

PRELIMINARY MINUTES

**TOWN OF LUDLOW
BOARD OF SELECTMEN**

June 18, 2018

BOARD MEMBERS PRESENT:

Bruce Schmidt., Chairman	Logan Nicoll
John Neal	Brett Sanderson

STAFF PRESENT:

Scott Murphy	Rose Goings
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OTHERS PRESENT:

Phil Carter	Bill Davis	Ron Tarbell
Terry Carter	Paul Orzechowski	Sharon Bixby (Okemo Valley-TV)
Alan Couch	Patti Potter	

1. **Call to Order**

- A. Chairman Bruce Schmidt called the meeting to order at 7:00 p.m. Bruce Schmidt noted that this is the first Select Board meeting without Howard Barton, Jr. who recently passed away. Bruce Schmidt said that Howard was a great person and great friend. The town has lost a great advocate and citizen. He asked for a moment of silence.

2. **Consideration of any Changes, Additions or Removals to the Agenda**

- A. Bruce Schmidt suggested moving Agenda Item #10 – Planning Commission Interim Zoning Discussion ahead of Item #5 – Liquor Control Board. The board agreed. (NOTE: Minutes will reflect original Agenda order.)

3. **Approve Minutes of Previous Meetings**

- A. Bruce Schmidt advised that the minutes to be approved are from the regular meeting of May 7, 2018.
- B. **MOTION by John Neal and seconded by Brett Sanderson to approve the minutes of the regular meeting of May 7, 2017 as presented. Motion passed unanimously.**

4. **Comments from Citizens**

- A. There were none.

5. **Liquor Control Board**

- A. Bruce Schmidt advised that the liquor licenses are for:

<u>Applicant</u>	<u>Business Name</u>
Desiree Guica	Du Jour VT
Brick and Mortar Hospitality, LLC.	Sam's Steakhouse

- B. **MOTION by John Neal and seconded by Brett Sanderson to approve the liquor licenses as indicated. Motion passed unanimously**

6. **Award Highway Wheel Loader Contract**

- A. Scott Murphy advised that the voters did approve this purchase in the budget. There were 2 bidders, Caterpillar and Komatsu. Caterpillar was low bidder by about \$20,000, including the trade-in.
- B. Bruce Schmidt noted that the minutes of the bid committee were not in the packet and should have been. He wants them included in the future.
- C. Scott Murphy said he would ask Pam Cruickshank to send them tomorrow.
- D. Ron Tarbell said there are only 2 companies that have hydrostatic models: Komatsu and Caterpillar. The Caterpillar is a better machine and also has better visibility.
- E. Bill Davis said the Caterpillar has more options and is a great machine.
- F. Ron Tarbell said it will have a plow with a wing.
- G. Brett Sanderson asked what the budget was for the machine.
- H. Ron Tarbell said the budget was \$200,000 and the cost will be \$200,500.
- I. **MOTION by Brett Sanderson and seconded by Logan Nicoll to accept the bid from Caterpillar for the Wheel Loader. Motion passed unanimously.**

7. **Consider Killington Sports Car Club Request**

- A. Bruce Schmidt noted that the race was actually last weekend – June 8 through 10th.

8. **Execute FY2019 Equipment Note Renewals**

- A. Scott Murphy advised that there are 6 renewals and that the band included the bottom 3 on the same note.
- B. **MOTION by Brett Sanderson and seconded by Logan Nicoll to sign the note renewals. Motion passed unanimously.**

9. **Consider Setting New Solid Waste Rates at the Transfer Station**

- A. Patti Potter advised that the increases are not for solid waste but are for permits and tires. The tire company was recently bought out and the new owner raised our prices from \$850 to \$1,000 plus \$25/tire. The price is \$5/tire up to 16 inches and 4 or more tires the price will raise \$2/tire. She suggested raising permits as indicated below and said that the rates have not been increased in several years:

