendees: Jim Agate – Chair; Molly Welch – SB Vice-Chair; Jeff Skramstad – SB Member; Nick Morgan – SB Assistant/Town Admin; Forrest Holzapfel; Kate Kirkwood – Energy Committee (ZOOM); Andrew Richardson – Highway Supervisor; Mary Sargent – Zoning Admin; Bob Fisher – Town Attorney; Will Shakespeare & Michael Schneider – MVFD; Ty Gibbons, Jonathan Morse, Jean Boardman – Residents.

#### **Regular Select Board Meeting Agenda**

Identify Any Changes to Agenda: None,

#### **Scheduled Business:**

Unscheduled Open Public Comment: None

Approval of Minutes from October 26, 2023 – Skramstad/Welch – Passed unanimously.

Signature of Pay Orders - Done

#### **New Business**

Nick opened the meeting by reminding the Board that the next meeting will be held on Tuesday, November 21, 2023 @ 6:00p, due to the fourth Thursday of the month landing on Thanksgiving.

MVFD 2024 request: Will Shakespear (President of MVFD) and Michael Schneider (Treasurer of MVFD) came before the Board to present their request for funding to be included on the 2024 Town Warning/Ballot. Will noted that the request is higher than past years due to increasing costs and the need to maintain and upgrade equipment. (Amounts to be requested are: General Funding - \$55,000 & \$50,000 for the equipment fund.) Will further noted that the MVFD is in the process of determining the best course of action to increase its corps of volunteers as recently the number of active participants has been on the decline. The Board pledged to work with the MVFD on recruitment and to provide whatever help the MVFD may find useful. Several ideas were discussed briefly with the idea of providing some form of stipend to the volunteers (including first responders). While not a large sum, such a stipend would serve to provide some extra incentive, but also provide an acknowledgement and a “thank you” to the volunteers. It was also noted that any action along these lines would be incorporated into the MVFD’s operating budget and would not require additional funding. Will stated that he will continue to keep the Board apprised of the situation as ideas are developed and also noted that the MVFD along with its fellow and neighboring Departments remain able to provide coverage of Marlboro.

Nick noted that this request from the MVFD will be included in the Draft Warning/Ballot that will be presented and discussed at the upcoming Informational meeting at the MCC on 11/18/23 @ 2pm.

#### **Highway Dept:**

North Pond Road & Beaver: Jonathan Morse came to the Board to discuss some issues on North Pond Road concerning the ongoing beaver issues in town. Mr. Morse also wanted to commend Road Supervisor, Andrew Richardson, for his excellent work on maintaining the Town’s roads. Mr. Morse noted that it was important for the town to continue to work to co-exist with the area’s wildlife and went on to note that he had noticed that one of the Beaver Deceivers on North Pond Road had been destroyed and that the culvert it was protecting was clogged increasing the chance of flooding from the Beaver Pond onto North Pond Road. He noted that he had come to the meeting to see what plans the Highway Department and the Select Board had to work on this ongoing issue. The Board noted that they had decided to work with and had arranged for the VT Agency of Natural Resources to help the Town maintain its Deceivers. Regarding the specific situation on North Pond Road, Andrew noted that the deceiver had failed prior to the damage done to it as the Highway Department attempted to clean it. Andrew noted that repairing the existing deceivers, he installed a much larger culvert (36”) in place of the two smaller culverts and placed a screen over the culvert to prevent the beavers from clogging up the inside of the culvert. With such a screen, the beavers will still try to block it, but it can be and is being cleaned at regular intervals. As Winter is approaching and beaver activity is slowing down, Andrew felt that this would solve the immediate issues and provide time for the VT ANR to come in the Spring and put in a new deceiver. Andrew acknowledged that he is vigilant about the issue and while he cannot get to every beaver issue immediately, he does know what areas are of concern, watches the weather, and works hard to make sure any problem areas are addressed in advance of bad weather. Nick also noted that the human/beaver “conflict” is a big issue in Marlboro and other towns and has asked the Conservation Commission to look into contacting VT ANR to see if there are some solutions (i.e., relocation programs, etc.).

