

**TOWN OF RUTLAND
SELECT BOARD**

MINUTES: June 30, 2015

Board members present: Mary Ashcroft, Paul Clifford, Don Chioffi and John Paul Fagnant

The meeting opened at 6:30 P.M. with the Pledge of Allegiance.

Ms. Ashcroft moved to approve the June 16, 2015 minutes as printed. Mr. Fagnant made a second to the motion. The motion passed unanimously.

There were no questions from the floor.

Mr. Red Grover informed the Board that he is not ready to present his response to Mr. Peter Andrews's review of his road, because his lawyer is on vacation. Mr. Grover said he would be back in contact with the Town when his lawyer is available and should be ready for the Board's July 14th meeting.

Town Planning Commission Chairman Andrew McKane reported:

Not present.

Town SWAC Representative & Transfer Station Mr. Richard Lloyd reported:

1. The repairs have begun at the Transfer Station.
2. The painting is complete.
3. The doors will be installed the second week in July.
4. The new punch cards have been purchased.
5. Mr. Lloyd presented two price quotes for a new three yard solid waste compactor. He said there is **\$29,199.42** remaining in the Transfer Station budget. Mr. Lloyd asked that the Board consider selecting the low bid in order to get a new compactor.

Mr. Chioffi told Board members that he has discussed the matter with Mr. Dicton and that Mr. Dicton thinks it is critical that the compactor be replaced. Mr. Chioffi said the compactor is on emergency status.

He said Mr. Dicton and himself, as the Transfer Station Committee, recommend that the Board purchase a new compactor out of the current year's budget. Ms. Ashcroft inquired as to why the **\$29,000.00** set aside for maintenance fund was not used.

Mr. Lloyd said there is **\$6,000.00** in the maintenance fund. Mr. Lloyd cited various amounts earmarked for various Transfer Station expenses. Mr. Lloyd said over all the Transfer Station is under budget. He said after everything has been spent there is **\$29,000.00** remaining in the budget.

Ms. Ashcroft said the Board raised the money for the purposes in the budget and that now the Board is being asked to use the money for something that was not in the budget.

Ms. Ashcroft cited the fact that the prices submitted were not submitted per the Town's bid policy. Mr. Lloyd told Board members that he called the Hubbard's and Casella and requested they submit a quote to remove and replace the compactor.

Mr. Chioffi told Board members that he and Mr. Dicton felt the purchase is an emergency. Ms. Ashcroft asked when Mr. Chioffi and Mr. Dicton met to discuss the compactor replacement. Mr. Chioffi said he spoke with Mr. Dicton on the phone since he is not present.

Ms. Ashcroft asked if Mr. Chioffi's discussion with Mr. Dicton was a warned meeting. Mr. Chioffi said his discussion with Mr. Dicton was a conversation. Ms. Ashcroft said Mr. Lloyd told her on Sunday that the replacement of the compactor was not that critical.

Mr. Lloyd said the ram that compressed the trash is going very slowly and that it is just a matter of time before something goes. Mr. Faignant said he shares Ms. Ashcroft's concern regarding the integrity of the Budget. He asked if there is an equipment replacement fund or a depreciation fund for the Transfer Station.

Ms. Zeller said there is no replacement fund or a depreciation fund for the Transfer Station. Mr. Faignant said the Town needs to comply with the bid process. Mr. Faignant said he understands there is a need and that it has to be taken care of in the proper way.

Board members discussed the compactor replacement further. Mr. Faignant moved to put the compactor out to bid subject to approval of the voters. Ms. Ashcroft made a second to the motion. The motion passed unanimously. Mr. Lloyd and Town Administrator Mr. Joseph Zingale Jr. will post a bid notice in the paper.

The Board and Mr. Lloyd discussed purchasing a second compactor for zero sort and a proposal from the Hubbard Brothers to convert the existing compactor into a zero sort compactor. Mr. Lloyd suggested putting a new zero-sort compactor on the planned August ballot.

Mr. Chioffi said he does not think it is appropriate to put another money item on

the ballot. Mr. Chioffi said the Board could have a yes or no item on the ballot asking voters if they want to go to zero-sort.

