

TOWN OF SWANTON
MINUTES
JOINT SWANTON BOARDS MEETING
Town Selectboard
Swanton Village Complex
120 First Street, Swanton, VT 05488

Wednesday, September 16, 2015 @ 7:00 p.m.

Present: David Jescavage, Town Administrator; Dan Billado, Selectboard Chair; Joel Clark, Selectboard Vice Chair; John Lavoie, Selectman; Betsy Fournier, Swanton Recreation; Chris Leach, Eugene Labombard, Adam Paxman, Village Trustees; Reginald Beliveau, Village Manager; Neal Speer, Village President; Jim Hubbard, Planning Commission Chair; Andy Larocque and Ed Daniel, Planning Commission; Brian Savage, Representative; Ronald Kilburn, Zoning Administrator; Sandy Skeels-Kilburn; Brian Dubie; Zach Scheffler, Channel 16; Matthew Freedom, St. Albans Messenger; Dustin and Christine Lang; Taylor Newton, Northwest Regional Planning Commission; John A. Smith; Patricia Rainville; Clark and Carolyn Palmer; Mary Anne Duell; Ed & Sarah Ferguson; Pat Messier; Dave Buttefield; Gil & Marie Tremblay; Rita Howard; Darlene Marrier; Sara Luneau Swan; Danielle Garrant.

A. Call to Order

Mr. Billado called the meeting to order at 7:00 p.m. Mr. Billado welcomed the Village Trustees.

B. Pledge of Allegiance

Mr. Billado led those present in the pledge of allegiance.

C. Agenda Review

Mr. Jescavage added Introduction of Zoning Administrator Candidate under Other Necessary Business. Mr. Clark added April 27, 2015 JLB Minutes and Church Library Parking Lot under Any Other Necessary Business.

D. Meeting Topics

1. Minutes

- a) **April 27, 2015 JLB Minutes**
- b) **August 18, 2015 JLB Minutes**

Mr. Beliveau made a motion, seconded by Mr. Lavoie to approve the minutes of April 27, 2015 and August 18, 2015 as printed. Motion carried.

2. Public Comments – None.

3. Community Development

- a) **Discuss Board Jurisdiction for Adoption of Municipal Plan, Zoning Bylaws, & Appointment of Zoning Administrator**

Mr. Billado explained that Mr. Beliveau and Mr. Jescavage had been working on the legalities behind approving the town plan and appointing the Zoning Administrator. In the past, those things had been voted on by both the Village Trustees and Town Selectboard, but they had learned recently that that was not the proper legal way to do it. The Selectboard would definitely listen to the Village Trustees, but the voting would be done by the Selectboard.

b) Public Hearing on Revisions to the *Swanton Town & Village Municipal Plan*

Mr. Hubbard stated that the Planning Commission had worked for the past twelve months on revising the Town Plan, as required every five years by current state statute. The Planning Commission had reviewed the entire document page by page. He stated that the plan was more aggressive in preserving buffer zones near bodies of water, meeting floodplain standards, and more, in order to address water quality. He felt confident that the town plan as presented was thoroughly reviewed. He stated that the renewable energy issue had been brought to their attention over the last forty-five days or so by various citizens, and the Planning Commission had tried to address renewable energy more specifically in the plan as a result.

Mr. Clark commended the Planning Commission for their efforts in updating the plan, and for adding the report from the Community Visit. There were a lot of efforts behind making Swanton a better place, and the Planning Commission's desire to highlight those efforts was well done. Mr. Hubbard noted that many people contributed to the Community Visit in early 2015; "it's a very important part of our plan."

Christine Lang noted that there had been more specific wording suggestions for the town plan regarding renewable energy, including setbacks from wind turbines. Had any consideration been given to adding that? Over 134 homes were within one mile of the seven proposed wind turbines.

Mrs. Sarah Luneau felt that the wording in the plan was a bit vague, and said that many nations were implementing setbacks from wind turbines, up to 6000 feet. Unfortunately, "people take advantage when you don't have parameters. Maybe we need to have some specifics to protect our taxpayers, community members, and wildlife." Swanton was in new territory, but other countries, states, and counties were more knowledgeable, and were taking measures because of the impact that wind turbines had had on their communities.

Mrs. Lang presented language that required no wind turbines within a mile of residents unless those residents specifically agreed. Mr. Labombard said that what they were suggesting was better suited for the bylaws, but Mr. and Mrs. Lang replied that the Public Service Board only reviewed language from the town plan.

