

**TOWN OF UNDERHILL**  
**SELECTBOARD SPECIAL MEETING MINUTES**  
**Tuesday July 21, 2020, 1:00 PM**  
**Underhill Town Hall - Remote Meeting**

**Selectboard:** Dan Steinbauer, Bob Stone, and Peter Duval

**Town Staff:** Jim Beebe-Woodard, Town Administrator; Brad Holden, Interim Town Administrator  
Andrew Strniste, Planning Director & Zoning Administrator; Patricia Sabalis, Town Agent

**Public:** Bob Heiser, Vermont Land Trust; Joseph McLean, Esq.; Bridget Stone-Allard; Julianne Nickerson; Rachel Becker

**1:00 PM Call to order, adjustments to agenda.** Meeting called to order by Chair Dan Steinbauer. Selectboard members introduced themselves to all present. Jim Beebe-Woodard introduced himself as the new Town Administrator. Members of the public also introduced themselves.

**1:03 PM Public Comment Period.** Bridget Stone-Allard stated that her public comment might be better placed during Thursday evening's regular Selectboard meeting but wanted to offer a heads up; she stated that she is interested to know "why the police budget is doubling to \$38,000 in FY2021." Ms. Stone-Allard reviewed minutes from last budgeting season between September 2019 and December 2019 and didn't see any record about why this is changing. Ms. Stone-Allard also states that she is interested in having a motion before the Selectboard to form an ad hoc committee to recommend ways to educate and inform Underhill residents on racial issues. Wondering if there might be a collaboration with the Historical Society and MMU and/or BRMS students that could work on a project researching persons of color who have impacted our local community. As part of this ad hoc committee, Ms. Stone-Allard would like a draft public statement to be created/printed both in the *Mountain Gazette* and also placed on the Town of Underhill website condemning police brutality and asserting a commitment to racial justice and establishing a plan for moving forward.

Dan Steinbauer thanked Bridget for bringing this to the table and confirmed that Thursday's Selectboard meeting, where racial justice is an agenda item for discussion, would be an appropriate place to discuss this topic further.

Bridget asked if the Chair might address the topic of the police budget increase. Dan stated that is on the agenda for Thursday as well and that the Selectboard is currently trying to gather more information. Bob Stone offered to address her question and stated that the biggest question he receives from residents is related to speeding on local roads. Surrounding communities like Jericho and Cambridge have contracted with sheriff and VSP for far more than the three hours Underhill currently devotes to traffic enforcement. Therefore, the Selectboard made the decision to increase the line item for law enforcement to address the issue of speeding throughout the Town. Bob explained how money generated by traffic tickets comes back to the town and how those percentages are affected by whether or not the Town has a local ordinance that mirrors the state ordinance.

Brad called a point of order cautioning further in-depth conversation on this topic since it is not on the agenda and this is a public comment period. Suggested deferring the conversation to Thursday.

Julianne Nickerson stated that she was here to support Ms. Stone-Allard's proposition and confirmed her understanding that the topic of racial justice would be taken up further during Thursday's regular Selectboard meeting.

Dan Steinbauer suggested moving on to the main part of today's agenda: addressing a 1061 notice for the Tomasi meadow and the conservation easement to the Vermont Land Trust. Dan invited Bob Heiser to offer a brief run-down of what this is all about. Bob Heiser stated that this action item is related to the town's acquisition of the Tomasi meadow and the Town will be acquiring the land while simultaneously conveying a conservation easement to the Vermont Land Trust and Vermont Housing and Conservation Board, one of the main sources of funding for this land acquisition. Because the town will be conveying an interest in land, a 1061 notice is required. 1061s have a 30-day notice requirement. The purchase and sale agreement between the Tomasi family and the Vermont Land Trust expires at the end of August and the P&S gives the VLT the right to buy the land but they will assign the P&S to the Town. The Town will go on to purchase the land, but the 1061 transaction notice is required in order to facilitate this transaction during the time period covered by the P&S.

Dan asked if there were other questions or input about the transaction.

Peter Duval expressed concern that this was being done last minute and stated that he had not been provided with the easement draft until today and only because he asked for it from town staff. Peter stated that the letter from the VLT and the Jericho-Underhill Land Trust is dated April 16<sup>th</sup> and addressed to the Selectboard. Peter stated that he has a "sinking feeling" that this is "emblematic of miscommunication within the town" and asked for clarification about why this information wasn't provided sooner. He expressed concern about being "in a rush, in a snap meeting to deal with it." Peter stated that if this is not addressed, communication coming to the Selectboard will continue to come in this way. He asked if Joe McLean could speak to this matter.

