

Village of Old Bennington
Trustees' Meeting Minutes
Nov. 7, 2023

The meeting was held at The Barn and on Zoom. A link to the Zoom recording is at the end of the minutes.

Officials present: Presiding officer Anne Slattery; Trustees Jim Warren, Ed Woods, and Susan Wright; Treasurer Ron Rabidou; Auditor Kathy Wagenknecht; Planning Board Chair Nancy Coseo; and Clerk Mary Walsh. Trustee Steven Anisman attended on Zoom.

Officials absent: None.

Citizens present with comments: Thomas Scheetz, Carl Feltz, James Gallen, Peggy Hammond, Galen Jones, Tamara Kremer, Marta Kozlowsky, Charles Kozlowsky, Renny Ponvert, and Megan Schwarzkopf. Lucy Baldwin, Jan Buonanno, and Kate Musso attended on Zoom.

Guest speaker: Merrill Bent, attorney for the Village.

1. Opening: The meeting was called to order at 7:03 by Anne Slattery, who allowed extra time for people to find places. AS notified all that the meeting was being recorded. All trustees and elected officers were present.
2. Changes/updates to agenda: AS said two officials' names were inadvertently omitted from the agenda; Parks and Sidewalks Commissioner Susan Wright and Auditor Kathy Wagenknecht would make reports.
3. Minutes of Oct. 3, 2023, meeting: EW moved to accept the minutes; JW seconded the motion. The minutes were accepted unanimously.
4. Citizens comments not related to agenda: Megan Schwarzkopf called attention to the crosswalks that need to be repainted. AS said that would be added to the agenda for December.
5. Special topic and guest: AS gave an introduction for the Village's attorney, Merrill Bent. Village residents were recently surprised to see a solar-energy installation being built on Bank Street, without design review and approval by the Village. We need to understand the relevant laws, so that the Village can make better decisions in the future. Merrill's presentation is not something the trustees will be deciding on tonight. It's an opportunity to listen and learn. Merrill will answer questions if she can, and if not, the answers will be provided at either the next monthly meeting or a special meeting. Courtesy is expected,

and rude or insulting comments will be called out as out of order. “We are all in this together and we don’t have the facts yet.”

Merrill Bent is managing director at the law firm of Woolmington, Campbell, Bent & Stasny, in Manchester. She specializes in land use, real property, energy and environmental law, including matters related to permitting.

MB said she wanted to briefly summarize the approval process for solar installations, because it will help explain why Village residents had no advance knowledge of this one. A “certificate of public good” has been granted by the Vermont Public Utility Commission in Montpelier, approving certain types of generating equipment. The PUC is responsible under state law for regulating the siting of local energy projects. The state law is intended to encourage renewable energy, and to ensure there are uniform standards statewide. In certain types of proceedings, municipalities can weigh in. Local provisions of law, which for us is the Solar Screening Ordinance, may be enforceable, but municipalities are not allowed to regulate these projects beyond the scope or authority that they’ve been given by the State Legislature. The procedures to be followed are state procedures.

Section 248 of the PUC law lays out the steps and opportunities for public participation in PUC siting cases. It calls for evidentiary hearings in large, contentious cases, but that’s not what we have with this solar installation. For small projects, the proceeding consists of just a registration. It is the least onerous process and it’s meant for installations of less than 15 kilowatts. It’s called a Class One Net Metering System. The state wants to encourage small renewable energy projects, and it assumes that the small ones will be unobtrusive. The one now under construction in the Village is a 14.4 kilowatt project, so it qualifies as small.

The registration process calls for the applicant to send notice to the PUC, the Vermont Department of Public Services, the Vermont Agency of Natural Resources and the respective utility. There is no requirement that the affected municipality be notified. Residents would not normally be aware when such an application has been filed. It’s the kind of thing you’d see only if you looked at the PUC’s website every day.

There’s a ten-day public comment period. If no one objects during that time, the application can go forward, starting on the first business day after the public comment period expires.