Mr. Faignant said he would like to get a price from the Hubbards to convert the existing compactor for zero-sort. Ms. Zeller said the Board budgeted **\$15,000.00** under maintenance to cover the compactor. Ms. Ashcroft said it looks like the Board will be able to purchase both compactors.

Ms. Ashcroft said the Board would ask the residents to vote for a new compactor and refurbish the old compactor with money in the budget.

Town Emergency Management Director and Transportation Council representative Mr. Martin Wasserman reported:

Not present.

Town Clerk & Treasurer Ms. Donna Zeller reported:

1. Ms. Zeller said the Town is in good fiscal shape as it ends the fiscal year. She said there should be a fair amount of money to roll-over. She said should have some numbers for the next meeting.
2. Ms. Zeller told the Board that the accounting conversion is in progress. She told the Board that she should be able to cut checks by the next meeting.
3. Ms. Zeller cited the A.M. Peisch letter in the Board's packet. Ms. Zeller recommended that the Board continue using A.M. Peisch. She said they have been very helpful with Town accounts.

Mr. Faignant moved to authorize the Chairman to sign the agreement with A.M. Peisch. Ms. Ashcroft made a second to the motion. The motion passed unanimously. Mr. Chioffi signed the agreement letter.

4. She told the Board she is waiting for the Grand List to be finalized. Ms. Zeller said she plans to mail out tax bill at the end of July.
5. Ms. Zeller said propane and fuel oil bid requests would go out later in the week.
6. Ms. Zeller told the Board that a new work station had been installed, which will be accessed remotely by the Delinquent Tax Collector.

Town Road Commissioner Mr. Byron Hathaway reported:

1. He reported that the Prospect Hill Road culvert project is almost complete. He said the road is open to traffic. Mr. Hathaway said 80% of the project cost was paid by the State of Vermont.

Mr. Chioffi declared the Public Hearing for the Post Road sidewalk/joint use path open for comments. Mr. Hathaway said the Town has applied for a bicycle / pedestrian grant through the Agency of Transportation. He said the State would cover 90% of the project cost.

Mr. Hathaway cited the fact that a previously application to do the same work was denied. He said the project would involve extending the present sidewalk on the Post Road to the top of the hill on Chasanna Drive. He said the rest of Chasanna drive to Sanbourn Place would have a one foot lined striped shoulder.

He said there would be a shared use path from Sanbourn Place into Northwood Park. Mr. Hathaway said the Town will need at least one easement to construct the sidewalk/ joint use path. He said the path would end at the ball field parking lot.

Mr. Hathaway said the sidewalk would be 1,800 feet in length and that the shared use path would be 1,500 feet in length. He said Chasanna Drive would be widened in the future to provide more shoulder room and more paved area for bicycles and pedestrians.

Mr. Hathaway said the Town is applying for engineering and construction funds. He said there is a provision for a Town to accept a lesser amount of money should it be available.

Town State Representative and Chasanna Drive resident Mr. Tom Terenzini told Board members that he is concerned that school children must walk in the road in order to get to Northwood Park and Glenn Dam. He told the Board that there is a lot of traffic on the Post Road. Mr. Terenzini said he fully supports the sidewalk/ joint use application. Mr. Chioffi adjourned the Post Road sidewalk/joint use path application hearing at 7:15 PM.

2. Mr. Hathaway told Board members that he has prepared a cost summary for the proposed Highway Garage. He reviewed the estimate line by line with the Board.

Items cited by Mr. Hathaway:

Josselyn Brothers, Construction of Highway Garage **\$598,678.00** plus **\$1,500.00** for possible heating.

Site Paving, no estimate.

Detention Pond, **\$40,000.00** estimate.

Stantec inspection & Certification, **\$24,200.00** estimate.

Rutland City water line tap, **\$500.00**

Mr. Hathaway said if the project is managed properly the price should come in under the estimated **\$700,000.00**.

Mr. Chioffi said Chairman Diction would like Mr. Faignant appointed to the Highway Committee to take the place of Mr. Clifford, who will be resigning his position on the Board. He said Mr. Diction would also like Mr. Chioffi to take over the Board representative to the Town School Board. He said the positions would either be until further notice or the discretion of the Chair.