Mr. Jescavage said that he had attended a workshop on the Section 248 process. One of the presenters was associated with the Public Service Board and the other was from the Agency of Natural Resources. They both gave advice that a plan that was too specific could be regarded by the Public Service Boards as being more of a bylaw than a town plan. Therefore, appropriate language had to approach specificity in a balanced way. A new rule would give towns and abutting property owners automatic party status, instead of leaving pursuit of the process up to the Town. Mr. Jescavage asked what should happen if no Certificate of Public Good had been obtained prior to putting up wind turbines, and the presenters replied that there were only two known cases (one being Swanton's project) and those would likely be used as test cases by the Public Service Board.

Mrs. Lang felt that state had the townspeople in a Catch-22: "It can't sound like zoning, but they won't look at the bylaws." Rep. Brian Savage said that he, Rep. Marianna Gamache, and Sen. Dustin Degree were trying to draft a bill that required the Public Service Board to look at the local zoning plan, in a way that did not hinder a legitimate public utility. Mr. Taylor Newton explained that the case regarding language that was too specific was because of a case reviewed in the last year.

Mr. Dubie stated that, with great respect to all the work that the Planning Commission had done, he was concerned that the language currently offered regarding renewable energy, he asked to add the term "quality of life" into the considerations. Billy Lowell said that ANR personnel were "surprised at the unexpected change" to a ridge because of a wind turbine project, so Mr. Dubie wished to add the word "aesthetic." He also wished to add the word "wildlife," noting that other wind projects had to put money into funds to replenish

populations of bats that were decreased by wind turbines. To sum up: He wished to add “quality of life, aesthetics, and wildlife” to the current considerations.

Mr. Hubbard said that the bylaws upheld those things specifically, and he felt that the current trouble with wind turbines came from Montpelier. Mr. Dubie suggested an asterisk on the area “See bylaws,” or some other ways to reference the bylaw standards. He noted that the abutting landowners had been before the Public Service Board regarding the MET tower, but, if you were not a lawyer or expert, your opinion will not matter. It was a very intimidating and unpleasant experience for those landowners who were present. Mrs. Luneau agreed with Mr. Luneaus suggestion to reference the bylaws in the town plan.

Mr. Newton explained that, in statute, the PSB would review the town plan when they were issuing a Certificate of Public Good. Rutland had developed specific setbacks for solar facilities in their plan, and when the project was reviewed by the PSB, the PSB said that the setback was a *de facto* bylaw, and could therefore be ignored because it was too specific. Mr. Clark summed up that the Town had not gotten sued or fined; the PSB had simply not listened to the town plan. He felt that there should be a statement and a specific stance. He was considering language that would add “Swanton discourages wind turbines in that area.” “If the PSB is going to tell us we’re all crazy anyway, so be it.”

Mr. Hubbard felt that for the PSB not to review the bylaws was “some crazy God-power gift they’ve been given,” and felt that the bylaw limitations should be followed. “That’s where our hands have been tied. We’ve come up with a plan. Now our plan rules, and the bylaws have no merit? It makes no sense.”

Mr. Billado felt that the Selectboard should do everything that they possibly could to ensure the quality of life for the people of Swanton. Mr. Lavoie said that wind turbines were being addressed, but what about solar panels? Mr. Billado felt that the language was not specific to wind.

Mr. Newton explained that the project was aimed for a timeline, and if the plan was amended tonight, the hearings would be pushed back, so the plan would not be regionally approved and Swanton would not be able to apply for a grant (up to \$20,000). Mr. Billado felt that the negative affects on 134 homes would be worth that \$20,000.

Mr. Speer stated that he appreciated the concern. “Whatever we put in this plan will not stop wind turbines. This is a bigger battle than the municipal plan. All three boards will have to take a stand. Whatever we put in this municipal plan is not going to make any difference to the Public Service Board. It’s going to be a bigger battle than that. You made your case at the NRPC meeting, and we changed some verbiage. You seemed comfortable with that. If we try to satisfy everybody, we’ll never get this approved, and our verbiage may not get the end that you’re looking for. If we don’t change the verbiage to satisfy you tonight, that doesn’t mean this is over. It’s going to be a lot further down the road. The next step is for the joint board to make a stand on this project.”

Mrs. Pat Messier said that at least the wording allowed the town to take a stand on paper. “It may not change their minds... They [the PSB] seem hell-bent on getting whatever they want. But we need to take a stand.”

Mr. Doe said he felt the loss of the grant was a “drop in the bucket” and the wind project should not be located in that particular place.