	<u>Current Rates</u>	<u>Proposed Rates</u>
Residential	\$10	\$20

Business	\$50	\$75
Commercial	\$100	\$125

- B. Scott Murphy advised that the minutes from the January 2018 meeting indicate that Brett Sanderson suggested raising the rates to \$25, \$75 and \$125. These rates were included in the budget revenue, but that was never voted on. These increases are needed to cover rising costs.
- C. Patti Potter added that they have lost all of the revenue from the Commercial haulers since starting with the purple bags.
- D. Bruce Schmidt asked how they are doing with the business and commercial companies.
- E. Scott Murphy said there are only 15 commercial and 44 business permits.
- F. Brett Sanderson asked if there is a problem with determining business or commercial.
- G. Patti Potter said not really. She added that there are people who don't want to sort. She said that people from out of town have commercial haulers and the commercial haulers have to bring a list of their customers.
- H. Bruce Schmidt said we don't mandate "recycle" and don't go through the bags.
- I. Patti Potter said some people come in and pick up the literature and still don't follow the rules. She said she offers containers to people. It has to come from within the home.
- J. John Neal asked if raising the rates so high will turn people away.
- K. Logan Nicoll said people would still get 52 bags for free.
- L. Bruce Schmidt suggested trying \$20 this year and another \$5 next year.
- M. Brett Sanderson said people won't want to have an increase 2 years in a row. It would be better to do it all at one time.
- N. **MOTION by John Neal and seconded by Logan Nicoll to raise the permits prices for residential, business and commercial to \$25, \$75 and \$125, respectively and to include the new fees for tires. Motion passed unanimously.**

10. **Consider Request from Planning Commission for Interim Zoning**

- A. Alan Couch advised that the DRB Chair, Phil Carter, had brought some issues to the attention of the Planning Commission. The zoning regulations are ambiguous and some of the definitions are not clear or missing. The Planning Commission is asking the Select Board to schedule a public hearing to enact Interim Zoning to preclude the use of Drive-in, Drive-up and Drive-through windows until the Planning Commission has the time to re-write those parts of the zoning regulations that are affected. Interim Zoning would be in effect for one year. This is a procedural move to protect the town from litigation should a question of use arise and go to court.
- B. Phil Carter explained that a recent case arose with Ludlow Pharmacy requesting a drive-up window. He advised that he is speaking at this meeting as Chairman of the DRB. The DRB is bound by state, federal and local regulations to interpret the zoning regulations. The DRB denied the request and the applicant appealed that decision. Phil Carter explained that when zoning regulations are being put together, there are parts that may be taken from other towns, and ours are very similar to the Ferrisburg regulations. The case went to the Environmental Court. The attorneys for Ludlow Pharmacy wrote a 26-page brief and Ludlow's attorney would have to respond to that brief. They said that our language is ambiguous, confusing and definitions are missing. In the Village regulations, "Retail Service" is allowed, but "Retail Use" is not allowed. However, there is a definition for

“Retail Use”, but not for “Retail Service.” There are definitions for “Drive-In” and “Drive Though,” but not for “Drive Up.” The definition for “Retail Use” is good and does exclude “Drive Up” service, but “Retail Use” is not an “allowed use.” The attorney said that the Village of Ludlow Zoning Regulations is ambiguous, confusing and susceptible to different interpretations. The DRB denied the application based on the definition of “Retail Use” because it excludes “Drive Up” service. Recently, Ferrisburg had a similar situation and the applicant won at Environmental Court. Our attorney said that one problem is that we allowed Heritage Credit Union to have a drive up but denied it to Ludlow Pharmacy and it is not clear that there was a rational basis to deny the application. The attorneys for Ludlow Pharmacy said that “Professional Service” is allowed in our regulations. The regulations state “but not limited to” among the uses considered “Professional Services.” It is unclear and makes it almost impossible for the DRB to function. The DRB is an “on the record” board and when cases go to the court, the court does not re-hear the evidence, but goes by the DRB’s decision and reasons. The DRB needs to have legitimate reasons to deny application for the pharmacy but allow it for a credit union. We would have lost the case at court because our denial would appear to be discriminatory and unconstitutional. We settled the case out of court because we would have lost. The pharmacy will get the drive-up window. If we had gone to court, our zoning would be open to any request for drive up service in the future. The people of Ludlow have voted against drive up windows. We need to have the town get control of this and make clear definitions and language in zoning. This mess has got to be fixed.