## **Marlboro Select Board Minutes – November 9, 2023 – Page Two**

North Pond Road & Beavers: (continued) At the end of the discussion, Molly & Jeff suggested that the Select Board should look into setting up a volunteer group, similar to the group working to keep the recycling center well “policed” to help monitor the beavers and their activities. Nick noted that he would contact the Conservation Commission and see about having them into a Board meeting to discuss this over the Winter in preparation for Spring.

Higley Hill Road Traffic Report: Andrew noted that he had asked the VT Agency of Transportation to make a study of Higley Hill Road (especially the gravel stretch) to review how much traffic was using this stretch of road. Andrew reported that the results of the study showed that approximately 325 vehicles (cars as well as heavy trucks) were using the road per day, and that the AOT noted that over ~200 vehicles/day is usually an indication that “blacktopping” should be considered. Andrew noted that due to the heavy traffic, constant maintenance of the gravel of road is needed and that requires a good amount of sand as well as gravel to keep the road passable. Such materials only add to the “mud” problem come Spring as the fine particulates are much more prone to causing a “mud” issue. Andrew discussed some basic costs including approximately \$30,000 every 3 years to re-gravel correctly. He also noted that standard “blacktopping” can run over \$200,000 for this amount of road. Andrew has done some research and neighboring towns have had great success with “Chip Sealing” which is much more inexpensive than standard “Blacktop” and seems to hold up very well. Andrew noted that this information is only a first step in dealing with this stretch of road and more research and input from residents is needed before any final decisions can be made. Nick also noted that something to consider is that “chip sealing” would fall under the standard grants that the town receives for roads helping to defray the costs as opposed to the funds required to re-gravel. The Board and Andrew agreed to continue to process the information and revisit the issue in the near future.

Recycle Camera Quote: Nick reported that the Town’s security firm (Home Security Service) came to the Highway Garage to quote a camera system to monitor the Recycling Center and the overall facility, in an effort to increase overall security and also potentially capture any “dumpers and/or litters” at the Recycle Center. A complete system that would provide close up (read license plate numbers) security for the Recycle Center and overall coverage of the full garage area would run ~\$2,800. Nick provided the Board with the detailed quote and requested they review it and revisit the issue at the next meeting to make a decision. Nick did note that the somewhat cheaper option of “ring” type camera systems could not provide the detailed coverage necessary and that without the considerable expense of laying cable to connect the camera(s) to the internet system to record made this option quite untenable. The Board acknowledged the quote and agreed to consider it at the next meeting.

General Updates: Nothing further.

**Recycling thoughts from Ty Gibbons:** Ty Gibbons came before the Board to report that his volunteer group to keep the Recycling Center well “policed” was going well, and everyone noted that the area looks great and commended Ty and his group for their great work. Mr. Gibbons also flushed out his idea to set up a separate “box” for refundable bottles and cans, that his group would monitor and take for refunding with the money going to a general fund for the school for projects, field trips, etc. Mr. Gibbons also stressed that he would work with the school to get students involved. Andrew discussed possible locations for the “Refundables Box” and noted that he would work with Mr. Gibbons in making this happen. The Board was in full agreement.

**Hogback Hunting Request:** The Town received a request for permission from a resident of Bennington, VT to set up a tree stand and hunt on Hogback Mountain during the established deer hunting season. Hunting is allowed and the interested party made the extra effort to request permission in a very polite and excellent email. Nick consulted with Mike Purcell (Chair of the HPC) and Mike advised a good location West of the VAST trails and Andrew noted that any “tree stand” should not use any screws to secure the “tree stand”. The Board directed Nick to communicate the Board’s appreciation for the permission request and advise that there was no objection, while noting the suggested location and how to set up the “tree stand”. After the meeting, Nick reached out to the person and received back an email noting that they would hunt where suggested and that no screws (etc.) would be used to set up the “tree stand”.

**General Discussion on Zoning Amendments with Town Attorney Bob Fisher:** In preparation for the Select Boards Public hearing on the seven (7) proposed amendments to the Zoning Regulations from the Planning Commission, the Board invited the Town’s Attorney, Robert Fisher, to attend the meeting to provide his legal advice and general knowledge of the process and the proposals. Mr. Fisher noted that while the amendments were being discussed, no decision could or should be made until after the public hearing (which is tentatively set for 12/14/23, though it could be moved) at which time the Board would advise the Planning Commission of their decision and include any approved amendments to the 2024 Town Warning/Ballot for the residents to vote on.

