



**Town of Whitingham
Office of the Selectboard**

MINUTES OF MAY 22, 2019

These Minutes shall be accepted into the public record (with any corrections noted) at a future meeting of the Whitingham Selectboard.

The Whitingham Selectboard held a regular meeting on Wednesday, May 22, 2019 at 6:30pm in the Selectboard Office of the Municipal Center, 2948 VT Route 100, Jacksonville, VT.

Selectboard members present: Wayne Wood, Vice Chair; and members Wayne Corse, Craig Hammer, and Scott Reed.

Others present: Gig Zboray, Selectboard Office Administrator; Almira Aekus, Town Clerk; Stanley Janovsky, Road Commissioner; Dan Hollister, ACO; Howard Dix, Listers Clerk; Mike Eldred, Deerfield Valley News. Residents: Richard Lemaire, Sherry Adams, Phil Edelstein, Carl "Butch" Jillson, Laurie Brown, and Seth Boyd. Contractors: Rob Mitchell of Mitchell Stone & Gravel. Great River Hydro, LLC representatives: Erin O'Dea, Matt Cole and Mark Cleverdon.

Call to Order. Additions or Changes to Agenda

Wayne Wood called the meeting to order at 6:30pm. Gig rescheduled Great River Hydro to attend at 8pm rather than 7:30pm as originally posted. Stanley Janovsky brought in another access permit for review and approval.

Hearing of visitors (for concerns not on the agenda) none

Highway Department-open and accept bids

Stanley Janovsky came to the table to open the many highway bids:

Stone:

Zaluzny Excavating Corp. 1" crushed stone delivered \$31 per cubic yard

Bazin Brothers 1" crushed stone delivered \$28.50 per cubic yard

Danek Excavating – 1" crushed stone delivered \$16.95 per cubic yard

Mitchell Sand & Gravel – 1" crushed stone delivered \$19.85 per cubic yard

Gravel:

Fitzpatrick Excavating – 1" crushed gravel delivered \$18.50 per cubic yard / 1.5" stone delivered \$21 per yard

Zaluzny Excavating Corp – 1" crushed gravel delivered \$23.90 per cubic yard / 1.5" crushed stone delivered \$29.50

Cersosimo Industries – 1" crushed gravel delivered \$25 CY / 1.5" quarry stone \$28.50 CY delivered / ¾" quarry stone \$28.50 CY delivered

Bazin Brothers – 1" crushed gravel delivered \$23.35 CY / 1.5" crushed stone \$26.95 CY delivered

Zoar Stone & Gravel – 1" crushed gravel delivered \$16.95 CY / 1.5" crushed stone \$19.95 CY delivered

Mitchell Sand & Gravel – 1" crushed gravel delivered \$17.80 CY / 1.5" crushed stone \$19.85 CY delivered

Milling: 21,000 square yards
Mitchell Sand & Gravel- 95 cents per square yard
Peckham –total is \$19,012
Arlington Paving - \$1.15 per square yard
Springfield Paving - \$1.25 per square yard
Bazin Brothers - \$1.10 per square yard
Northeast Paving - \$1.67 per square yard
Garrity - \$1.00 per square yard
All States Asphalt - \$1.06 per square yard
Vermont Roadworks - \$2.36 per square yard

Full Depth Reclaim: 24,400 square yards
Peckham – total is \$29,030
Arlington Paving - \$1.50 per square yard
Springfield Paving - \$1.25 per square yard
Bazin Brothers – 65 cents per square yard
Garrity - \$1.00 per square yard
All States Asphalt – 76 cents per square yard

Bitmous Concrete/Paving: estimated 5,000 tons (last year was \$62 per ton)
Vermont Roadworks - \$78.38 per ton
Springfield Paving - \$75.80 per ton
Mitchell Sand & Gravel - \$69.48 per ton
Peckham – binder \$82 per ton / top \$89.50 per ton
Bazin Brothers - \$72.50 per ton
Northeast Paving - \$84.15 per ton

Mr. Mitchell recommended that the town use the same company for milling and paving so there is just one company to blame if the job does not turn out well. Mr. Reed asked if Mr. Mitchell would match the price offered by Peckham for milling, Mr. Mitchell said he would.

Mr. Janovsky noted that Mitchell's gravel was the best. **Wayne Corse made a motion to put the gravel bid on hold until the next meeting so that the Road Commissioner can compare samples between Zoar and Mitchell, seconded by Scott Reed, all in favor.**

Scott Reed made a motion to accept Mitchell's bids for paving, milling (at \$19,012) and crushed stone, seconded by Wayne Corse, all in favor.