Town Fire Chief Mr. Frank Cioffi reported:

1. Mr. Cioffi told Board members that he is still researching issues concerning a solar field in town.
2. The Chief informed Board members that a fire truck would be out of Town on July 2nd for maintenance work in New Hampshire. He said the computer in engine # 3 needs to be reprogrammed.
3. Chief Cioffi requested an executive session to discuss issues involving the Bennington Furniture Store.
4. Mr. Cioffi said he is working on a Center Rutland Station drainage plan with Mr. Hathaway. He said he will report back to the Board when the plan is final.

Town representative to the Rutland Regional Planning Commission Mr. Sherman Hunter reported:

1. Mr. Hunter said the Commission recently reviewed three Act 250 applications. He said one application was for Alderman's Chevrolet to rebuild a small building. He said the new building would be four square feet larger than the existing small building. He said the application was approved by the RRPC.
2. Mr. Hunter said the RRPC also reviewed two Act 248 applications. He said one was a 500kW solar farm in Benson and the other was an upgrade to a power station in Wallingford. He said both were approved.
3. He said the RRPC will not be meeting in July & August.

Town Police Chief Mr. Ed Dumas Reported:

1. Mr. Dumas told the Board that the department has received a total of 649 calls so far this year.
2. Chief Dumas told the Board that he recently attended a PSAP meeting in Pittsford. He said the Rutland PSAP is schedule to be taken over by the

Rockingham PSAM as of September 15, 2015.

He said the Town will have to decide whether to: switch to the Rockingham PSAP, join a new dispatch to be set up by the County Sheriff's office, or possibly join the City of Rutland's dispatch if available.

Mr. Dumas said there would be no charge to switch to the Rockingham PSAP until January, when the Legislature plans to announce rates. Board members and Mr. Dumas discussed the dispatch issue further and took no action.

Town Recreation Director Mr. Mike Rowe reported:

1. He thanked Mr. Hathaway and Mr. Tom Gallipo for their assistance doing concrete work at the swimming pool.
2. Mr. Rowe thanked all the volunteer baseball coaches for the time they gave to the baseball program. Mr. Rowe congratulated Mr. Butch Goulette whose baseball team made it to the Major's Semi-final.
3. Mr. Rowe said the 4th of July fireworks will go off at dusk on Saturday night around 9:30 P.M. he said the pool would be open all day on the 4th and that the concessions stand will be open during the fireworks display.
4. He informed the Board that a senior luncheon has been scheduled for July 21, 2015 from noon to 1:00 P.M. at the Town pool. Mr. Rowe said the seniors would have a barbeque prepared by himself and his staff.

Town Administrator Mr. Joseph Zingale Jr. reported:

1. He informed Board members that he has received a copy of the Insurance certificate from the Adult Softball league using North wood Park and Dewey Field.
2. Mr. Zingale informed the Board that he has not responded to a recent Public Information request because he cannot read the request submitted. Mr. Zingale said he has written to the individual, informing the individual to either print or type their request since he is unable to read the submittal.
3. He informed the Board that the Town Attorney has concluded the purchase of Baker land located off the East Proctor Road. Mr. Zingale said the Board would shortly receive the property deed.
4. Mr. Zingale presented a copy of a proposed agreement between Fire District #1 and the Town of West Rutland. The Board took no action.
5. Mr. Zingale requested a brief executive session to update the Board regarding the waterline negotiations with Mr. Alderman.

Mr. Rowe said the Board should begin to discuss how the new Town land adjacent to Dewey Field will be used.

6. Mr. Zingale informed the Board that a resident on Post Road Extension has applied to the PSB for the installation of ground mounted solar panels. Mr. Chioffi said the application is for 15 kW.

The Board discussed whether to send out a letter to Town residents regarding the special election ballot items. Mr. Chioffi said the Board, with participation from Mr. Hathaway, would write the letter. Mr. Chioffi said the letter would address the highway garage and the election of a Board member.

Ms. Ashcroft said it is a good idea to send a letter and that the compactor purchase should also be on the ballot. Ms. Ashcroft said she would work with Messrs. Hathaway and Faignant on the new garage.

Mr. Chioffi said the letter should be sent out prior to the next meeting and he suggested it be drafted and approved electronically. Mr. Faignant said to do so would be a violation of the open meeting law. Mr. Faignant said the Board has to have an open discussion regarding the content of the letter.

