

**TOWN OF CHARLOTTE
SELECTBOARD
MARCH 12, 2012**

APPROVED

MEMBERS PRESENT: Charles Russell, John Owen, Ed Stone, Winslow Ladue, Dennis Delaney (via telecommunications).

ADMINISTRATION: Dean Bloch, Selectboard Assistant.

OTHERS: Stephen Brooks, Ellie Russell, Edd Merritt, Gerald Bouchard, Jim Donovan, Peter Swift, Paul Landler, Elizabeth Bassett, Judy Hill, Tom Nola, Julie Wetzell, Gordon Troy, Bruce Bernier, Ed Sulva, Tom Zabruski, Helen Lugano, Sue Leonard, Marcia Vogla, Kieth Randall, Debbie Randall, Sherry Applegate, Brett Applegate, Diana McLaughlin, Bill Ellis, Carrie Spear, Brian Slatter, Jennifer Slatter, Carol Casey, Charlotte Citizen, and others.

(NOTE: the agenda was heard out of order, but appears as warned for continuity.)

CALL TO ORDER

Dean Bloch, Selectboard Assistant, called the meeting to order at 7:00 p.m.

SELECTBOARD ORGANIZATION:

- **Determine Board structure and elect leadership**
- **Adopt rules of procedure**
- **Select newspaper of record**
- **Approve schedule of regular meetings**
- **Determine how agendas will be created**

Determine Board structure and elect leadership

The Selectboard members spoke in support of the current board structure.

MOTION by Mr. Stone, seconded by Mr. Owen, to appoint Charles Russell as Charlotte Selectboard Chair for one year.

VOTE: 5 ayes; motion carried.

Adopt rules of procedure

MOTION by Mr. Owen, seconded by Mr. Ladue, to adopt Robert's Rules for Small Boards.

VOTE: 5 ayes; motion carried.

Select newspaper of record

MOTION by Mr. Stone, seconded by Mr. Owen, to use Seven Days as the Charlotte newspaper of record to post legal notices for a period of one year.

VOTE: 5 ayes; motion carried.

Approve schedule of regular meetings

The Charlotte Selectboard meeting schedule was set for the 2nd and 4th Mondays of each month at 7:00 p.m., with the exception of April 9th and 30th.

Determine how agendas will be created

MOTION by Mr. Owen, seconded by Mr. Ladue, to maintain the current practice that Mr. Bloch would send out agenda drafts to the Selectboard members a week ahead of the meeting date, and items to be added should be submitted through Mr. Russell, who would contact Mr. Bloch.

VOTE: 5ayes; motion carried.

ADJUSTMENTS TO AGENDA:

Add under Public Comment:

- Vermont Gas Addison County Advisory Group report – discussion
- Charlotte Park and Wildlife Refuge contracts – discussion

PUBLIC COMMENTS

Ms. Cole reported that the Vermont Gas Addison County Advisory Group learned that the gas line would not pass through Charlotte. The route would follow the Circumferential Highway, down the Route 116 corridor to Monkton and Middlebury.

Ms. Cole reviewed that the Park Oversight Committee was recommended separating out maintenance of the Robert's walking trail and some of the park maintenance trails from the contractor's bid. Some of the spring walk-around hand work has been done on an on-going basis by volunteers and that work was taken out of the bid as well. The committee would like to hire the Corrections Department inmates to do some of the work.

MOTION by Mr. Stone, seconded by Mr. Owen, to remove maintenance of the hiking trails out of the mowing bid contract and hire the Corrections Department inmates do work as presented.

VOTE: 5 ayes; motion carried.

Mr. Stone said that last year bids were sent out for brush-hogging and clearing around headstones. This year he would not make any decisions and suggested that other Board members take up that responsibility, said Mr. Stone.

CHARLOTTE SOLAR, LLC, PUBLIC COMMENTS

Mr. Russell reviewed that the Public Service Board (PSB) has scheduled a pre-conference hearing for Tuesday, March 13, 2012, at 9:30 a.m. and an April 5th community hearing in Charlotte.

Mr. Bloch noted that Stephen Colvin had submitted a written letter, dated March 11, 2012, in opposition of the proposed project.

Mr. Russell opened the floor for public discussion and comments.

Mr. Swift submitted written comments to the Selectboard and reviewed his major concerns that included preservation of prime agricultural land. Converting the parcel to a commercial solar farm was a modest public good compared to retention of farm land, stated Mr. Swift.

