

Town of Plainfield Select Board Special Meeting
September 18, 2024
149 Main St, Plainfield, VT and Via Zoom
Minutes - Approved

Agenda:

- Changes to Agenda
- Announcements
- Executive Session pursuant 1 V.S.A. § 313 for confidential attorney-client communications made for the purpose of providing professional legal services to the body regarding 79 Bean Rd.
- Return from Executive Session/Decisions (if any) in public
- Public Comment
- Town Clerk's Report (Bram Towbin)
 - Discuss search for Town Treasurer
- Approve K.Bellavance contract for winter sand hauling
- Announce date for next Select Board Meeting: regular meeting 9/23/24
- Adjourn

Present: Select Board members Karl Bissex (Chair), Patti Jamele, and Frances Rose Subbiondo. Also present were Town Clerk/Treasurer Bram Towbin, Development Review Board (DRB) Chair Janice Walrafen, Town Attorney Michael Tarrant, Kim Nolan, Adam Hochschild, Zoning Administrator Karen Storey, DRB member Seth Mullendore, Ryan Christiansen, Sarah Pollica, and Road Commissioner Josh Pitts.

Chair Bissex stated that this meeting was primarily called to discuss 79 Bean Rd. He requested that attendees share only factual information as the Town Attorney Michael Tarrant was in attendance for the purpose of hearing information regarding 79 Bean Rd in preparation for a court appearance. Bissex recognized Development Review Board Chair Janice Walrafen who requested clarification regarding enforcement of the violations of non-compliance. Bissex recognized Kim Nolan who requested information regarding the Select Board's progress in contacting the property heirs.

Bissex recognized Town Attorney Michael Tarrant. Tarrant explained that the Town had filed a motion at the end of August 2024 to amend the complaint, requesting to bring into the case a third sibling, Seth. Tarrant shared that the court had not yet responded to that motion although

the 15-day response period had passed. He expressed his hope that the court will resolve the motion prior to the status conference next week. He stated that no attempts have been made to contact Seth as the court has not yet approved this action. He explained that if the court approves the motion the amended complaint will be sent to the sheriff who will be tasked with finding Seth to serve him. Walrafen requested that Tarrant explain the complaint that's before the court. Tarrant explained that the original complaint to enforce the NOV (Notice of Violation) sent by the Zoning Administrator regarding the prolonged use of the RV on the property at 79 Bean Rd without a permit has been amended to include a third sibling (heir). Walrafen asked for further clarification of the enforcement actions if the court were to rule in favor of the complaint. Tarrant explained that the goal of the Town is to vindicate its bylaws, specifically regarding prolonged use, thus the Town would seek payment of its legal fees to get the enforcement as well as an order prohibiting the use beyond six months which is allowed under the bylaws.

Bissex recognized 79 Bean Rd neighbor Adam Hochschild who stated his understanding that there are two cases, the one described by Tarrant which is in court and also one before the DRB regarding a pending building permit for 79 Bean Rd which was denied and is currently being appealed. Tarrant confirmed this. Bissex asked Walrafen for clarification regarding the 79 Bean Rd probate status and how this may impact the DRB decision. Walrafen explained that the Zoning Administrator had received a building permit which was denied because the property doesn't meet setback requirements. She shared that the current resident of 79 Bean Rd, Devin Lynch, had filed an appeal and a request for variance which will require a public hearing which has been scheduled for September 24, 2024. She explained that the issue at hand is legal ownership of the property and whether Lynch has a right to make these requests. She further explained that Tarrant had informed her that Lynch could have legal standing if his requests are approved by all of his siblings in order for him to have ownership rights. Zoning Administrator Karen Storey explained that a zoning permit applicant does not necessarily have to be the owner of the property but must prove that they have permission of the owner. She stated this property is an estate and two of the three offspring of the deceased owner have given permission. Walrafen clarified that there is not clear ownership permission but the permit application has already been reviewed and denied. Walrafen asked Tarrant if the DRB is allowed to rule on a permit application in which there is not clear ownership. Tarrant explained that this question has not gone before the Supreme Court but has gone before the Environmental Division numerous times. He explained that the Environmental Divisions position on issues like this is that it has no jurisdiction, nor do DRBs or Zoning Administrators, to determine title questions but if applicants are able to offer sufficient evidence of having the right to make decisions about a property that is often "good enough". He explained that following this action neighbors or others who may disagree may sue and get declaratory relief in the Civil Division, but it's not up to the towns or the Environmental Division to deal with the issue.