Wayne Corse made a motion to go with Bazin Brothers for reclamation, seconded by Scott Reed, all in favor.

Highway Department-Employee Evaluation and retroactive pay increase

Stanley Janovsky did a probationary review of newest highway crew member, Joshua Lemaire, and recommended that Mr. Lemaire receive an hourly pay increase of \$1 per hour retroactive to pay period beginning May 2, 2019. **A motion was made by Wayne Corse to increase Joshua Lemaire's pay to \$19 per hour retroactive to May 2, 2019, seconded by Craig Hammer, all in favor.**

Stanley Janovsky was denied a state grant for a Class II paving grant for Kentfield Road. The project did qualify for grant funding, but the state did not have enough funds.

Review and sign Access Permit for 1487 Fuller Hill Road and 9024 VT Route 100

The access permit for 9024 VT Route 100 is already a state approved driveway they will be using the same driveway just extending it further into the property. **Wayne Corse made a motion to approve both access permits, noting that the Fuller Hill Road driveway needs to be pitched away from the road as noted on the permit, seconded by Scott Reed, all in favor.**

Scott Reed met with the Village Electric Company about taking over the sidewalks, they would be happy to pass them on to the town. Mr. Reed questioned Stanley Janovsky what his opinion is of taking over the sidewalks. Mr. Janovsky's honest opinion is that he doesn't want them, he can't see how it would benefit the town and feels like it would be a great expense to the town.

Research would need to be done regarding liability of sidewalks and if they are required to be shoveled in the winter. Mr. Lemaire noted that sidewalks are now required to be 5' wide.

Transfer Station, SWIP and Waste Management Ordinance-Public Information and Feedback

No comments from the public.

Craig Hammer spoke with Martin Farm in Greenfield, they would be willing to take our compost but he is waiting for a price for a dumpster and transportation.

A port-a-potty has been delivered to the transfer station. It has a water sink in it (type A) at a cost of \$110 per month.

Animal Control Officer, introduce, discuss fines & warrant

Dan Hollister came to the table. Introductions were made all around. Mr. Hollister has been the ACO for the town for 4 years or so. Mr. Hollister shared a concern of his regarding the annual dog warrant and the harsh language included in it. Most towns don't actually impound an animal, the ACO goes door to door and issue citations, which avoids a lot of conflict. There is nothing the town can do about the wording of the dog warrant, it is statutory. Almira Aekus noted that VT Statutes 20 V.S.A. §3621 says the municipality MAY issue a warrant and it can be issued as needed. Because unregistered dogs are a violation of the Dog Ordinance. The ACO can go on private property to the front door and speak to the dog owners and issue a warning or a fine.

There are some steps the town can take after a fine has gone through the Judicial Bureau unpaid, more research needs to be done on it. The ordinance says fines SHALL be issued and each day is a new infraction. Mr. Hollister is not in favor of a daily fine, he would rather it be a weekly fine to allow people time to correct the violation. Mr. Hollister suggests that no dogs be impounded unless absolutely necessary for a dog bite or some other extenuating circumstance. He would also like to recommend the town approve of an "administration fee" for dog owners that are late registering their dogs year after year.

A motion was made by Scott Reed to do away with the annual Dog Warrant and to only issue the list of unregistered dogs to the Animal Control Officer, in order to avoid the impoundment of a dog for their being unregistered, any one Selectboard member can sign a Dog Warrant for a single exigent circumstance if necessary, seconded by Wayne Corse, all in favor.

Mr. Hollister noted that fines will be issued for unregistered dogs and also for late rabies vaccination if there is no proof on file.

Review and sign non-employee contracts

Non-employee contracts, which are needed for the annual Worker's Compensation audits were reviewed (a three-year contract for Tyson Dix for mowing and weed whacking of the Municipal Center and Eames Village Park and one-year (calendar year) contract for Barb's Cleaning for cleaning of the Municipal Center). **A motion was made by Craig Hammer to sign the three-year contract with Tyson Dix and the one-year contract with Barbara Brown of Barb's Cleaning, seconded by Wayne Corse, all in favor.**

Great River Hydro-discuss valuation

Representatives of Great River Hydro came to the table to discuss property value with the Selectboard. The most recent agreement ended with the 2018 Grand List. They feel it benefits the town and the company to reach an agreement. The value has been the same from 2013 through 2018. They question if the town is willing to work with them to agree on a new value. They say energy prices are going down due to other green renewable energy sources (solar and wind). They say the value of the plant is lower due to the income approach of valuation. Mr. Cleverdon asked if the 2019 value is set and has it been set at the prior agreement amount? Mrs. Aekus noted that whatever the town and the power company might agree on would have to involve the state of Vermont. The grand list will be lodged next Friday so there is no time to negotiate a value. Therefore, Great Rivery Hydro will have to file a grievance and go through the process.