Ms. Bassett read prepared comments, and noted that she was not against solar, but this was the wrong size and scale for the location. Town money should go toward view shed protection and land conservation to preserve Charlotte's agricultural heritage. The Town Plan places commercial facilities elsewhere. She did not want to see Charlotte looking like the industrial zone along Route 116, said Ms. Bassett.

Mr. Ellis, attorney representing Mr. Colvin, the Walkers, and others, said that the Selectboard should take an active role in opposing the solar project on the basis that the project would interfere with the orderly development of the Town. The project doesn't conform to Town regulations. Jurisdiction was not cut and dried regarding a 'public utility' exemption. Green Mountain Power was not proposing the project. It is a 'nug' – non utility generation project. As defined in state law the project needs a Certificate of Public Good under Section 248, which talks about siting of a facility. Section 203, Title 30, regulates selling electricity directly to ratepayers. The solar farm would sell power to a middle man that would sell power to the utilities. There was concern that if the Town didn't oppose the project the PSB would allow the project to go forward and that would set precedence. A project that was selling power generated at \$0.28 would encourage other private developers of similar projects. The next one could be in anyone's backyard. Protect the taxpayers and local zoning, said Mr. Ellis.

Mr. Russell asked for clarification of a definition of public utilities in Title 30. Mr. Ellis replied that it was the company. It does not say public utility. Section 203 doesn't apply since the company was not selling power to the rate payers. For example, Hydro Quebec is the selling arm of HQUS. Power is sold to Vermont utilities, and not to the public. This was the ruling in 2011 for Hydro Quebec, said Mr. Ellis.

Mr. Russell asked if Town regulation, Section 4.15 applied. Mr. Ellis said he was not familiar with Section 4.15.

Mr. Troy asked the Selectboard to step up to the plate. The scale of the project was beyond the scope of what was planned for that area. He understood it was designated as a view corridor. The solar farm would be seen by everyone and would be unsightly. He was for solar, but not in prime agricultural soils. The commercial/industrial center on Ferry Road was a good spot, said Mr. Troy.

Mr. Nola reiterated his concerns stated at previous public hearings regarding the proposal. Who would be responsible for compensating for the depreciation of his home, and would his home be reassessed at a lower rate, asked Mr. Nola.

Ms. Lugano explained that she owned property on Lake Road and had a better place for a solar farm. There was no development on the farm and it couldn't be seen from the road. The VELCO power lines went through her property, said Ms. Lugano.

Ms. Leonard, Sheehan Green resident, said the project would be 40'-50' from her back yard. The proposal would be unsightly and should not be placed in a residential neighborhood. She asked the Selectboard to intervene on her behalf. She was concerned that her property value would go down, said Ms. Leonard.

Ms. Spear expressed concern that the 'public' would only have two more public meetings to make comments on the project. She attended the Thompson's Point solar project meetings. Everyone there said they supported solar, but not in that spot. When Clark Hinsdale showed her the proposed project her immediate thought was it should be moved over further in the field. When the East Charlotte Village Planning session was on-going she thought that the person who came up with a project first would set the tone for the Village. People are the future of the village. People on that land would be better than solar panels. We need to talk about the next 25 years, said Ms. Spear.

Mr. Zabruski, Sheehan Green resident, said he was not familiar with how a view corridor was defined in the Town Plan. His view was not toward the Adirondacks, but of trees and a swampy stream. He moved to Vermont for the views and to Charlotte for its views. All of Charlotte was a 'view corridor'. The project was not appropriate for this field, said Mr. Zabruski.

Ms. Cole said the Town needed to learn more about the issues before deciding where to put a large scale solar project. There was so little Town commercial land and it is like saying we can't have solar at all in Charlotte. We have to present good arguments to the PSB, said Ms. Cole.

Ms. Hill pointed out the Town would not benefit from the project, which was a private project. On a recent journey to Waitsfield she saw that there were a lot of solar panels. The Vergennes solar farm was appropriately placed on Route 7, said Ms. Hill.

Ms. Roth, Sheehan Green resident, said she had mixed feelings. It was privately owned land and if it was within the law, then that private land owner should have freedom to make a contract. She would rather have 10' solar panels in that field versus 2-story homes. We wouldn't know who might move in and those people might be more bothersome than solar panels. She was selling her home for other reasons than the project and she disclosed the project to potential buyers. They didn't mind what would be on the other side of the hedge, but they did find another property at a lower price, explained Ms. Roth.