Joe McLean stated that he first learned about the Tomasi Meadow project on June 30<sup>th</sup> and was provided with documents at that time. He reviewed these documents and was asked at that time to prepare the 1061 notice, which he drafted. He notes that the letter is dated April 16<sup>th</sup> but has no knowledge of what transpired between April 16<sup>th</sup> and June 30<sup>th</sup>. He confirmed that he and Bob Heiser have had several conversations in an effort to keep the project moving. Peter asked if Joe would agree that it is necessary practice that the entire Selectboard be aware of correspondence that is sent to the board, in a timely fashion. Joe stated that he has no specific knowledge about the Selectboard's practices related to communication among the members, and is not in a position to talk about the process. Joe confirms that the letter was sent to the Selectboard Chair and that is all he knows related to the process.

Dan stated that this transaction has been in process for some time and confirmed that the prior Selectboard met with Bob Heiser several times last year. Dan stated that there has been an assumption that there were legal things that needed to be set up and expressed gratitude to Bob Heiser and Joe McLean for that assistance. Dan stated that perhaps we need to be more on top of procedure moving forward. Joe noted that based on his experience to date, and based on paperwork he's seen, Joe does not see any obstacles that would prevent things from moving forward. Joe confirms that the documentation is in good shape with no need for substantial redrafting. He confirms having answered questions from the Town Agent with respect to this project as well, particularly in relation to the Town's ability to provide parking on some portion of the property which is an issue specifically addressed in the conservation easement document.

Dan Steinbauer stated he was impressed with the conservation efforts reflected by the document.

Peter Duval stated that he did not know that we have authorized the Town Agent to be involved in the drafting of the 1061 document. Joe clarified that he did not say "drafting," and that he repeated that "a

question had been received.” Joe stated he had no knowledge of anyone being involved in the drafting of the document other than Bob Heiser and his paralegal and perhaps the VLT attorney. Joe states the conservation easement is a largely standard VLT document that he has had an opportunity to review and provide input on. Peter stated that he did not think we had authorized the Town Agent to be involved in any case. Peter also stated that he had not previously heard anything about a parking lot and that it seemed antithetical to any notion of conserving the property. Dan stated that he remembers talking about this issue at a prior Selectboard meeting but could not pinpoint a date. Bob Stone also could not remember the date, but recalls a discussion about the parking lot and how other nearby options would also be utilized (e.g., the Underhill ID school parking lot). Dan recalls thoughts and considerations about conservation and minimizing a parking area so that it’s only what may be necessary. Dan and Bob Stone shared their understanding of what “parking lot” would entail on this property. Joe McLean states that it’s a right and not a requirement and there is no mandate that the Town must provide parking on the property, and there are various safeguards in place with the VLT to ensure that if parking were to occur it would not undermine the conservation value.

Peter stated that he did not wish to belabor the point but that there is already a parking area at Casey’s Hill and ample right-of-way owned by the Town that could be used for on-road parking and that he was not sure there is a need for additional parking. Bob Stone stated he was not sure why the Town would want to tie its hands and not have the ability to work out parking in consultation with the VLT. Peter stated that he had not had any time to dig into this because he had just received the document today.

Dan Steinbauer asked what needed to be done to in terms of this meeting moving to accept this motion what is the wording of the motion that we would want to use.

Joe stated that the action item is simply to approve the 1061 notice so that it may be posted and published in accordance with 24 VSA 1061, as it is a prerequisite to the conveyance of municipal real estate. He clarified that the notice does not act as a mandate that the real estate be conveyed at any particular time, and that there is still opportunity to provide feedback on the grant of conservation rights and restrictions. Joe stated that he and Bob Heiser anticipate making minor changes to the Schedule A document attached to the conservation easement document. The 1061 notice will allow for the Town to act to convey the conservation easement to the VLT at the appropriate time. Dan asked whether there needs to be a separate motion for the Selectboard Chair to sign the 1061. Joe suggests combining the motion to include signing the notice and also posting it in accordance with the statute. Bob Stone offered a motion, with Peter seconding. Peter asked if there is enough time, and is it scheduled, to close in advance of the final day. Bob Heiser stated he believes we will have the last week of August to close. The motion passed 3-0. Dan confirmed that he would come in later today to sign the motion.