- C. Logan Nicoll said that the Planning Commission is requesting Interim Zoning because the members feel that there is not enough time to re-write the regulations with the normal procedure. The Trustees have scheduled their hearing for July 3rd. The Planning Commission will start working on the re-write immediately. The town did vote against drive-up windows in the past.
- D. John Neal said that this is a request to set a date for a public hearing and that discussion over the topic will take place at the public hearing.
- E. Scott Murphy advised that Interim Zoning can be in effect for 2 years, but may be rescinded at any regularly scheduled public hearing
- F. **MOTION by John Neal and seconded by Logan Nicoll to schedule the public hearing for Interim Zoning on August 6, 2018.**
- G. Bruce Schmidt said that he is concerned that there will only be 4 Select Board members at the August hearing and he does not know if any motions would pass. He said that drive-ins have been a sticking point and in 2009, people did vote against them, but only by a 10% margin. He asked what the plan is to get the regulations re-written.
- H. Alan Couch said that 9 years ago, the town voted against fast food restaurants. The Planning Commission wants to enact Interim Zoning in response to that vote. The Planning Commission wants to investigate and find out if that opinion has changed. Does Ludlow want a 12-pump gas station with drive-up? The public hearings will give the Planning Commission more voter input and prevent any new applications for drive-ups during the process. It will also protect the town against arguing this in court.
- I. Phil Carter said that Ludlow would have lost in court. It would have been very expensive for the town and left the town wide open for anyone who wanted to out in drive up windows. The attorney’s advice was to settle and enact Interim Zoning.

- J. Bruce Schmidt asked if that also protects the town from new businesses. He said that he does not like Interim Zoning and feels that it can be abused. He said that he would be against strip clubs and would agree to Interim Zoning for that. He said that Interim Zoning restricts applicants from use of their land. He said that he would give the Planning Commission 6 months to re-write the zoning and if they are not done in that time, he would vote to rescind the Interim Zoning. He said there has to be some push to get it done.
- K. Rose Goings said that the Planning Commission is starting tomorrow and that she has already sent documents to the board members to start the process.
- L. Alan Couch said that personal feelings are not pertinent. The Planning Commission needs to clear up the zoning regulations and we need public opinion.
- M. John Neal said that he agrees that the time line should be shortened and said that anything the Planning Commission can do to expedite the process would be better.
- N. Logan Nicoll said that he expects that the Planning Commission can complete it within 6 months. The Planning Commission does need public input. He said that public opinion may have shifted over the last 9 years. He added that there was a vote prior to the 2009 vote and that vote also went against drive-ups. This may have to go to a town vote.
- O. Phil Carter said that personally, he does not care about drive-ups, but the zoning regulations need to be clear with clear definitions and uses. The DRB needs that to be able to make decisions.
- P. Bruce Schmidt asked, if the zoning regulations are ambiguous, why the DRB didn't see this before.
- Q. Phil Carter said the DRB, as a board, does not have personal opinions. Our decisions are based on the zoning regulations. We may not show personal preferences. There was a case before the St. Albans DRB for a Wal-Mart and one (possibly the chair) had a Wal-Mart hat on throughout the hearing. The DRB decided against the Wal-Mart but lost in court because of the hat. The only thing that matters to the DRB is the regulations and we are locked by them.
- R. **Motion passed – 2 in favor, Bruce Schmidt against, Brett Sanderson abstain.**

11. **Consider Funding Paving of the Ludlow Section of Route 103**

- A. Scott Murphy advised that the State paving cycle will not return to Ludlow until 2022 and he would like to get on the same cycle as the state for the Village. He has received quotes from Pike and Fuller. Fuller is the low bidder (\$203,685) including 2 center lanes and 2 turn areas? He and Ulla Cook have discussed funding of this project and one option is:

Lease from Stearn's Pit Rental	\$64,000 (in hand)
Stearn's Pit Capital Account	\$21,000
Coolidge Solar Project payment (due in November	\$100,000
Total	\$185,000

- B. Scott Murphy suggested funding the balance with a 180-day interest only bank loan and see if there is any surplus at the end of this fiscal year to apply to the loan.
- C. Brett Sanderson said we need to do something.
- D. John Neal asked if we do something, do we get out of the state cycle.
- E. Brett Sanderson said no.
- F. Scott Murphy said the state expects the town to do maintenance.
- G. Ron Tarbell said we should do it. This will include only the travel sections, no shoulders or aprons. He said that we have tried to band-aid it but need more.
- H. John Neal asked about the culverts.