Ms. Applegate, Hinesburg Road resident, said she thought that the site selection was done in an underhanded way before the neighbors knew about it. It appears that there are other places like Helen's that could have offered a site. Is there anything the Town could submit for next year regarding a better location, asked Ms. Applegate. Mr. Russell

explained that the bidding process for locations went out two years ago. As other selections dropped from the list this site went to the top, said Mr. Russell.

Ms. Cole suggested that those with concerns should view the SPEED website.

Ms. Vogla, Hinesburg Road resident, expressed concern regarding the size and scope of the proposal. She works in South Burlington near an existing solar farm. It is totally screened and not visible from the road. There would be a lot of panels on 15 acres, said Ms. Vogla.

Ms. Slatter said that 15 acres of solar panels was not too different from a 15 acre parking lot. Where would rain storm run-off drain to, asked Ms. Slatter.

Mr. Russell asked if there was interest in having the Selectboard request a later date than the April 5th public hearing. This might give more time to research a defensive position. During the VELCO hearings he and Ms. Cole strategized in Executive Session due to litigation issues, and that was done in the Town's interests. The PSB results may not please everyone. Some people were not in favor of the project, and some were, pointed out Mr. Russell.

Mr. Russell encouraged people to review Section 4.15 in the Town regulations. Mr. Donovan said that Section 4.15 relies on definitions and the definition was the problem. Mr. Russell replied that Section 4.15(b) exempted a project from local regulations if it went before the PSB.

Mr. Slatter spoke in support of the Town attending the PSB hearings.

In response to questions, Mr. Russell said that if a property owner was not happy with their property assessment they could go through the grievance process. Regarding the rights of a person, it was an individual neighbor who decided to do something with his land. The private land owner was not required to notify his neighbors about the project first. The Town position was restricted by language in the Town Plan and regulations, said Mr. Russell.

Mr. Joslin said that people's frustration should be with the state and not with the Town. A broader issue was that the project could just as easily be something else - like a housing development on that land. There was little town owned land. This was private land being developed privately. The Town can only give an opinion on the project. In recent discussions the Planning Commission talked about zoning regulations and that was where to form an opinion on use and location. Regulations could be changed, such as was done with another big farm project, pointed out Mr. Joslin. Mr. Russell reiterated that the project was exempt from Town regulation.

Mr. Bouchard asked if Section 248 nullified the ACT 250 permit process. Mr. Ellis said that Section 248 incorporated ACT 250 and how the PSB applies the ACT 250 criteria. If individuals can't attend the pre-hearing conference the Selectboard could present an

opinion, but it was not 'evidence'. You must seek intervener status to participate. Regarding the Town regulation exemption, the Selectboard could advocate that "...the project would unduly interfere with development of the Town, and that it was not allowed in the Rural District." The PSB process just started. People should attend the PSB meeting tomorrow at 9:30 a.m., The People's Bank, 3rd floor. The PSB is the public advocate and they need to get testimony on "undue adverse impacts" and "ethics", said Mr. Ellis.

Mr. Russell said that he, The Town Attorney and Mr. Bloch would be attending the hearing.

KEVIN BURGET – interview for appointment to the Trails Committee

The Selectboard interviewed Mr. Burget, and reviewed his qualifications.

MOTION by Mr. Stone, seconded by Mr. Owen, to appoint Kevin Burget to the Trails Committee for a term ending in April 2014.

VOTE: 5 ayes; motion carried.

JOE GALLAGHER – interview for appointment to the Trails Committee

Mr. Russell suggested deferring an appointment to the Trails Committee until Mr. Gallagher moved into Town.

CHARLOTTE SOLAR, LLC

Mr. Russell said that the Charlotte Solar Farm, LLC was a non-utility generator.

Mr. Ladue suggested presenting a strong legal argument to support a general position based on the Town Plan, and in addition include mitigation factors. He has heard that the project isn't consistent with the Town Plan and regulations. He doesn't support the facility on this parcel of land, said Mr. Ladue. Mr. Bloch pointed out that there was no language to support mitigation. Mr. Ladue replied that the Town could make comments on mitigation.