Dan made a motion to go into Executive Session due to a pending or probable civil litigation and confidential attorney-client communications. Bob Stone seconded the motion. Joe McLean stated that prior to making that motion, the statute requires that the Selectboard make a finding that “premature general public knowledge would clearly place the Town or person at a substantial disadvantage.” Joe stated that his understanding the intent of the Executive Session would allow the Selectboard members to receive confidential attorney-client communications from him, particularly related to Peter’s appeal to the Environmental Division related to his zoning application to establish multi-family units at his property, and also allow Selectboard members to consider any possible resolution or negotiations that might resolve that litigation. Joe recommended that the Selectboard find that premature general public knowledge would place the Town at a substantial disadvantage because it would disclosed confidential

communications that would constitute a waiver of privilege and prematurely disclose to Peter and the public what the Town's litigation and negotiation strategy might be.

Bridget Stone-Allard offered a point of order, stating it is her understanding that any decisions that are made by Selectboard must happen outside of Executive Session. Joe McLean confirms that this is correct and that the Selectboard may not take any action in Executive Session.

Peter Duval asked for Joe to describe the "laws relating to communication with the Selectboard, generally, and whether the Selectboard can act if the whole Selectboard is not informed about an issue."

Joe stated that he realizes that is something Peter is interested in learning more about and acknowledged receipt of an email from Peter just prior to this meeting. Joe stated he would not disclose the contents of that email during this meeting. Joe is happy to discuss that issue with Peter and other Selectboard members but is inclined to believe that it is not appropriate to get into that in detail today.

Peter asked if Joe had communicated separately with other Selectboard members in the past four months.

Joe stated that he has communicated with the representatives of the Town with whom he has been directed to communicate in connection with Peter's litigation. Peter asked who those people would be. Joe stated that while we were considering the motion to enter Executive Session to discuss Peter's litigation against the Town that he did not understand what Peter's intent is with respect to these discussions. Joe asked if Peter's intent, as a party opponent in litigation, was to directly participate in communications that would benefit Peter's interest and potentially negatively impact the interests of the Town. Joe asked Peter what is the purpose of these questions. Peter stated that as is illustrated by the letter from the VLT that is "four months stale and just barely arriving" in his email, he is concerned generally about communication within the Town. Peter stated that the people responsible for stewarding the Town's interests "are not all getting all of the information." Peter stated that it is also his concern that Joe may be being directed by people who are not represented by the Town. Peter explained to Joe that the chain of authority starts jointly with the Selectboard and not with individual members, and then flows from there by delegation. Peter stated he sees no variation from that perhaps except for some "statutory responsibilities that are well-described in statute belonging to other bodies but definitely not to staff." Peter stated that he is concerned that the case that he is quite concerned that the case in which he and Joe are involved has been going on without oversight of the Selectboard. Joe stated that we should be clear that Peter "makes a point generally about communication in the Town" that may be a legitimate topic for discussion, but not for today at this meeting. Joe states that what we are talking about today is something different, not about the general manner in which the Selectboard will communicate among its members, with counsel, or with staff; today is about communication specifically relating to Peter's specific case and communication between representatives of the town who have been involved with this matter and "efforts to try to have discussions to move this process forward without unfairly disclosing to [Peter] or to others what the litigation strategy would be." Peter stated that he was only made aware of this Executive Session yesterday and suggested that there seems to be "no trouble making discussions in open session with Green Lantern group, we just had a discussion with the Land Trust in open session, my concern is that this idea that the town attorney can choose to communicate with a fraction of the Selectboard and then have an Executive Session with a fraction of the Selectboard is generally improper." Joe stated that Peter is actively in litigation against the Town as a party opponent. Peter stated that this is a misrepresentation and that Joe represents the Town and "[Joe] made... [Joe] filed a cross appeal, ok? You could have not done anything and I would be talking one on

