

**TOWN OF UNDERHILL**  
**SELECTBOARD REGULAR MEETING MINUTES**  
**Underhill Town Hall**  
**Thursday, December 19, 2019, 6:00 p.m.**

**Selectboard:** Pat Sabalis, Dan Steinbauer and Bob Stone

**Town Staff:** Brian Bigelow

**Public:** Ruth Miller (MMCTV), Karen Neeson, Jim Neeson, Nancy Berry, Kassandra Bean, Tony Julianelle, Roger Frey, Gertraud Frey, Susan Cromwell, Georgann Pedrotty, Tim Pedrotty, Richard Hawley, Anne Hawley, Mat Champlin, LeeAnn Whelan, Doug Keith, Carol Smith, Livy Strong, Steve Webster, Karen McKnight, Samantha Slayton, Sean McCann, Kurt Johnson, Jenn Wood, Roger Koniuto, Christine Toulis, Chris Toulis and Dean Haller

**6:00 p.m. Call to order, adjustments to agenda.** Meeting called to order by Pat Sabalis. Adjustment to agenda made adding a discussion about the 60/40 split of shared Jericho and Underhill financing of the Jericho Underhill Community Library District (JULD), Jericho Underhill Park District (JUPD) and the Underhill Jericho Fired Department (UJFD).

**6:01 p.m. Public Comment.** None.

**6:02 p.m. Lease Land.** Pat Sabalis reviewed status and history and read a series of remarks reflecting the consensus of the Selectboard. Remarks are attached to the minutes and conclude with the determination of the Selectboard “... *that it is in the best interest of the Town and in the public good to allow the provisions of 24 VSA §2409(b) to become effective on January 1, 2020 and vest the fee simple title of lease land to the current lessee of record free and clear of the Town’s interest.*”.

Additional comments received from Sue Cromwell, Tim Pedrotty and Tony Julianelle made in support of the determination. After discussion of a more immediate action by the Selectboard in advance of the date in the legislation, the consensus was to adhere to the statute.

**6:14 p.m. FY20-21 Budget, Preliminary Budget Review.** Selectboard met with invited representatives of groups making requests: UJFD Chief Mat Champlin, Jenn Wood (Green Mountain Transit), Carol Smith and Livy Strong (JUPD), Steve Webster (Underhill Energy Committee) and Karen McKnight (Underhill Conservation Commission). Representatives expanded on their organizations’ requests and programs. Input to be considered in future budget meetings.

**7:22 p.m. Meadow Lane, Dumas Road, Roaring Brook Flooding Update:** Kassandra Bean, Selectboard and staff discussed next steps. Email from Staci Pomeroy/DEC River Scientist with potential outline for study reviewed. Consensus of Selectboard to have staff reply with Selectboard support. Further budgetary discussion to take place. Kassandra Bean relayed a request from Patty Gray to have more notice prior to any visits to her property (DM012) and offered access through her property (DM010).

**7:39 p.m. Highway Infrastructure & Equipment Committee (HIEC). Update on Projects.** Kurt Johnson, HIEC Chair, provided updates on HIEC Projects.

- HIEC recommends that DirtTech’s bid for the proposed reconstruction projects on Poker Hill Road in the amount of \$245,000.00 be accepted.

Pat Sabalis moved approval of DirtTech's bid for the proposed Poker Hill Road reconstruction projects in the amount of \$245,000.00. Dan Steinbauer seconded and the motion passed 3-0.

- 2020 Construction Project Reviews with Residents. The Corbett Road and Irish Settlement and Poker Hill Road reviews were well received by area residents. One will be scheduled for Bridge #8 repairs this spring.
- East Engineering Projects. Engineering cost estimates received for three additional projects: North Underhill Station Road and Poker Hill Road intersection, Park Street stormdrains and the Town Hall parking Lot

Bob Stone moved approval of engaging East Engineering for engineering designs for the intersection of Poker Hill and North Underhill Station Roads and Park Street stormwater improvements. Using \$17,000 of Highway Reserve Funds. Dan Steinbauer seconded and the motion passed 3-0.

Pat Sabalis moved approval of engaging East Engineering for engineering design of the Town Hall parking lot using \$2,500 of Town Hall Reserve Funds. Bob Stone seconded and the motion passed 3-0.