The applicant must certify, under penalty of perjury, that they have satisfied the local preconditions, and the project is in compliance with the affected municipality’s ordinances or bylaws, or zoning bylaws. The screening requirements for residential solar projects cannot be more restrictive than they are for commercial installations; they cannot have the effect of interfering with the project’s functional use. There is, however, the possibility of an aesthetic review.

The Village of Old Bennington does have a relevant provision: It says that ground installations must be built in side or rear yards, and be screened from neighboring

properties. This provision is about aesthetics and cannot be interpreted to mean that solar projects are prohibited anywhere in the Village.

MB said that her role is not to rule on whether the installation is or isn't allowed. We're still at an information-gathering stage. Next, the relevant authority must decide whether the installation has satisfied the Village's requirements, and what to do if it has not. The trustees can hold a discussion in executive session for the purpose of receiving legal advice. Holding conversations with the property owner and the developer would also be important, to find out what we can agree on and how to address differences.

It would not make any difference if the Village had an Enhanced Energy Plan on its books. Something like that could give a municipality a greater voice in 248 proceedings, but it doesn't have any bearing on the registration process for a small installation below 15 kilowatts. There is no law the Village could have passed to avoid the situation we're in now.

AS then opened the meeting to public questions and comments.

Brian Scheetz asked about the implications for other properties that might build small solar installations. Does the PUC's 15 kilowatt limit for the simple registration apply only to residential projects, or could a commercial enterprise take advantage of it too?

MB: If someone wanted to build a serial project that was connected through a common scheme, the Village could argue that it needed more scrutiny.

Marta Kozlosky, of 9 Catamount Lane, an adjacent property, said that when she first saw construction equipment outside her windows, she assumed it was for something like a failed septic system and she felt sympathetic. But the next time she looked, she saw that it was an energy project. "I felt like I was punched in the stomach." Until now, the owner of that property had always made an effort to improve it and make it look attractive. He even installed a beehive. She thought that since this is a historically designated Village, we might have control over construction of an energy project, and that perhaps it could be paused. But it kept moving forward. Big black panels went up. She asked a workman what was going on, but he said he didn't know anything. She called Green Mountain Power. Construction paused after that, but she doesn't know if it was because of her call. She wonders if Green Mountain Solar knows that there are minimal rules for anything below 15 kilowatts, and that's why they're promoting 14.4 kilowatt projects. "It was really inconsiderate of the people who are doing this in our small Village not to even have notified the closest neighbors that this was going to happen. I'm very hurt." One more comment: There's a Quechee Theory that gives aesthetic parameters for energy projects larger than 15 kilowatts. If you're talking about how to make an very large installation unobtrusive somewhere else, then there should be proportional parameters for a small project in a small village.

Charles Kozlosky said that MB mentioned a ten-day window for public comments. How does that work if no one is notified? Second, on a commercial project like Apple Hill, the PUC considered aesthetics and whether the project was part of the public good. I understand the state's desire to promote alternative energy, but we should have been notified. If there's going to be mitigation, it should consist of something like a Yew Tree fence to screen it off. The Sonatina Piano Camp has a solar installation, and it was done properly. They notified all the neighbors, and they made it look unobjectionable. With the current project, "The visual impact as you walk or drive the village is terrible." There are only three municipalities in Vermont that require a design review for new construction, Woodstock, Manchester and Bennington. For this installation their requirements were ignored.

MB: Even if you had complained about this project during the required timeframe, the PUC would have just said, "Thank you for your comment," and it wouldn't have had any impact. Yes, this is unsatisfying, but the purpose of the PUC process is to streamline the review. The normal review you'd have in a 248 Proceeding for a large project isn't applicable here. It's true that it would have been better to have been told about the project in advance, but under state law, the only thing that warrants further deliberation is the screening requirement.

Tamara Kremer asked whether the screening review was still open.

MB said that a certification was made that the requirement for screening the project had been satisfied. Usually, a homeowner would say the criteria were met with the help of a professional.

Tamara Kremer asked when the ten-day comment period began.

MB said it was in August.

Marta Kozlowsky said we needed clarification of whether the person installing the solar array was supposed to certify that he or she met that requirement. If they didn't certify it, what does the Village do?