one with the judge about my appeal. You decided to get yourself involved in the appeal.” Dan stated that “we decided.” Joe stated that he “didn’t decide anything.” Peter stated that during the March 19<sup>th</sup> Selectboard meeting, former Selectboard member Kurt Johnson also “made an outburst about how [Peter] had sued the town.” Peter stated that this is false and that Kurt was unaware of the “actual legal situation really raises a lot of concern about communication within the Town.” Peter stated that this was not the only situation where the Town has “gone to great lengths to frustrate a resident but it is the one that seems to be the most egregious.” Peter states that he believes that it would be a conflict of interest for him to hear what Joe has to say to Bob and Dan, but that our conflict of interest policy was “written by a salad shooter and it makes no sense.” Peter stated that he still has a general duty to avoid a conflict of interest and he is happy to duck out of any conversation that Bob and Dan want to have with Joe but vehemently opposes the notion that he can be excluded prior to understanding what the topic is and prior to having an opportunity to participate. Peter states it is his job and duty to address his conflicts of interest that he has and not Joe’s job to tell him that he cannot participate in a Selectboard meeting. Peter states that this is the problem he sees and that it is a general problem in the town. Peter stated “it is a general problem that Pat [Sabalis] as Town Agent, which is an obsolete office that the state legislature has, finally, in its wisdom, eliminated as of July first...is that she seems to be able to tell you what to do without any Selectboard authorization is a problem, ok? Same thing goes with DRB involvement in Town matters. The DRB is quasi-judicial, distinct from the Selectboard and the Town.” Peter suggested that the trajectory of the case has been to “mangle the authority with DRB involvement, staff involvement, Selectboard involvement.” Peter stated he would happy to self-identify a conflict of interest upon entering into Executive Session, but not before that. Joe stated that with a motion pending, this was Peter’s opportunity to do just that and make a representation, on the record, about a conflict of interest. Peter asked for assurance that the only topic that would be covered during this Executive Session is this one case, and that Joe, Dan, and Bob are going to be the only people involved in the Executive Session. Peter stated that this is not an opportunity for anybody else to direct the Selectboard and what it is going to do. Joe stated that he has no authority to determine who will be included in the Executive Session, and statute gives the Selectboard the right to include staff, clerical assistance, legal counsel, and other persons whose information is deemed necessary. Joe stated that the law only allows the Selectboard to discuss the items that have been identified for Executive Session and that it would be improper to go beyond them. Joe recommended that the Selectboard strictly adhere to those topics that have been delineated as the basis for entering into Executive Session. Dan stated that if Peter was not a member of the Selectboard, he would not be notified that the Selectboard would discuss his case during Executive Session but because he is the litigator then he becomes part of the public. Dan suggests that it would be an improper use of the Selectboard role if Peter was to use his position to influence this case in his favor. Peter stated that his role as a Selectboard member has allowed him an opportunity to see “how sausage is made, and how sloppy it is.” Peter states that this is a matter of conflict of interest and not a matter of Executive Session privilege. Dan asked Joe whether he should withdraw his motion and replace it with language Joe had used. Joe said yes and offered to read him language to frame the motion but also asked if Peter wanted to address the issue and recuse himself now, or wait to hear the motion and decide then. Peter stated that he believes that the conflict of interest recusal happens after entering Executive Session because oftentimes the Selectboard discusses multiple topics while in Executive Session. Bob Stone stated that he hoped Peter would have faith that Dan and Bob would limit conversation to specifically this one matter only. Bob stated that he has no interest in discussing other issues facing the Selectboard without Peter and when other issues arise that require Executive Session, Peter’s input would be welcomed. Peter stated that he will look forward to the town relenting from its appeal of the DRB decision.

Joe suggested framing the motion as follows: I move to make a specific finding that premature general public knowledge involving environmental court docket number *126-10-19 Vtec Duval CU Denial* and the related docket number, that premature general public knowledge of confidential attorney-client communications and discussions regarding the pending litigation and potential negotiations related thereto would clearly place the Town at a substantial disadvantage by potentially waiving attorney-client privileged communications and disclosing to Peter and third parties prematurely the Town's litigation strategy. Bob Stone made this motion; Joe asked if that was specific enough for Peter. Peter said yes and cited the other docket number as *93-8-18 Vtec*. Dan seconded the motion, and asked if there was any further discussion. Joe asked Bob Stone to invite into Executive Session any person that the Selectboard believed are necessary to provide information to the board. Bob Stone stated that Joe, Pat Sabalis, and potentially Brad Holden, Jim Beebe-Woodard, or Andrew Strnske may have information related to the Executive Session discussion; Dan agreed with Bob. Jim Beebe-Woodard stated that both he and Brad Holden would respectfully decline as it has not typically been the role of the Town Administrator to participate. Andrew Strniste stated that if his presence was desired, he was available.

**1:59 PM** Dan called the vote on the motion and it passed 3-0 and stated that they would move into Executive Session.

**3:03 PM** Bob Stone made a motion to exit Executive Session with Dan seconding. No discussion. 2-0. Dan stated that no action would be taken. Bob thanked Andrew, Joe, and Pat for time and professionalism, with Dan supporting.

**3:05 PM Adjournment.** On a motion made by Bob and seconded by Dan the Selectboard voted 2-0 to adjourn.

Submitted by Jim Beebe-Woodard, Town Administrator

Read and Approved as submitted/amended

  
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Dan Steinbauer, Chair

8/4/2020  
Date Approved

8/5/2020  
Date Signed