Town Clerk Bram Towbin asked Tarrant about the Town's potential liability should other family members disagree with the Town's decision. Tarrant stated that it is the Town's job to go through the permit review process and would not be liable. Towbin pointed out that the individuals resided at 79 Bean Rd have only been paying taxes on land and questioned why this issue has not been explored legally. Tarrant responded that the tax issue is not related to the zoning issue that Town is currently trying to enforce. Towbin asked if it is legal for a town to prohibit a permit application if a party is not compliant with Town rules. Tarrant explained that he was not aware of any authority for the Town to deny lawful process through the zoning regulations. Towbin explained his position that the Select Board should pass a motion stating that people have to be in compliance to pursue permitting.

Bissex recognized DRB member Seth Mullendore. Mullendore read aloud from the Zoom chat that 79 Bean Rd neighbor, Sarah Pollica, had asked if a neighbor can petition the court to open the Melanie Sargent estate. Tarrant stated his understanding that a creditor, but not a neighbor, could petition to open an estate. Towbin reiterated his question, asking if the Select Board could legally pass a motion saying that people need to be in compliance with regulations in order to receive a permit. Tarrant stated that he was unaware of the Town having any authority for this nor was he aware of any prohibition saying the Town can't do it. Mullendore stated that the DRB wants to be cautious proceeding with the variance hearing as the question of ownership hasn't been settled. Tarrant explained that it is not the Town's job to determine who has rights rather to determine whether or not the application met the requirements of the bylaws. Tarrant further stated that unfortunately there is no binding authority saying what the correct answer is. Storey pointed out that one way to resolve a violation is to apply for a permit to correct the violation; Tarrant agreed. Hochschild stated his belief that there is sufficient grounds for the DRB to deny the request for the variance for several reasons including setback issues and an unclear sketch provided with the application. Tarrant discouraged discussion of this sort and encouraged Hochschild to share his concerns at the public hearing on September 24th.

Bissex followed up with Tarrant regarding Towbin's question about the Select Board's authority to modify the rules by which the DRB acts. Tarrant stated the question has not come up in the past but he would look into it. He stated his impression that this would not be a good idea, pointing out that a person in violation shouldn't be prohibited by the Town to try and not be in violation. Towbin stated his understanding that there are multiple violations occurring at 79 Bean Rd. of Town and State regulations. Nolan stated her belief that there were septic violations at the property. Neighbor Ryan Christiansen shared that there may be substantial risk to the Town, with Walrafen adding that the property has a flood inundation setback which is why Lynch is applying for a variance, and expressed his understanding that approving a variance in this case could jeopardize the Town's ability to get insurance. Tarrant addressed this stating that if the Town negates its obligations to enforce its bylaws it could run afoul of the Special Flood Hazard Bylaws for flood insurance. He further explained that this is a fact question that needs to be

addressed during the DRB variance hearing. Nolan expressed her belief that Lynch should move off the land at 79 Bean Rd. Bissex recognized Storey who explained that part of the land at 79 Bean Rd is in the Special Flood Hazard area. Walrafen stated that the Town had worked with the former owner of 79 Bean Rd, Melanie Sargent, to try and get a State permit for the septic system there but still has not heard from the State whether that system will be permitted. Prior to leaving the meeting, Tarrant explained that Ryan McCall had reported to him that prior to 2007, if the wastewater system existed and wasn't abandoned for a period of five years, it's exempt from this permit requirement under the Clean Slate Doctrine. He further explained that if the system was abandoned for five years then the State would say it is subject to regulation. He shared that McCall had suggested the wastewater system at 79 Bean Rd is functioning as he didn't see any foaming or discharge and didn't have any way of proving whether the system had or hadn't been abandoned. Towbin suggested that McCall had stated that he wouldn't enforce because he's concerned about homelessness. Christiansen stated that time stamped photos had been provided to McCall recently which may show the system abandoned for more than ten years. He went on to explain that there was a previous NOV for 79 Bean Rd about four years ago with fees due and there are liens on the property. He asked if the Town as a creditor could petition to open the probate process. Tarrant explained that the NOV the Town is enforcing currently was only issued several months ago, he further explained that fines through zoning process accrue but they don't become real until the Town goes through enforcement action, getting a judgement from a judge with an actual monetary amount due. Tarrant left the meeting with assurance that he will update the Select Board regarding the status meeting scheduled for September 23, 2024.