- Proposal for Irish Settlement and Poker Hill roadbed material for disposal for residents. After discussion the consensus of Selectboard is to have the HIEC draft a proposal for a process for the utilization of waste materials from the road 2020 reconstruction projects with first priority given to Class 4 roads. Selectboard to review draft proposal.
- Final CIP Revisions. Handout received with the most current update to proposed capital Improvement Program dated December 15, 2019.

#### **8:16 p.m. New Business.**

**Bid Results of Poker Hill Road Reconstruction.** Resolved in HIEC Update agenda item.

**Draft Town Meeting Articles.** Draft reviewed. Consensus of Selectboard to follow the format from the 2004 Casey's Hill purchase. In addition staff to propose an article establishing the formation of the Reserve Fund funded by Green Lantern Group lease payments for any future decommissioning costs of the Beartown solar array. Bob Stone recommended consideration of an article committing a dedicated amount each year to Highway for Capital Items.

**2022 Hazards Mitigation Plan update.** Selectboard committed to providing the 25 percent local match if amount is not covered by a State Grant. Consensus of Selectboard is to continue to participate in a Regional Hazard Mitigation Plan with an estimated cost of approximately \$2,000. Chair signed Funding Certification, staff to submit.

**Ratio Discussion.** Notice made that the traditional 60/40 split of funding UJFD, JUPD and JUCLD between the Towns of Jericho and Underhill is trending out of equity. Growth trends in both population and Grand List in Jericho would put the equitable split closer to 62/38. Chair to draft letter to Jericho Selectboard.

**8:27: p.m. Warrants and Minutes.** By consensus the Board reviewed and signed current warrants.

Pat Sabalis moved to approve the minutes of the December 3, 2019 Regular Meeting of the Selectboard. Dan Steinbauer seconded and the motion passed by a vote of 2-0-1 (Bob Stone abstaining).

Pat Sabalis moved to approve the minutes of the December 13, 2019 Special Meeting of the Selectboard Dan Steinbauer seconded and the motion passed by a vote of 3-0.

**8:30 p.m. Member Items, Correspondence, Announcements, Schedule:**

**Correspondence.** Notice made of receipt of:

- Biennial Groundwater quality test results at former landfill site received from Ross Environmental Associates. Results consistent with previous findings and forwarded to Vermont Department of Environmental Conservation.
- Annual Water Supply test results at Town garage received from Ross Environmental Associates. Results consistent with previous findings and forwarded to Vermont Department of Environmental Conservation. Staff to have results posted at Town Garage.
- Hard copy of UJFD June 30, 2019 Audit received. Staff to request electronic copy to distribute and post.
- Notification of grant award for a Municipal Planning Grant to fund an affordable housing study.
- Access Permits issued by Zoning Administrator for DesRoches/CO010 and Case/IS339.
- Email from David Clift/Harvest Market Steering Committee re: funding for law enforcement/traffic control. Consensus to readdress closer to the 2020 event.

**Schedule.** The next regularly scheduled Selectboard meeting is January 7, 2020. Bob Stone advised that he has conflicts on January 23 and February 20. Consensus is to start those meetings at 3:00 p.m.

**8:38 p.m. Executive Sessions.**

Pat Sabalis moved that the Selectboard enter Executive Session with Dean Haller under: 1 VSA §313 (a)(3) Appointment or employment or evaluation of a public officer or employee. Dan Steinbauer seconded and the motion passed by a vote of 3-0.

At 9:55 p.m. the Selectboard exited Executive Session.

Bob Stone moved that the Selectboard declare Christmas Eve a full holiday for all Town employees, weather permitting, Pat seconded and the motion passed 3-0.

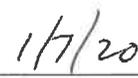
Selectboard will have a Special Meeting with the Road Foreman (weather permitting) and Town Clerk on Monday, December 30, 2019 at 8:00 a.m.

**10:00 p.m. Adjournment:** On a motion made by Pat Sabalis and seconded by Dan Steinbauer the Selectboard voted 3-0 to adjourn.

Submitted by Brian Bigelow, Town Administrator

Read and Approved as submitted/amended

  
Pat Sabalis, Chair

  
Date

Remarks about Lease Lands  
Selectboard Meeting 12/19/19

The Selectboard wants to explain for the record, the basis of our action -- or our inaction -- on the issue of whether the Town of Underhill will retain ownership of some or all of the perpetual lease lands within the Town.