- I. Ron Tarbell said the culverts and storm drains are okay. He doesn't know about sewers. He said this will include 1 ½ inch from the Village line to the Village line. We can't do less.
- J. Bruce Schmidt asked if the \$64,000 is from the Solar project rental.
- K. Scott Murphy said yes, \$8,000/month for 8 months.
- L. Bruce Schmidt asked if we should wait until next year.
- M. Brett Sanderson said this year. If we have another winter like this past year, it will be a big mess.
- N. **MOTION by Logan Nicoll and seconded by Brett Sanderson to have Fuller re-pave Route 103 within the Village lines. Motion passed unanimously.**
- O. Brett Sanderson said we should get paving bids out earlier in the future.
- P. Logan Nicoll said at the recent Planning Commission public hearing, people supported repaving in the Village. They also supported changing parking on Main Street to head in on the south side of the road and changing the speed limit to 25 MPH.
- Q. Bruce Schmidt asked if there are plans for the crosswalks and lines on the roads.
- R. Ron Tarbell said they will hold off on the cross walks until the paving is done. He said that the machine they have for painting the lines was cheap when they bought it and is showing its age. It takes a lot of time. They need a new machine that is bigger and can do colors better.
- S. Bill Davis said the paint is very expensive.
- T. Brett Sanderson asked labor and paint costs.
- U. Ron Tarbell said the paint is about \$3000 to \$4000. He said he would find out about labor costs.
- V. Brett Sanderson asked if they have looked into finding someone to do the lines.
- W. Bruce Schmidt said if they have concerns about the equipment, to let this board know. He asked them to get bids for the stripes.
- X. Scott Murphy said he would like to get the stripes done early. It looks better to have them done. He said we can do the white lines and find someone to do the red.
- Y. Bruce Schmidt suggested just doing white.
- Z. Scott Murphy said he thought about that.
- AA. Ron Tarbell said the next time they pave, not to put standing bricks at the cross walks. They don't hold up.
- BB. Bruce Schmidt asked about grading Barker Road.
- CC. Ron Tarbell said they (Ranger Solar) do not have a grader up there. He would prefer to have the town do it and bill Ranger back. There is ongoing construction up there.
- DD. Bruce Schmidt said the road is rough where they turn the equipment into the barways.
- EE. Ron Tarbell said the town can grade it and put chloride down. He said that he has talked to Ranger about using Commonwealth Avenue, but that is the way GPS sends them. It is an ongoing battle.
- FF. Bruce Schmidt said he would like to get an update on the project for the next meeting. He has heard that they can't get people to put the panels together.

12. **Approve Entertainment Permit - Stemwinders**

- A. John Neal recused himself from this vote.
- B. Scott Murphy said this is an annual renewal and expires in April. It is for acoustic indoor music.
- C. **MOTION by Logan Nicoll and seconded by Brett Sanderson to approve the entertainment permit for Stemwinders. Motion passed unanimously.**

13. **Consider & Possibly Sign Letter of Intent to Participate in Municipal Roads Grants-In-Aid Program**

- A. Scott Murphy advised that this is second opportunity to get involved with this program for free money from the state. Every town pays a permit fee. This is a letter of intent and just says that Ludlow is interested in the program. We would work with the Regional Planning Commission. Funding is 80%/20% and trucks and wages count towards the town's 20%. The deadline to file is June 22, 2018 and is for projects mandated by the State from the Clean Water Act.
- B. Ron Tarbell said it is or stone lined ditches.
- C. **MOTION by John Neal and seconded by Brett Sanderson to sign the Letter of Intent. Motion passed unanimously.**

14. **Consider Holding a Public Hearing on Amending the Town's "Smoking & Tobacco Policy"**