Listers, if any

Howard Dix noted that Change of Appraisal notices will go out by next Friday, May 31st and he has been working well with NEMRC and it is moving forward fairly well.

Sewer Department, sewer rates continued from May 8 meeting

Butch Jillson noted that in view of the extended agenda he will ask his sewer questions at a later date.

Town Hill Committee

Mr. Boyd had sent a letter to the Selectboard. Since then he has received a resignation from Steve Betit. He suggested the Selectboard appoint Heather Woods and Erin Lackey to the Town Hill Committee and they might look for one or two more members. The Committee is grateful for the work done by the Department of Public Works, he spoke with Mr. Janovsky briefly about the new "to-do" list and what the DPW can do versus what should be contracted. New "playground quality wood chips" are needed and Mr. Boyd thinks it can be spread by volunteers. Dana Dix has the Memorial plaque and that should be installed before the 4th of July. Discussion about the installation of the fence around the antennae equipment. They are

working on a 3-5 year plan. Craig Hammer noted that the trees on either side of the flagpole have encroached the flag and recommended removal or trimming.

Wayne Corse made a motion to appoint Heather Woods and Erin Lackey to the Town Hill Committee, seconded by Craig Hammer, all in favor.

Selectboard vision looking forward

Phil Edelstein wrote a letter to the Selectboard, he recommended a working session to go over the purchasing policy and a long-term plan for the town.

Purchasing Policy

The Selectboard will hold a special working session regarding the Purchasing Policy (and then work on their vision for the town). Mr. Reed suggested that after the Purchasing Policy is edited that the Town Attorney review it after the edits are done. **A motion was made by Wayne Corse that Mr. Fisher's opinion be added as an addendum to these minutes and posted publicly, seconded by Craig Hammer, all in favor.**

Education Funding Litigation, if any none

Approval of Payables Warrant – May 23, 2019

A motion was made by Craig Hammer to approve Payables Warrant W1948 dated May 23, 2019, seconded by Scott Reed, all in favor.

Approval of Payroll Warrant – May 23, 2019

A motion was made by Wayne Corse to approve Payroll Warrant W1947 dated May 23, 2019, seconded by Craig Hammer, all in favor.

Approval of Minutes of May 8, 2019

A motion was made by Craig Hammer to approve the Minutes of May 8, 2019 as written, seconded by Scott Reed, all in favor.

Other business / Office Administrator – as needed

At the May 8th meeting Sherry Adams noted that her role as the last member of the Kitchen Committee was no longer required. A thank you letter was reviewed by the board. **A motion was made by Wayne Corse to sign the thank you letter to Sherry Adams, seconded by Craig Hammer, all in favor.**

Jeanette Felton had called Gig and asked, on behalf of the Lions Club, if they could put an addition onto the shed at the Transfer Station. She said that they have already spoken to the Transfer Station attendant and Jennifer was fine with it. Almira Aekus suggested that half of the shed behind the Fire House would be available.

Gig will be out of the office all day Thursday for EMD training. She will take a floating holiday on Friday and the Municipal Center will be closed Monday for Memorial Day.

The Town Clerk received an email regarding "Vermont Microcell Interest Survey" in reference to the "jungle gym" on the Municipal Center property. The state is making this equipment available to towns. They estimate the cost to operate the equipment would be about \$1,800 per year per "site", they say Whitingham has 11 sites. For \$19,800 per year we can offer our residents voice and text services but not mobile data in a limited area. Phil Edelstein suggested that we ask the state to remove the equipment. **A motion was made by Wayne Corse for Gig to ask the state to remove the equipment from the municipal center land and that we are not interested in operating it, seconded by Craig Hammer, all in favor.** Gig should also answer the survey to reflect that motion.

Mr. Corse noted that he had offered to pay for the legal fees for the Purchasing Policy review by the town attorney but has now rescinded his offer. **Craig Hammer made a motion that the town pay for the legal fees for review of the Purchasing Policy, seconded by Scott Reed, all in favor.**

Almira Aekus noted that the town is audited every year. Sullivan and Powers had recently called her to schedule the audit. It is best if the audit is completed by September so that all the financial statements are accurate for the Town Report. It was noted that the audit cost \$15,900 for fiscal year 2017-18. Although the Purchasing Policy does not require auditing services to go out to bid no decision was made tonight. It will be on the next agenda.