Although some have suggested that we just do nothing, we believe that the SB should articulate its reasons for doing nothing in this matter.

By way of background:

Some Underhill taxpayers possess property that includes lease lands owned by the Town.

Vermont's lease lands date back to the 1700s before Vermont was a state, when the governors of New York and New Hampshire — acting under the authority of the king of England — set aside plots to be rented in order to raise money for churches and schools.

These perpetual leases conveyed the right to possess, enjoy, and use the land in perpetuity or substantially in perpetuity. This has been described more poetically as a lease of the land for "as long as grass grows and water runs."

After the Revolutionary War, individual towns took over responsibility for the lease land. Eventually, most towns stopped collecting the rents on lease lands, which were very small sums (e.g., 25 cents/annually), and began to tax the properties.

Although lease lands were not abolished, no one paid much attention. However, in recent years, some cautious title attorneys have raised lease lands as an issue for those trying to sell land because they saw it as a potential defect of title, which makes a land sale difficult.

This first became a real issue in Underhill in the spring of 2017 when a landowner couldn't close on the sale of his house because a title search revealed that his property included lease land. None of us in Town Hall or on the SB had heard of this concept, including me who took property law in law school and never heard of lease or glebe land. The Town was willing to give the landowner a quit claim deed to whatever interest the Town had in the land, but it had to obtain legal advice, and follow the statutory requirements, which included posting notices of the sale in public places and in the newspaper for a particular period of time before it could convey title. Since then, the Town has signed off on two or three more quitclaim deeds.

In late 2017, the Vermont legislature passed a law that provides in part:

On January 1, 2020, fee simple title to perpetual lease lands shall vest in the current lessee of record, free and clear of the interest of a municipal corporation in the perpetual lease lands . . . , unless prior to that date the legislative body of the town votes in the affirmative to retain ownership of some or all of the perpetual lease lands within the town.

This brings us to today. Lease land has been a huge issue for a minority of Town citizens who own property with lease land. They have been an informed, passionate and vocal group at all of the SB and town meetings regarding this issue. They have made the case that retaining title would create uncertainty about the title to the their property, land that they have improved, built houses on, and paid property taxes on for years.

It would be so easy to just say, okay let's give them the land. However, the SB is always constrained in its actions by the mandate that it must act in a way that serves the necessity of the town and the public good.

So we must look beyond what's easy, and what's best for a minority.

A few people have argued that the Town should not relinquish something when it doesn't know exactly what it is giving up. By giving up lease land, Underhill would be signing over its rights to whatever resources exist under the lease land, such as minerals and water. However, the leases are perpetual, as we said earlier -- this gives the lessee the right to possess, enjoy, and use the land in perpetuity or as long as grass grows and water runs.

Given the land development in modern times, it is difficult to imagine how the Town would extract water and minerals from a parcel of land that likely contains a house and other improvements, and that is in the middle of a residential area. How would that be consistent with the lessee's right to possess, enjoy and use the land in perpetuity? Such an effort likely would be met with great resistance and result in lengthy litigation.

Further, like many municipalities, Underhill hasn't kept reliable records of its lease lands. We have a map that shows some of the lease lands, but we can't guarantee that it is entirely correct or that it includes all lease land.

In addition, a little known state law requires a town to list every perpetual lease in a separate record, with a brief description of the leased land, the fair market value of the land, the name of the lessor, the annual rental payable, and as of April 1 of each year, the name and address of the lessee.

Like most towns, Underhill doesn't have such a list. It would be a very expensive and extensive project to compile the list with the required information because we would have to search the title of most of land in Underhill.

Finally, we have heard very, very little from the majority of the Town citizens about the issue of lease land, despite many meetings that were duly noticed. Only one or two people have suggested that the Town retain title to the lands.

A reasonable conclusion from this silence is that the majority of citizens do not care whether the Town relinquishes its interest in lease land.

So, weighing the equities, noting that those with lease land have paid property taxes on the lands at the same rate as other landowners for decades,  
and recognizing the expenses the Town would incur, and the resources required, to compile a complete list of lease land as required by statute,  
the Selectboard has determined that it is in the best interest of the Town and in the public good to allow the provisions of 24 VSA sec. 2409 (b) to become effective on January 1, 2020 and vest the fee simple title to lease land to the current lessee of record free and clear of the Town's interest.