Mr. Clark asked if the Planning Commission was anticipating going for a grant for 2016. Mr. Hubbard said that the Planning Commission was looking at applying for a grant to address renewable energies. Mr. Beliveau asked if the town plan would be able to be approved before the wind project went before the PSB. Mr. Newton said that plans, when approved, were effective immediately, and plans should be regionally approved. Swanton’s plan was in the docket to go before the committee on September 30th. In the preliminary staff review, the plan met all the requirements. Mr. Hubbard asked if a small revision like that would be a dramatic change.

Mr. Newton read the statute, which stated that substantial changes in the concept, meaning, or intent of the plan would require another hearing, warned 15 days in advance. In his opinion, the proposed changes constituted substantial change.

Mr. Leach suggested moving forward with a plan with stronger language, than moving forward with vague language. Mr. Labombard was concerned that a project might go before the PSB without an active plan (Swanton's plan expired on August 31st).

Mr. Clark did not feel that adding "quality of life, aesthetics, and wildlife" to be substantial change. Each of those aspects was already talked about in the town plan, in other sections. Mr. Labombard said that, as he understood it, if the change was typographical or grammatical were not considered substantial, but any other changes were considered substantial.

Mr. Dustin Lang reminded the attendees that they were at the eleventh hour because the developer had not applied for the CPG. "We don't have much of a voice as it is, but what we do have has been taken away."

Mr. Newton stated that the PSB would not look at any plan but a duly adopted plan. However, regional approval was not required.

Mr. Dubie said that he withdrew his motion for adding the language. He felt that he was "wasting the board's time." He summarized that the wind project application was made in 2014, with ANR knowing that the developer did not have a CPG for his MET tower. He asked the Swanton officials to participate in a robust way in the 248 process, and be willing to spend some money on it. He thanked the Selectboard for showing support for the quality of life issues of the residents.

Mr. Hubbard said that the Planning Commission knew that they needed legal counsel to address things rightly. The developer needed to be accountable for his violations.

Mr. Speer objected that Mr. Dubie was not wasting anyone's time, and identified the attendees as "perfect victims" of the lack of local control. This case was another example of a continuing problem.

Mary Ann Duell said that she had attended the meeting held by Mr. Belisle, and the event had disturbed her. She was very concerned about the health issues posed by the wind turbine project. "We need help."

Mr. Lavoie agreed that the state was not listening, and noted ways in which local control had been removed over the years. He was concerned about the aesthetic effects on tourism. "Don't give up the fight. We're going to do what we can."

Mrs. Lang noted that many other towns did not have the town officials with the residents. Many Selectboards were for the projects.

Mr. Billado agreed that "we're in this together," and encouraged the people to continue to make their voice heard in Montpelier. "We're with you, we hear you, and we'll support you. You're not in this by yourself."

Mrs. Pat Messier asked if this was legal, for the PSB to act this way? Rep. Savage said that Section 248 gave the PSB jurisdiction to act for "the common good for the state of Vermont."

Mr. Clark said that he wanted verbiage changed, but Swanton was "under a clock" and the plan needed to be adopted. It was noted that the plan could be amended immediately in the future. Mr. Newton stated that the plan objectives called for studying renewable energy, and grant funds could be used to hire a contractor to look at renewable energy siting. Mr. Jescavage said that the experts would look at the town as a whole. If the town were to get party status, the town's statements must be backed up by expert verification.

Mr. Daniel's opinion was that the plan should move forward as it was currently proposed, and then look into the issue further after adoption. Mrs. Penny Dubie agreed with adopting the plan for now, then amending immediately for more specific language. Mr. Savage felt that Swanton could make a court injunction to stop the wind project temporarily, enough to look at the town plan more closely, though that would take money. Mr. Speer noted that the NRPC energy committee was looking at siting for renewable energy in the region.

Mr. Dubie said that part of the determination for the MET tower was that the PSB would do a site visit, would review the developer and his consultants, and the track record. He asked that the Selectboard considered being an intervener in the determination of the MET tower. He formally requested Swanton's intervention regarding the PSB's determination for the MET tower.

Mr. Doe asked the board if they were comfortable with the current language, and whether they would comment during the 45-day window. Mr. Newton clarified that the Town should give input on the proposal 7 days before the 45 day expiration. He added that NRPC was asking questions regarding the project; Swanton would be copied on those questions.

Mr. Clark made a motion, seconded by Mr. Lavoie, to close the public hearing, and to move forward with the Swanton Town & Village Municipal Plan as presented. Motion carried.