Regarding Amendments #5 & #6, which removes the classification of a “parking space” as a “structure” under the Zoning Regulation, Mr. Fisher noted that on a legal basis this was a good adjustment.

**General Discussion on Zoning Amendments with Town Attorney Bob Fisher: (continued)**

Amendments #1 & #2 concerning “off-road vehicular ways” present some legal issues. Mr. Fisher noted that should a “vehicular way” actually cross a neighboring property line that is an issue of “trespass” and can be handled as such, not as an issue of a “setback” which these amendments are addressing. Second, the amendments using “off-road vehicular way” are “vague in its nature” and hence legally challengeable for being “void for vagueness”. Additionally, they potentially create more and more layers of permitting and permissions that become onerous for all involved.

Amendment #3, Mr. Fisher saw it as unenforceable as it is currently worded and that adding “driveways” is inappropriate as “driveways” are in the purview of the Highway Department and the Select Board and not the Zoning Administration.

Amendment #4, Mr. Fisher noted that overarching legal issues of “equal protection under the law” come up if “primitive camps” are not exempted. To regulate primitive camps that do not adversely impact the “Wildlife Overlay” and thus potentially preventing a landowner’s use of their land can trigger this legal challenge. It was also noted here that “Water & Sewer” are the triggers for classifying a structure as “not” a primitive structure (electric does not trigger this).

Amendment #7, Mr. Fisher noted that this is just a clarification and seems fine as is and does not raise any legal issues.

Moving on from the Amendments to the issue of Potash Hill and the EDU designation. Based on the Town’s Zoning Regulation, in order for an area to be classified as an EDU, the owner must have state education certifications. As the current occupants of the former Marlboro College property do not have this State certification, the property does not fall under the EDU designation and is by default a Rural Residential District. Mr. Fisher strongly recommended doing away with the EDU designation in the Zoning Regulations and allowing the current owners to apply to the DRB for a PUD. In order for this to happen, the current owners need to come up with a plan and present it to the DRB.

Mr. Fisher continued that in the interim, the current owners can have their immediate plans reviewed under the Rural Residential District rules and get a ruling on whether they can move forward or not. Mr. Fisher stressed that the best course of action for them would be to proceed with applying for the PUD designation.

Mr. Fisher did advise that the Select Board does have the authority to institute “emergency zoning procedures”, however this situation does not seem to rise to the level of an emergency which could cause problems as treating one entity as special could lead to challenges.

The discussions here were quite involved and a complete audio recording is available here: <https://soundcloud.com/marlboro-select-board/2023-11-09-marlboro-select-board-meeting-audio>

The Board thanked Mr. Fisher for his input and assistance and noted that most likely the Public Hearing on the Amendments would be held on 12/14/23 or 12/16/23 (firm date to be set at the 11/21/23 Select Board Meeting) and asked Mr. Fisher if he could attend to provide his legal thoughts if needed. Mr. Fisher noted that he would be available.

**Old Business**

**Town Administrator Report:**

Upcoming (11/18/23) Warning Info Meeting: Nick advised that the Warning Info meeting will be held on 11/18/23 (2-5pm) at the MCC and provided the Board with an initial draft of the warning which would also be made available to residents at the meeting for discussion.

FEMA Update: Nick reported that while work still needs to be completed on the application, things are moving forward and most should be completed by 11/17/23, all things being equal.

Garage Mold RFP update: Nick is working up an RFP for contractors to take on the Garage Mold issue and requested any information on local contractors who may be able (and interested in) quoting the job. As work cannot truly begin until the spring, Nick was hopeful that a contractor could be found, and this process could move forward.

WCSO Rates for FY 2025: Nick reported that while we have not received the final 2024 contract for the WCSO, the town has been advised that the hourly rate for deputies over and above the normal monthly contracted amount would be \$64/hour. Nick also noted that there is a general meeting with the WCSO on 11/15/23 in Brattleboro which he would be attending and would report back to the Board.

**Motion to Adjourn @ 8:32p (Welch/Skramstad – Passed unanimously)**