Almira Aekus noted that the annual cost for flowers is often more than \$1,000 but she would not know the amount until all the flowers are selected. The Purchasing Policy would not allow her to do so. **Scott Reed made a motion to allow Almira Aekus to spend the entire budget amount for town flowers, seconded by Craig Hammer, all in favor.**

Scott Reed reviewed estimates from WW Building Supply and Leader Home Center for three different options for replacement windows. He feels he needs to get more information before he can recommend an option. Almira Aekus noted that there is money in the budget for this current fiscal year and would like the windows purchased before June 30th.

Mr. Lemaire asked what was the status of the security cameras? Mr. Wood provided an update of the meeting that he and Gig had with First Choice. A written proposal should be available at the next meeting.

Adjourn

A motion to adjourn was made by Wayne Corse, seconded by Craig Hammer, all in favor.

Wayne Wood adjourned the meeting at 9:33pm.

Respectfully submitted,
~Gig Zboray

LEGAL MEMORANDUM

FROM: ROBERT M. FISHER, ESQ.
TO: TOWN OF WHITINGHAM SELECTBOARD
DATE: MAY 10, 2019
RE: TOWN OF WHITINGHAM PURCHASING POLICY

Pursuant to discussions at the May 8, 2019 Selectboard meeting, I have been asked to review the Whitingham Purchasing Policy as it relates to two recent purchases by the Board. These recent purchases involved the purchase of a loader and the purchase of paving services. In preparing this memorandum, I have reviewed the Town's Purchasing Policy adopted by the Town on March 28, 2018 (which mirrors the VLCT Sample Policy), the minutes of several meetings pertaining to the above stated purchases, and the purchasing policies for the State of Vermont. I have also conducted legal research pertaining to sole source and recurring purchases in an attempt to ascertain Vermont case law on the matter.

The Town's Purchasing Policy is taken from the model policy provided by the Vermont League of Cities and Towns. The purpose of the policy is to obtain the highest quality goods and services for the Town at the lowest possible price and to allow for fair and equal opportunity among suppliers. The idea behind the policy is to promote public confidence that the tax dollar is being spent wisely after a fair and open process. The policy is not specifically mandated by law other than a town must have such a policy in order to receive and/or participate in various grant programs. Usually, this is a function of legal conditions which are passed down from the federal grant conditions to the State, and then from the State to the Town. However, absent those types of situations, there is no Vermont statute that I am aware of that specifically provides that the Town must follow a particular purchasing procedure in order to procure and purchase goods and services needed to operate the Town. It is a policy, not an ordinance. That said, when the Town adopts a policy, the Town should follow the policy because it promotes the public confidence in the Town in making purchasing decisions in a fair manner and in a manner that hopefully pays the least amount for the particular item or service.

The Town's policy requires that large purchases with a value over \$10,000 for the highway department follow a sealed bid process outlined in the policy unless specific exceptions apply. (Policy, page 3) For purposes of the question presented here, both the purchase of a loader and the purchase of paving services exceeded a value of \$10,000, so the sealed bid process was invoked, unless an exception applied. There are five exceptions outlined in the Town's policy, two of which are relevant to the loader and the paving services. Those two are the exception for "Sole Source Purchases" and for "Recurring Purchases."

With regard to the Town's purchase of the loader, the Board authorized the purchase of the loader on November 7, 2018. The minutes do not reflect any sealed bid process for the purchase of the loader. The Board made its decision based on the recommendation of the highway department after the highway department had researched and tried out various different loaders. However, no sealed bid process was followed. Therefore, the question is whether the "sole source" purchase exception applied. It is my legal opinion, based on legal definitions of "sole source," that the purchase of the loader did not fall within the "sole source" exception to the Purchasing Policy.

The Town's policy allows the Selectboard to waive the bid process if it "determines that there is only one possible source for a proposed purchase." In general, "sole source" purchases are not meant to avoid competition, but rather to expedite a purchase under justifiable circumstances. In the Town's Purchasing Policy, the term "one possible source" is not defined. By comparison to other procurement policies used at the State and Federal level, the term "sole source" is defined more by a list of criteria than by one set definition of the term. For instance, the typical criteria for "sole source" items include things such as it being of unique capability that no other source can supply, being uniquely compatible with other existing equipment owned by the Purchasing entity, being a follow on for some specialized system or equipment, or being such a custom piece of equipment that only one supplier has the ability to supply the item.