4. Correspondence – None.

5. Other Necessary Business

a) Zoning Administrator Applicant

Ms. Darlene Marrier stood. She stated that she was presently the Zoning Administrator for the town of Bakersfield, with minimal hours, and had worked with seven towns in Franklin County in zoning over seventeen years. She said she really enjoyed working in zoning. She lived in Montgomery Center and was raised in Vermont. Mr. Hubbard said that the Planning Commission had had four quality applicants, had interviewed three people, and recommended with Ms. Marrier. Mr. Billado thanked Mr. Ron Kilburn for his work as Zoning Administrator.

Mr. Clark asked Ms. Marrier for her views on enforcement. Ms. Marrier said that she felt that every municipality should have money set aside for enforcement, and she had a process for dealing with violations of which she has been made aware. She sent out a "friendly letter," and, if no resolution was made, the notice of violation would be made. If resolution still did not follow, she would bring the information to the Selectboard and recommend taking the matter to Environmental Court. If a few violations were addressed each year, the word would get out that the municipality supported enforcement.

The Selectboard would discuss the details of the position in executive session.

b) Church Parking Lot

Mr. Clark said that the United Methodist Church wanted to know if the library and church parking lot could be combined. Mr. Paxman said he understood that the arrangement would probably involve plowing the associated driveway, which he felt should not be done because of liability. He was also concerned about the precedent. Mr. Clark suggested that there were ways to reduce liability (leasing the lot, for example) and noted that the Community Visit had identified the need for more parking in the village. He felt that the letter should receive a response. Mr. Leach felt that the parking lot was an important central space, and served many people. Mr. Beliveau suggested that he and Mr. Jescavage should look into the liability, and to consider the leasing angle. The Selectboard agreed. Mr. Labombard asked them to negotiate with the church's spokesperson.

6. Any Other Necessary Business

Mr. Billado noted that, in the past, Rep. Brian Savage had confronted Montpelier about the complaints regarding the PSB, and had not received a response by the deadline. Rep.

Savage said that, recently, the governor had given a response: "It is still an open docket." Mr. Billado recalled that the Swanton Selectboard had sent a letter to the governor on August 8th, and asked Mr. Jescavage to follow up to get a response. Rep. Savage said that, in the past, the Public Service Board and the legislature have been at odds with each other. At a hearing, the chair of the committee told the chair of the PSB: "We established you and we can disband you. Keep that attitude up, and you're out of here." There were long-standing issues with the PSB policies.

Mr. Dubie felt that a written letter to the governor should receive a written response.

7. Public Comment (Reprise)

Mr. Newton reminded the Planning Commission that they could apply for a municipal planning grant. The Selectboard would have to pass a resolution, and the deadline was September 30th.

Mrs. Lang asked Mr. Jescavage to put the NRPC response to the Swanton Wind Project developer on the town website.

Mrs. Ferguson asked if the plan, once adopted on the 23rd, amendments could be made that night. Mr. Hubbard reminded that, to do an amendment, another hearing could be scheduled.

Mr. Billado explained that he and Jim Pratt, Swanton lister, had called a meeting with Martha Staskus and John Zimmerman. Ms. Staskus offered the documents regarding permits for the Georgia wind site. Mr. Dubie said he felt there was a deliberate attempt by the developer and his professionals to withhold information. "We're trying to be factual. We want to be accurate." He was disappointed that the package did not include information for this project, with specific information to work with. He stated that he was disturbed by the available public information: "It's very troubling." He stated, "We're really thrilled with the support of the Selectboard, and we look forward to working together shoulder to shoulder, on the facts."

In closing, Mr. Billado reminded the attendees that "we're all in this together." He thanked the Planning Commission, the Selectboard members, and the Village Trustees. The attendees thanked the boards.

The Planning Commission hearing adjourned at 9:00 p.m.

8. Executive Session

The Planning Commission, Village Trustees, and attendees left. Mr. Lavoie made a motion, seconded by Mr. Clark, to go into executive session at 9:05 p.m. Motion carried.

Mr. Clark made a motion, seconded by Mr. Lavoie, to exit executive session at 9:46 p.m. Motion carried. Mr. Clark made a motion, seconded by Mr. Lavoie, to appoint Darlene Marrier as Swanton Zoning Administrator, for the days of Monday, Tuesday, and Thursday, 24 hours per week plus any necessary meetings, with a starting pay of \$21 per hour, with review after 90 days.

9. Adjournment

Mr. Lavoie made a motion, seconded by Mr. Clark, to adjourn the meeting at 9:48 p.m. Motion carried.

Received and filed by:

Cathy Fournier, Swanton Town Clerk

Date