Bissex stated his interest in following up on any possible modifications to Town regulations that would be within State laws and might help the Town with this case. Towbin shared his opinion that the Town should seek alternate legal counsel. Bissex recognized Storey who pointed out that the hearing has not opened yet so discussion of whether a variance would be granted or not should not be discussed. She further reminded attendees that a hearing can be continued for the purpose of gathering needed information. Walrafen stated that the DRB would want to see an engineer drawing of the property and schedule a site visit. Bissex stated his interest in finding out about the water quality downstream from 79 Bean Rd and his belief that if someone is in violation of the Town regulations they shouldn't be considered for a permit until they settle the violation. Towbin shared that the Town had spent \$3500 cleaning up the property at 79 Bean Rd in the past. He shared his impression that the Town's past decision to not be proactive in addressing the violations at 79 Bean Rd has allowed the current situation to develop. Walrafen asked for clarification of the Select Board's mechanism for enforcing the Town's Ordinances. She pointed out that although the property has been in violation for years no fines have been legally levied. She suggested the Town could ask the attorney to go back to the prior date of violation. Bissex recognized Storey who stated that the Town had not pursued the original violation. She explained that she had denied the Lynch permit application because it didn't meet zoning regulations and Lynch has now appealed for a variance which is within his right. She

further explained that once his appeal for variance was received the DRB is required by Town regulations to set a hearing date within 60 days which is what has occurred. Hochschild stated his disagreement with the Town attorney stating his belief that the Town didn't need a court order to be a creditor. He suggested that the Town attorney look into petitioning to open the probate process. Storey shared that in the file for 79 Bean Rd there is a lien because the well driller was never paid by the property owner. Walrafen asked the Select Board how the Town can apply the rules when those in question don't abide by the rules. Bissex suggested that the Town send a registered letter informing the residents of 79 Bean Rd of the amount owed in back fines for violations.

Subbiondo read aloud comments from the Zoom chat. She stated that Mullendore had written that it could be that a party cannot be considered for a variance instead of a permit if they're in violation and that Pollica had written that if the Town is the creditor than they could open probate. Towbin stated his interest in asking a local attorney from Plainfield for a recommendation for another attorney to represent the Town. Bissex stated he will pursue that recommendation.

Walrafen stated that the DRB Variance Hearing would be held at the Municipal Office and via Zoom on Tuesday, September 24, 2024. Bissex stated he would look into the option of the Town billing for the fines accrued due to violations.

Changes to Agenda:

The item was not discussed.

Announcements:

The item was not discussed.

Executive session pursuant 1 V.S.A. § 313 for confidential attorney-client communications made for the purpose of providing professional legal services to the body regarding 79 Bean Rd.:

The item was not discussed.

Return from Executive Session/Decisions (if any) in public:

The item was not discussed.

Public Comment:

This item was not formally discussed although Bissex allowed public comment throughout the meeting.

Town Clerk's Report (Bram Towbin):

Discuss search for Town Treasurer – Towbin stated his hope to move as quickly as possible in hiring a Town Treasurer. He stated he had composed a job description which he would like to advertise. He noted that the position is not budgeted for. He stated his hope that once hired the Treasurer would then identify a Town Auditor. He stated that once the Town Treasurer is hired and trained he would lower his own salary as Town Clerk. Bissex agreed that the Town needs to address its finances. Towbin stated his intention to present at the next Town Meeting a change from the Auditor position being elected to being appointed or the creation of an appointed assistant Auditor position. Subbiondo asked for clarification of what Towbin was requesting of the Select Board in regards to posting the Town Treasurer position. Towbin stated that he is seeking Select Board approval because the position is not currently budgeted for. He suggested the Town Clerk and Town Treasurer positions should be salaried at \$45,000/year and be part-time. **Subbiondo moved to approve the Town Clerk to share the job offering for the Town Treasurer on appropriate channels to receive the best possible applicants. Jamele seconded. The motion carried unanimously.** Bissex requested that Towbin provide updates to the Select Board of the job posting process. Towbin agreed.

Towbin shared that the Town had received \$163,000 in FEMA funding on September 9, 2024 for the 2023 flood damage. He stated that this amount was on top of roughly \$30,000 that the Town had previously received. He also noted that the Town had received a \$30,000 grant for the 2024 flood damage.

