

TOWN OF CHESTER
SELECTBOARD

November 17, 2016
Minutes

PRESENT: John DeBenedetti; Ben Whalen; Arne Jonynas; Dan Cote; Heather Chase;
David Pisha

VISITORS: Jim Carroll; Julie Hance; Shawn Cunningham; Jan Moot; Roy Spaulding;
Frank Bidwell; Rick Cloud; Kelly Arrison; Marilyn Mahusky; David
Munukka; Amy Mosher; Barry Goodrich; Justin Savage; Maureen Savage;
Mary Jane Miles; Gail Stewart; Jerry Stewart; Roy Spaulding, Jr.; Randy
Miles; Michael Studin; Andy Brothers

The meeting was called to order at 7:00 p.m. by John DeBenedetti.

There were no additions or deletions to the agenda.

1. CITIZEN'S COMMENTS:

Amy Mosher stated that there is a Planning Commission public hearing on November 21, 2016 at 7:00 p.m. and she stated that she has not seen anything in the newspaper advertising the hearing. The Selectboard stated that she should check with Cathy Hasbrouck. It was left that Julie Hance will check with Cathy Hasbrouck regarding the noticing.

2. JIM CARROLL PRESENTATION:

John DeBenedetti stated that Jim Carroll has been invited to attend this meeting to discuss the relationship between the Selectboard and the Town Manager.

Jim Carroll presented a handout from the Vermont League of Cities & Towns. A copy of the handout is attached to these minutes. Jim Carroll stated that this handout is a compilation of various statutes that Selectboards tend to reference often as well as the VLCT Selectboard Handbook and the Town Charter. He then reviewed these documents and summarized their purpose.

Jim Carroll explained that Vermont operates under Dillon's Rule which in essence, means that the town cannot do what the State has not given them authority to do under statute.

Jim Carroll explained the pyramid of authority for local government. This pyramid begins with the voters at the top, then the Selectboard, then the Town Manager then Department Heads. Statute gives certain authorities to the voters and specific authorities

to the Selectboard. Jim Carroll elaborated and explained the case law and statutes that support these authorities.

Jim Carroll also discussed the relationship between the Selectboard and elected officials. He noted and explained that the Selectboard does not have the authority to tell elected officials what to do or how to do it. He referenced the case of Town of Bennington vs. Booth.

Jim Carroll discussed the quasi-judicial function of the Selectboard and explained that this often occurs during personnel issues where employees can only be disciplined for just cause. This would include elected officials, the Town Manager, the Police Chief and the Zoning Administrator. At that time, the Selectboard would be required to hold a due process hearing. Therefore, a Selectboard cannot sit in judgment on an employee and bring forth the action against the employee. Jim Carroll stated a Board member should not and cannot be involved in outside discussion involving that employee.

Jim Carroll discussed the Municipal Administrative Procedures Act which is a part of statute. MAPA guides the boards with regard to managing Rules of Evidence, ex parte communication, conflicts of interest and providing a written decision.

Jim Carroll opened the discussion for questions. He prefaced all questions by stating that he is the Town of Chester attorney so all answers will be generic and general in response. He explained the perimeters around representing the town as an entity and stated that he is required to assert the attorney client communication privilege during these public conversations.

John DeBenedetti questioned the broad authority of the Selectboard to provide general supervision of the affairs of the town. Jim Carroll stated that this authority is given only when it hasn't been given, by statute, to other elected or appointed officials. In the case of Town Manager government, most of these general duties are performed by the town manager in statute.

Mary Jane Miles questioned the zoning relationship. Jim Carroll stated that the statutes are much more detailed with regards to zoning documents. The Planning Commission is the legislative portion of zoning which presents their legislation to the Selectboard (executive branch). Discussion ensued regarding the process of moving regulations through the system towards adoption. Mary Jane Miles also questioned how the Australian Ballot system comes into play. Jim Carroll explained that since Chester has not voted to consider zoning via ballot, the Selectboard can either make the decision on their own or put the question to the voters.

John DeBenedetti and Jim Carroll made clarification that individuals should not be approaching independent Selectboard members, everything should go through the Town Manager. Marilyn Mahusky questioned whether or not she can lobby the Selectboard members or express concerns to individual board members regarding something that is

non quasi-judicial. Jim Carroll confirmed that he is not telling any citizen that they cannot exercise their right as a citizen.

Marilyn Mahusky asked Jim Carroll to clarify the difference between a Conflict of Interest Policy and a Conflict of Interest Ordinance. Jim Carroll stated his opinion that legislation gives enabling authority to the towns to adopt a Conflict of Interest Ordinance however, he does not recommend adopting an ordinance. An ordinance would require that either criminal penalties or civil fines would have to be given if a violation occurred. He does not feel that a Court would uphold that decision. As elected officials, there is nothing in statute that allows the majority of the Board to tell that individual that they cannot vote or participate. He stated that the conflict of interest rules apply more rigidly during a quasi-judicial capacity. Jim Carroll recommends adopting a Conflict of Interest Policy.