The Board discussed the Highway Garage ballot item wording submitted by the Town attorney. Mr. Chioffi read the proposed ballot wording. Mr. Faignant moved to approve the ballot prepared by the Town attorney. Mr. Clifford made a second to the motion. Mr. Chioffi said the Board would insert the dates when known.

Ms. Ashcroft said the Board should add the word "project" after "Highway Garage" on the ballot. All Board members agreed. Ms. Ashcroft said the Board should also add the wording "using funds approved by the voters at the Town Meeting on March 3, 2015", after the **\$700,000.00** project cost, on the ballot item. Board members discussed the proposed ballot item further. Mr. Chioffi called for the vote. The motion passed unanimously.

Board members discussed the soon to be Board vacancy, when Mr. Clifford resigns. Mr. Clifford said he will resign at the end of the meeting. Ms. Ashcroft said Mr. Clifford should resign before the end of the meeting so that the Board can take action to fill the opening.

Mr. Chioffi said he does not see the need to make an appointment since there will be only a few meetings before the August election.

Mr. Chioffi said he believes it is better for the voters to select a new Board member rather than the Select Board making the appointment.

Mr. Faignant said the State statute is pretty clear and that the Board is obligated to

make an appointment forthwith. Ms. Ashcroft said the statute requires the Board to appoint as soon as there is a vacancy. Ms. Ashcroft said the Board could also appoint an individual to serve until the March election.

Mr. Faignant said it must be made clear that the person standing for the March election is not standing for a three year term but rather the remainder of Mr. Clifford's term, which would be two years.

Mr. Chioffi told Board members that he had spoken with the Town Attorney who said forthwith does not mean right away. Mr. Chioffi said forthwith is an undefinable term. He said Mr. Brown said it could mean four to ten days. Mr. Chioffi said the Board is not putting the Town in jeopardy by not having a new member by August 25th.

Mr. Chioffi said individuals should have at least a couple of weeks to get their letter of intent into the Board. He said the Board would not be able to do something at the next meeting, when the Board does not know how many people are interested.

Mr. Faignant said the Board could appoint at the next meeting and that the statute says the Board shall appoint not hold an election. He said the Board is obligated to give notice of vacancy and make a decision in two weeks from among the people who indicate their interest. Mr. Chioffi said he is not in favor of making an appointment at the next meeting.

Mr. Chioffi said that according to Mr. Brown the Board is in no jeopardy by holding an election as opposed to appointing forthwith. Mr. Chioffi said to make an appointment verses holding an election conflicts with his ethics. Ms. Zeller told Board members that she is aware of three candidates.

Mr. Chioffi told Board members that Mr. Dicton does not want to fill the vacancy and prefers to leave the seat open until the next election. Mr. Chioffi said Mr. Dicton feels there should be an election.

Mr. Clifford questioned how the Board would function if reduced to four members and was dead locked in a 2 to 2 tie. Mr. Chioffi said the Board is in that situation right now and was last week when Mr. Dicton was not present. He said the Board did not have any problems.

Ms. Ashcroft moved to appoint a member to the Select Board to serve until the election of a Select Board member in an August meeting and to put the vacancy on the August meeting ballot for a vote so that the Board position can be filled for the balance of the term of the select Board member who is resigning.

Mr. Faignant made a second to the motion. Ms. Ashcroft restated her motion at the request for Mr. Clifford. Mr. Chioffi told Board members that Mr. Dicton is opposed to the motion that has been made.

The Board contacted Mr. Diction via telephone. Mr. Diction was told there is a motion on the floor to appoint someone to serve until the August election. Mr. Diction questioned why the Board wants to appoint someone for a couple of months then hold an election.

Mr. Faignant told Mr. Diction that the statute uses the word “shall” and that the Board is obligated to fill the vacancy forthwith until an election is had. He said the language obligates the Board to fill the vacancy until the election is had. He said the statute is very straight forward.

Mr. Diction asked Mr. Faignant if the statute gives a timeline. Mr. Faignant said it is to be forthwith. Mr. Diction said that give the Board discretion to act within a reasonable amount of time. Mr. Faignant said forthwith means forthwith. Mr. Diction said that according to the Town attorney forthwith means as soon as you can.