Approve K.Bellavance contract for winter sand hauling:

Road Commissioner Josh Pitts shared that the Town had received a second quote from a company other than K.Bellavance which was lower and which Road Foreman Michael Bingham would prefer the Town consider. He shared that K.Bellavance had submitted a quote for \$10.90/ton for sand hauling for a total of \$43,600. He stated that Blue Mountain Trucking quoted \$8.25/ton for sand hauling for a total of \$33,000. He also shared that the price of sand had increased to \$10/ton and Bingham had stated 4,000 tons would be needed. He shared that with the cost of hauling quoted by Blue Mountain Trucking plus the cost of sand the total would be approximately \$73,000 which is above the budgeted amount of \$23,000. He stated that the Town does not have labor or trucks available currently to cover the sand hauling. Bissex clarified that normally the Town would have the three person road crew use the Town trucks to haul the sand to build up the sand pile for winter use but that currently the road crew is limited and they are currently using the Town equipment to address other needed work therefore the Town is looking at contracting for the hauling of the sand. Towbin explained that normally the road crew is three people but currently is at two with former Road Foremen Mike Nolan assisting Bingham. He stated that injured road crew member Shawn Codling may be back in October and a new crew member is in the process of onboarding. **Subbiondo moved to accept Blue Mountain's quote**

for hauling sand at \$8.25 per ton for 4,000 tons with the total being \$73,000 including the cost of sand. Bissex seconded. The motion carried unanimously.

Pitts requested to bring an urgent road related issue before the Select Board and was approved to do so by Bissex. Pitts shared that the Town was presented with the opportunity to buy a used truck from Barre Town which the Town is in urgent need of to perform the village snowplowing. He estimated that the used truck would probably be good for two years of use and is priced at \$36,000 first come first served. Towbin stated there is money in the budget for equipment and that usually for a large purchase the Select Board weighs in. He provided historical context stating that the Town currently owns an F550 type vehicle that plows the Village but that this truck is in poor condition and is not likely to pass inspection without an expensive repair to the bent frame. He stated that a new truck would likely cost \$60,000-\$70,000 plus an additional amount for the needed equipment for plowing and sanding which could bring the total cost up to \$140,000-\$170,000. Subbiondo read from the Zoom chat that Jamele had asked if \$36,000 was a lot to spend for two years of use. Subbiondo asked how many years of use the Town could expect from the purchase of a new truck and equipment. Pitts stated for a base truck at 9,000 mile/year about a 6 year lifespan could be expected and that new plowing and sanding equipment could be used for approximately 12 years. Towbin stated that a challenge with buying a new truck is also that outfitting it with equipment can take many months. Pitts stated that the Town would want to budget \$17,300 per year for a new truck, comparing that with two years of use for the used truck at \$18,000 per year given the cost. He also pointed out that the used truck is already outfitted so ready for use immediately. Subbiondo asked what the estimate of two years use had been based on. Pitts stated that Bingham had inspected the truck and stated his belief that the truck could last two more years. Subbiondo voiced support for approving the purchase of the used truck. Pitts pointed out that purchase of the used truck will allow the Town two years to make a plan for its future replacement. Pitts recommended that the Select Board approve purchase of the used truck as it is first come first served. Bissex pointed out that the equipment fund could cover the cost of the used truck. Towbin stated that the money is in a reserve fund. **Subbiondo moved to authorize the Town of Plainfield to pay the Town of Barre \$36,000 for a used Town truck. Bissex seconded. The motion carried unanimously.** Bissex requested Pitts to advise Bingham of the approval.

Bissex requested a motion to approve the warrants. **Subbiondo moved to approve the payroll and accounts payable warrants. Bissex seconded. The motion carried unanimously.**

Towbin stated the Town has begun paying contractors for the 2024 flood repairs. He thanked Pitts for his work in classifying the flood related invoices the Town has received.

Announce date for next Select Board Meeting: regular meeting 9/23/24:

Bissex announced that the next Select Board meeting will be held on September 23rd.

Fredrick Pope of 3316 Brook Rd requested recognition for public comment, Bissex recognized him. Pope asked if there are plans for a building or development moratorium on Brook Rd or Lee Rd in the future. Bissex stated he didn't know of any moratorium currently. Towbin stated he also had not heard of any moratorium on building on Brook Rd. Pope stated he lives in a flood damaged house and plans to apply for the FEMA Buyout Program. He stated his interest in exploring his options for building on another site on his land. He stated he has spoken with Storey and Walrafen.

Adjourn:

Subbiondo moved to adjourn the meeting at 7:30 pm. Bissex seconded. The motion carried unanimously.

Minutes respectfully submitted by Kristin Brosky, Assistant Town Clerk.