- A. Bruce Schmidt advised that a letter had been received from BRACC.
- B. Scott Murphy said that effective July 1, 2018; recreational use of marijuana will become legal in Vermont. There are some concerns about where people will be using it. BRACC wants to ban its use from certain locations in town and are asking the Select Board to schedule a public hearing to propose changes to the town Smoking and Tobacco Policy. They have sent a proposal of their proposed changes. He said that he has discussed this with Chief Billings who is not sure that everything they want to include is needed. He suggests adding "marijuana" to the policy.
- C. **MOTION by John Neal and seconded by Brett Sanderson to schedule a public hearing for the Smoking and Tobacco Policy at the August 6, 2018 meeting. Motion passed unanimously.**

15. **Award Copier Contract for Municipal Offices**

- A. Scott Murphy advised that they received 3 competitive bids from Vermont Digital, Symquest and Canon. The bids were reviewed and Symquest was low bidder, by about \$75/month and the equipment was better. The copiers are Minoltas and should fit our office use well.
- B. **MOTION by Brett Sanderson and seconded by John Neal to award the bid for the Office Copier Contract to Symquest. Motion passed unanimously.**
- C. Bruce Schmidt said this is the last time the board will accept bids without information.

16. **Department Head Reports**

- A. Bruce Schmidt advised that all reports are in April.
- B. Scott Murphy suggested that board members read the Parks & Recreation report. He said that Nick Miele is doing a great job. He added that there were 31 kids for the first day of the summer program.

17. **Municipal Manager Updates**

- A. Review of All Fees
 - i. Scott Murphy said that they reviewed the Transfer Station fees.
- B. West Hill
 - i. Scott Murphy advised that West Hill is now open daily. They swept the basketball and parking areas. They dug trenches, have put in doggy bags for people to clean up after their

dogs, they put in port-a-pots, they are letting the grass grow in the soccer area to help keep away the geese and the summer program will be using the park.

C. Rod & Gun Club Road Bridge

- i. Scott Murphy said that they have received a \$175,000 grant from the Highway Structures Program and have sent out an RFP for contractors, with deadline of June 27, 2018. They hope to start work in July.

D. Andover Culvert

- i. Scott Murphy said that the project is complete and came in under budget.

E. Commonwealth Avenue Project

- i. Scott Murphy said that the paperwork was put together and sent to FEMA. FEMA generally takes a month to respond.

F. Paving Bids

- i. Scott Murphy said that the paving bids are due next Wednesday.

18. Other Business

- A. There was none.

19. Set Date for Next Meeting

- A. Bruce Schmidt advised that the next regular meeting would be July 2, 2018 at 7:00 p.m.

20. Possible Agenda Items for Next Meeting

- A. Bruce Schmidt suggested that the Town Manager put out an ad for the open position on the Select Board to be received in August. He would like to try to fill the position for the September meeting. He said that the loss of Howard Barton is so strong that he doesn't want to rush this and Howard really can't be replaced. He wants to stay on a regular meeting schedule and asked board members to let him know if they plan to miss a meeting.
- B. Scott Murphy said he will post the notice of vacancy on the Select Board.

21. Sign Warrant Orders

- A. Warrant orders have been signed.

22. Possible Executive Session/Personnel/Contracts/Real Estate Issues

- A. Scott Murphy advised that an Executive Session is needed.
- B. **MOTION by Logan Nicoll and seconded by John Neal that in accordance with the provisions of 1VSA §313 (1) (B), he moves that the Ludlow Select Board enter into Executive Session to consider;**
 - i. **Real Estate.**

The premature public knowledge of this information would place the Town and Village of Ludlow at a substantial disadvantage. This motion for executive session includes the members present and the Municipal Manager. Motion passed unanimously.

- C. Board entered into Executive Session at 8:18 p.m.
- D. Executive session ended at 8:20 p.m.
- E. **MOTION by John Neal and seconded by Logan Nicoll to authorize the town manager to negotiate price on house donated to Fire Department. Motion passed unanimously.**

23. **Adjourn**

- A. **MOTION by John Neal and seconded by Logan Nicoll to adjourn. Motion passed unanimously.**
- B. Meeting adjourned at 8:21 p.m.

Respectfully submitted,

Lisha Klaiber

Bruce Schmidt, Jr., Chairman

Brett Sanderson

John Neal

Bruce Schmidt

Logan Nicoll