3. CHILD SAFETY ORDINANCE:

Jim Carroll prefaced any presentation and discussion by stating that this discussion and all answers given will be general in nature. He stated that he will discuss only the concept of Child Safety Ordinances and the challenges.

Jim Carroll stated that there are 4 issues in Vermont with the adoption of these ordinances. He stated that the first challenge is locating any enabling authority of the town. He referenced the case which took place in Barre. He stated that there was a challenge against this ordinance. The final decision came forth that the City of Barre did not have any enabling authority. Barre fought that decision by stating that they were abating a nuisance. The Judge came back and said that is not the case. Therefore, there is precedent set that there is no enabling authority. She did not even address the Constitutional claims. She ruled on the bottom line by stating that there was no enabling authority. The trial court decision never got appealed and is therefore final. Jim Carroll stated that the ordinance is still there in Barre, but it not being enforced because it can't.

Jim Carroll stated that the City of Rutland's ordinance is now being challenged at the Court level. Questions arose as to who challenged. Jim Carroll stated that to his knowledge, the challenge was brought by an individual supported by the ACLU.

Mary Jane Miles stated that she has spoken with the attorney who drafted the Rutland ordinance. She stated that this attorney has drafted the ordinance with the Barre decision in mind. She further stated that the concerns in Chester revolve more around transitional housing and the loop holes. Mary Jane Miles also stated that any ordinance adopted by a town can be challenged. The Rutland attorney expressed that he does not set policy for the town, he did not recommend adopting an ordinance but he did draft it because the town wanted it. Jim Carroll stated that the Rutland attorney likely did research and wrote this ordinance based on the Constitutional challenges. Jim Carroll stated his concern that the town does not even have the authority to adopt the ordinance. The town would need to seek enabling authority from the State. Jim Carroll clarified that the enabling authority applies State wide unless it is specific within the town's charter.

Mary Jane Miles questioned if the Charter could be amended. Jim Carroll stated that Charters can be amended through the Legislature.

Mary Jane Miles questioned if the towns can do anything with regard to the loopholes that come through the transitional housing laws. Jim Carroll reserved his opinion. However, he did state that the Fair Housing laws come into play which is a sink hole for municipalities.

Randy Miles questioned the town's liability should it not adopt an ordinance and an incident occurs. Jim Carroll again stated that he will not offer an opinion as he may end up representing the town and he will; not have his words come back at him. He stated that towns are large targets. He explained the immunity levels that towns hold and that the facts would have to be pretty egregious for the town to be charged. Jim Carroll stated that he would be more concerned with the lack of enabling authority. He stated that this should not affect whether or not to adopt an ordinance. The potential of lawsuit is on both sides of the coin.

Heather Chase questioned if there are other mechanisms that the town could use to help in this issue. Jim Carroll stated that he is not aware of anything currently. Ben Whalen questioned when this was last brought to the legislation. Jim Carroll stated that he was not sure but thought that it was some time ago. He also clarified that solving the enabling authority issue gets you to the other Constitutional issues that come next.

Roy Spaulding questioned if the town could adopt an ordinance and just not enforce it. Jim Carroll stated that he is not in favor of adopting ordinances that have no intent of being enforced. They can be challenged multiple ways. Jim Carroll also stated that there is precedent set that if there is an ordinance on the books it should be enforced.

Amy Mosher stated that Group Homes are a proposed use in the new Bylaws. She questioned if the laws require that these be allowed in all Districts. Jim Carroll stated that he would prefer to do more research on that topic before he answered.

Discussion ensued regarding whether or not it is more important to have an ordinance that may not go challenged for many years. It was stated that an ordinance is enforceable until such time as it is not enforceable.

Ben Whalen clarified that a Child Safety Ordinance is a stand-alone bylaw and is not part of the zoning regulations.

Mary Jane Miles questioned if a violation could be enforced in terms of arbitration or discussion verses a fine, and can an agency be held accountable. Jim Carroll stated that there is no enabling authority for sanctions against another agency. Richard Cloud discussed that the distances from schools, etc. are determined by the registry applied to each person at the time of release.

Ben Whalen stated that this is an issue that affects all of Vermont. He would rather see this on a State level. Mary Jane Miles stated that this would take way too long. She is concerned that there is a large issue in Chester and that this needs to be addressed now.

Roy Spaulding stated that he would rather be proactive instead of reactive.

Frank Bidwell questioned the status of the Yosemite Fire. Jim Carroll stated that the petition is ready to file.

4. ADJOURN:

A motion was made by Arne Jonynas to adjourn. Seconded by Heather Chase. The motion passed. The meeting adjourned at 9:18 p.m.

Julie Hance
Secretary of the Select Board

Heather Chase
Clerk of the Select Board

The SAPA-TV recording of this meeting is hereby made a part of the permanent minute record of this meeting.