However he said it leaves a discretionary period for the Board to come up with a suitable candidate. Mr. Faignant said he does not see how the opinion complies with the word shall. Mr. Faignant said he would hope that since Mr. Diction had the conversation with the Town attorney, that the Town attorney would have included such discussion in the memorandum he wrote to the Board.

Mr. Diction said Mr. Brown made it very clear that forthwith means as soon as possible, in a reasonable amount of time. Mr. Faignant said the statute required a notice of vacancy be posted within 10 days of the vacancy.

Mr. Chioffi said the Board can post a notice within 10 days instructing individuals to get a signed petition into the Board by such and such a date so the individual can be considered for election on the date the Board decides.

Mr. Diction asked for clarification of Ms. Ashcroft’s motion. Mr. Diction said he agrees with Ms. Ashcroft and Mr. Faignant regarding the meaning of forthwith. Mr. Chioffi told Mr. Diction that Ms. Ashcroft wants to appoint someone and that he does not want to appoint anyone.

Mr. Chioffi said the person receiving the appointment would have an unfair advantage over other candidates, should the appointee decide to run for the seat in August. Mr. Chioffi said it is ridiculous to appoint an individual for a couple of meetings, when they can run for the position.

Mr. Chioffi said some Board members want to give someone an advantage by appointing them to attend two meetings. Ms. Ashcroft asked Mr. Chioffi to not ascribe motive to a member’s action. Ms. Ashcroft said she is concerned with the statutory language that outlines the Board’s obligation to appoint a member to fill the vacancy forthwith. She said she would be negligent to her oath as an attorney to ignore the language. Mr. Diction said Ms. Ashcroft’s concerns are very valid. Mr. Faignant asked to move the question. Mr. Chioffi said he did not want to do so.

Mr. Chioffi said all those in favor of moving the question say Aye. The motion passed by a vote of 4 to 1. Mr. Chioffi voted in the negative. Ms. Ashcroft re state her two part motion. Ms. Ashcroft made a motion that the Board advertise the vacancy and fill the vacancy at the next meeting, only temporarily until a vote is held on the vacancy at the Town meeting the Board will schedule in August. At that time the person elected would serve the balance of Paul Clifford's term.

Mr. Chioffi called for the question. The motion passed by a vote of 4 to 1. Mr. Chioffi voted in the negative.

Board members reviewed correspondence from the Town Attorney regarding the scheduling of the August vote. The Board determined the election can be held on August 25, 2015, which will allow sufficient time to meet statute requirements.

Ms. Ashcroft told Mr. Diction that because there was money left over in the Transfer Station budget the Board is considering placing an item on the ballot for a new compactor for a cost not to exceed, whatever the cost is. Board members discussed the matter further.

Mr. Faignant moved to place the following language on the August ballot; Shall the Town of Rutland purchase a new trash compactor at a cost not to exceed **\$25,000.00** from surplus FY 15 monies from the Transfer Station budget deposited in the General Fund Account. Ms. Ashcroft made a second to the motion. The motion passed unanimously.

Mr. Diction thanked Mr. Clifford for his service on the Board and he wished him well.

Mr. Faignant moved to go into executive session to discuss a personnel matter with the Town Fire Chief and to discuss the status of negotiations with Mr. Philip Alderman with Mr. Zingale. Ms. Ashcroft made a second to the motion. The motion passed unanimously.

The Board came out of executive session at 9:25 P.M.

Mr. Chioffi read thank you letters submitted to the Board by individuals that were awarded Town College Scholarships.

Mr. Chioffi read Mr. Clifford's letter of resignation from the Town of Rutland Select Board. Mr. Chioffi said the letter was received at 9:30 P.M. Mr. Chioffi said on behalf of the Board he thanked Mr. Clifford for his service and he presented Mr. Clifford his marble name plate.

Mr. Clifford said it has been a pleasure to serve on the Board and he wished his circumstances were different. Ms. Ashcroft and Mr. Faignant also thanked Mr. Clifford for his service on the Board.

Ms. Ashcroft moved to accept Mr. Clifford's letter with regrets and to post the vacancy for notice forthwith. Mr. Faignant made a second to the motion. The motion passed unanimously.