Taken in relation to the purchase of a loader for town highway purposes, there are multiple companies that supply loaders. From a review of the minutes, the Board discussed with the highway department the desire to have a hydro-static loader. If that was the case, then the bid process should have included specifications that the loader had to be hydro-static. If there is only one company that produces hydro-static loaders, then there would be justification for the "sole source" purchase and not following the bid process. If, on the other hand, there are multiple companies who have hydro-static loaders, then the bid process should have been used. Thus, based on the assumption that multiple companies make a hydro-static loader, it is my legal opinion that the purchase of the loader did not fall within the "sole source" exception to the Purchasing Policy." To be fair, however, the highway department indicated that multiple companies had been contacted about providing a loader and that some of these companies did not respond. The highway department had tried out Wilmington's loader for comparison and also was given a test period with the Komatsu loader. The highway department researched issues such as traction, size of bucket, drive trains, etc. Nevertheless, the Policy requires that "large purchases with a value over . . . \$10,000 for the highway department, . . . must follow a sealed bid process." Given that the loader is not typically a "sole source" piece of equipment, the "sole source" exception to following the sealed bid process did not apply. Consequently, the Board should have put the bid out to equipment dealers through a sealed bid process.

Turning to the paving contract, the issue is whether the paving meets the "Recurring Purchases" exception to the sealed bid process. Again, it is my legal opinion that the exception does not apply and thus, the sealed bid process should have been followed. The "recurring Purchases" exception allows the Town to use the sealed bid process when the "total value of a recurring purchase of a good or service is anticipated to exceed \$5,000 in any fiscal year." (Policy, page 5) Recurring purchases include items such as fuel oil, paper supplies, or other routine maintenance services. The Purchasing Policy further provides that the bid process "shall

specify the recurring nature of the purchase.” (Policy, page 5) By the terms of the Policy, once the bid is accepted, all future purchases “shall be made from that bidder without necessity of additional bids, until such time as the Selectboard votes to initiate a new bid process.” (Policy, page 5)

Here, the Town received bids for paving in 2018 and awarded the bid to a particular contractor. If the bid was similar to this year’s bid, the bid did not specify the length of time for which this recurring purchase would apply. Rather, the request for bids asked contractors/suppliers to submit bids for the paving to be accomplished for the particular sections of roads in 2018. It was not a bid that specified the recurring nature of the purchase for future years. If it did, and the specification was that this would be for multiple years, it could serve as a recurring purchase based on the language of the Policy, though with the volatility of oil prices, I doubt whether paving companies would provide a bid for more than a year in the future. I do think that in certain circumstances, the Board can specify the recurring nature of a purchase and have the bid apply to more than one fiscal year. The bid process would be utilized if such anticipated costs exceed \$5,000 per fiscal year, but the bid could specify that the bid would be recurring until otherwise voted by the Board. However, since the Board did not specify the paving as a recurring purchase bid in the bid documents last year, the award of a contract to last year’s low bidder is not in compliance with the Town’s Purchasing Policy.

Therefore, it is my opinion that 1) the purchase of a Komatsu loader does not meet the “sole source” exception to the Purchasing Policy and 2) that the paving contract does not meet the “recurring purchase” exception to the Purchasing Policy.

It is my recommendation that two things occur to prevent future misunderstandings or disputes over the Purchasing Policy. First, the Board and the Department Heads should meet and go over the Purchasing Policy to understand the requirements as it is currently written. Listing out all goods and services for which the Town will need to purchase is a good first step in determining which types of purchases need to follow the respective sections of the Policy. Advance agreement on which types of purchases need the sealed bid process and which types of purchases will fall into recurring purchases can make future dealings easier. Second, I would encourage the Board and Department Heads to brainstorm any needed changes to the Policy. Some of the dollar thresholds may need to be changed. Better defining what is meant by “sole source” and “recurring purchase” may be in good order, given the apparent ambiguity when these terms were applied. It also may make sense to create different exceptions in order to take advantage of certain deals—the need to be more agile as a town when it comes to purchases. And, it may make sense to put in a clause that allows the town, without bidding it itself, to piggy-back on to other public bidding processes, whether in state or out of state. If the Board wishes, I can provide to the Town some other examples, such as from Essex, Brattleboro, or Montpelier, Vermont.