Mr. Joslin said if it was consistent with the Town Plan how many locations would be OK. This would set a precedence in Town. We need to re-write the regulations, said Mr. Joslin.

Mr. Ladue noted that the Town Plan was silent on the scale of solar projects, although there was language in support of solar. Mr. Donovan said that the Planning Commission was looking at definitions and public use. If the project was classified as industrial then it would not be acceptable. We haven't done that, said Mr. Donovan.

Mr. Owen asked what the lawyer's opinion was regarding the project. Mr. Russell replied that it was not a clear answer. It was a 'public utility' as per the state. The Section 4.15 clause exempts from local regulations even more, said Mr. Russell. Mr. Donovan said that the Table in 4.15, public utility, was acceptable in all districts. Orderly development and limited agricultural resources are the strongest argument, suggested Mr. Donovan.

Mr. Russell said that the parcel isn't prime agricultural land. We could charge our lawyer to look into uses of primary agricultural soils and invite him to the Planning Commission meeting Thursday, said Mr. Russell.

Mr. Ladue asked if the project would connote village expansion into that field. Mr. Donovan said that was something considered in the last Town Plan update. No decision was made on it. The update of the zoning district did include going into that field as one of the recommendations from a group of citizens. Discussions are still in progress and it was not in the Town Plan now, said Mr. Donovan. Mr. Bloch said that means it could be in the district. Some people say to conserve the land. We can't say someone couldn't build a solar farm there, and then say it was OK for houses, said Mr. Bloch.

Mr. Landler said that the Town Plan was the strongest argument. Mr. Russell said we need to cite why. Mr. Ladue suggested saying that the Town Plan was conflicted on the issues, but the sense was that the facility isn't appropriate in this area, suggested Mr. Ladue. Mr. Joslin said that solar as supported in the Town Plan was vague versus saving open space. Regarding preserving open space and farms – it says throughout areas of high public value, said Mr. Joslin. Mr. Bloch said that a requirement was clearly written community standards.

Mr. Russell asked what limit the Town should spend on legal fees.

Mr. Russell asked if Clark Hinsdale came in with a 15 acre housing development would the Planning Commission let him do it. Mr. Donovan said he was not 100 percent sure that he was opposed to the project. It comes down to a fuzzy interpretation, said Mr. Donovan. Ms. Russell asked how ACT 250 would play into the issue. Was there any protection under the ACT 250 criteria, and would the PSB review the criteria, asked Ms. Russell.

Mr. Donovan said that the Planning Commission looked at shifting the panels to the west and into the back field. Shadows from the trees don't go all across the field so there would be sufficient sunshine for solar. Now there are more questions, said Mr. Donovan.

Mr. Donovan said that a small group should be appointed to represent the Town. This group should go to the meeting tomorrow as the start of their work, said Mr. Donovan. Mr. Russell suggested 2 Selectboard and 2 Planning Commission members. Mr. Donovan said he would be interested.

Mr. Russell asked if an extension to the April 5th meeting should be requested. Mr. Donovan asked what would the extra time gain. There would be no harm, but that might cost the Town more money in lawyer fees, said Mr. Donovan. Mr. Stone asked if \$1,500 was spent on legal fees for tomorrow's meeting, would the group be willing to go further. A concern was that if there was more time, then the attorney would be calling the town Hall and that would push his billing up. We heard from the public tonight that Charlotte was heaven. We looked at Thompson's Point and now we're looking at this. He heard

that Mr. Russell, Dean and the attorney would attend the meeting tomorrow, said Mr. Stone.

Mr. Ladue suggested going and just submitting a letter for intervener status. We don't need an attorney for that, said Mr. Ladue. Mr. Russell read the PSB pre-hearing conference agenda. Mr. Bloch spoke in support of an attorney who could submit a stipulation for intervener status. The Town should put its best foot forward from the start. We could raise the issue that this project isn't like other projects in the state. This one is close to a residential area, said Mr. Bloch. Mr. Stone pointed out that Mr. Ellis seemed prepared and presented new information. Mr. Stone said that Mr. Russell was more prepared than anyone of the Board. Pay up to \$1,000 for an attorney, said Mr. Stone.

Ms. Russell suggested that the strongest argument was that this project was right on the edge of the East charlotte village.

Mr. Delaney said he was opposed to the project and listed his concerns as follows:

1. The haste of occurrence was a problem and concern. He didn't know what successive phases of the 345 panels were, for example. He needs more time to ask questions and understand it better.
2. Safety of children was another issue. He didn't know if there was a question of safety.
3. There may be a number of issues we don't know about and that might come up as the PSB process progresses. It would help to have access to an expert.

Mr. Bloch asked Mr. Delaney to clarify his concerns related to children's safety – was it radiation, or the physical structures. Mr. Delaney replied it was both. He would like to ask an expert where potential problems might occur. That expert might have knowledge of similar projects in the US, pointed out Mr. Delaney. Mr. Bloch asked why a solar panel structure was different from other structures. For example, if a school house was built in that field and a child climbed on the roof – would that be different from a child climbing on a panel. Regarding more time, the PSB might ask what schedule the Town would like and then grant it. If you say you were opposed to the project then they might not, said Mr. Bloch. Mr. Delaney replied that he didn't have a sense of how much time was needed. He needed to understand it so he could ask the questions, said Mr. Delaney.

Mr. Russell suggested asking for a month extension of the April 5th hearing.

The Selectboard members would attend the Planning Commission 03/15/2012 meeting at 7:45 p.m. for further discussion.

REAPPOINTMENT OF BOARD, COMMISSION AND COMMITTEE MEMBERS

MOTION by Mr. Delaney, seconded by Mr. Owen, to approve reappointments of Boards, Commission, and Committee members for the terms as follows:

- **Lucia Plante to Town Service Officer for a one-year term ending April 14, 2013.**

- Holly Sullivan to the Conservation Commission for a four-year term ending in April, 2016.
- Jennifer Chiodo to the Energy Committee for a two-year term ending in April, 2014.
- Suzy Hodgson to the Energy Committee for a two-year term ending in April, 2014.
- Gerald Bouchard to the Planning Commission for a four-year ending in April, 2016.
- Peter Joslin to the Planning Commission for a four-year ending in April, 2016.
- Bill Fraser-Harris to the Recreation Commission for a three-year term ending in April, 2015.
- Josh Kowalski to the Trails Committee for a two-year term ending in April, 2014.
- John Limanek to the Trails Committee for a two-year term ending in April, 2014.

VOTE: 5 ayes; motion carried.

PHONE SYSTEM FOR TOWN OFFICE

MOTION by Mr. Owen, seconded by Mr. Ladue, to approve a proposal from Business Communication Services, Inc., to install a new phone system in the Town Hall for the amount of \$4,600.

VOTE: 5 ayes; motion carried.

PENALTY FOR LATE FILERS OF HOMESTEAD DECLARATION

MOTION by Mr. Stone, seconded by Mr. Ladue, to approve a policy to waive the penalty for late filers of the Homestead Declaration as presented.

VOTE: 5 ayes; motion carried.

POLICY REGARDING WAIVING AND REFUNDING PLANNING & ZONING FEES

Mr. Russell read a proposed policy to waive and refund Planning and Zoning fees. The Town had raised the fees to discourage the filing of frivolous appeals, explained Mr. Russell.

Ms. Russell suggested a revision of the first sentence to read "...for appeals of decision of the Zoning Administrator that are not upheld by the Zoning Board of Adjustment...".

Mr. Delaney suggested that parties should be required to engage in mediation before going to the Zoning Board of Adjustment with an appeal. Mediation is a good first stop, sated Mr. Delaney.

MINUTES: February 27 and March 6 (Town Meeting)

MOTION by Mr. Stone, seconded by Mr. Owen, to approve the minutes of February 27, 2012, as written, with corrections/edits.

VOTE: 5 ayes; motion carried.

SELECTBOARD UPDATES

Mr. Owen reported that Josh Flores explained a Shelburne Police Department program for property inspections for people that went on vacations. It has been suggested that it could be done as part of the patrol work. He would discuss the issue with Chief Warden, said Mr. Owen. Mr. Ladue said he would like to know how much time an inspection would take.

APPROVAL OF BILLS AND WARRANTS

The Selectboard signed Bills and Warrants as presented.

ADJOURNMENT

MOTION by Mr. Delaney, seconded by Mr. Owen, to adjourn the meeting.

VOTE: 5 ayes; motion carried.

The meeting was adjourned at 9:40 p.m.

Respectfully submitted, Kathlyn L. Furr, Recording Secretary