MB said that the homeowner is allowed to make an assessment, relying on a professional, that the screening meets the requirements. They don't have to get a permit or other document from an agency. They just say they believe it satisfies the ordinance.

Marta Kozlowsky asked whether the owner or the developer certifies this.

MB said the owner makes the certification, but they normally say they are relying on guidance from a professional who knows the process.

Peggy Hammond said that 20 years ago, when she lived on Long Island, they had the biggest solar installation of that time on their property in Suffolk County. It was great to see it

adding energy to the grid. But now we're in a historic district. It's the most visited historic district in the state, and it's on the National Registry of Historic Places. This is a national cultural asset. "I would really urge that legally, some fine-tuning be done, to prevent the taking of a visual asset that not only we but the whole world can enjoy." People come here to learn about the Revolutionary War. "This is a very, very special spot in the state, in the country, and in the world. Let's not allow the theft of a cultural asset. Let's not allow precedent to be set by what we all agree is a shocking visual offense."

MB said there are two ways to provide input to the state. One is to make comments to the PUC. The other through your vote on state legislators.

Jim Warren asked whether the PUC regulations allow for any historic designation review.

MB said the energy-project review and the historic-designation review are two different processes.

JW said that state historic-designation laws do exist, but have they been triggered here?

MB said no, not for solar-project siting. This is a state issue.

JW said that maybe the federal regulations don't apply to a project of this level.

Kate Musso, speaking on Zoom, said that she understood why the historic rules don't apply, but she thought that they should apply.

Janet Buonanno, 31 Bank Street, speaking on Zoom, said she didn't mind looking at the solar installation at all. She thought there might be a lot of other residents who were very happy to see new solar energy being developed, but their voices weren't being heard because they didn't come to the meeting. She said she wanted to offer this perspective so that the trustees would be aware of it.

Susan Wright asked why, when all the relevant decisions were made, was the historic element not discussed?

MB said she assumed that it was discussed.

SW said it was hard to believe that the officials would have just said, "Fine, solar projects have precedence over our history."

MB said that the more intensive review process was for the large energy projects.

SW said that was true, but a small energy project would have a large impact on a small village.

Tamara Kremer said she had found some legal cases that might apply to this. In one of them, the National Registry of Historic Places did say that the landowner had to get certification. And she found a case in which the State of Vermont got involved. "They are involved and they want to be involved. You just have to notify them." This was irrespective of whether the project was large or small.

Galen Jones, a member of the Planning Commission, said that the state had enacted the statutes that apply here, and then the PUC's rulemaking process was underneath that. Is the ten-day comment period in the rulemaking process or in statute?

MB said she thought it was in the rulemaking process but she wasn't sure.

GJ said that suggested that our legislators would not have wanted something like this to happen, but the PUC—which has a vested interest in these processes—has the ability to establish a comment period without telling people.

MB said that the legislators enact the overarching legal framework, and then leave it to the expert agencies to handle the details.

Peggy Hammond asked whether there was any record of what the state's historic preservation agency had submitted as input in this case.

MB said to look at Rule 5.100 of the PUC rules. There's usually a pretty significant body of information on how the rulemaking transpired, and who commented.

Carl Feltz, a member of the Planning Commission, said he was unclear on the role of the Planning Commission in a case like this. What say can they still have? And what about the Village bylaws? How can they be enforced if the Village has no say?

MB said that the only place where municipalities can have a say on a small project is on screening. As for what avenues may still be open for the Village, that's a conversation she wants to have with the trustees.

CF asked, So they have to satisfy our bylaws, but we don't get to decide whether they have done so?

James Gallen asked for confirmation: For a solar project, is screening the only avenue for review by the Village if it's less than 15 kilowatts?

MB: Yes, and there's supposed to be a certification on the application.

JG said he wanted to make some observations. First, this is a historic neighborhood. Over the summer, we had an orange sky here. An orange sky sullies the value of this area. You used to be able to come here and roll in the weeds without worrying you'd get bitten by

ticks. Now, with climate change, the winter isn't cold enough to kill off the ticks, so there are ticks everywhere. There's an argument to be made that solar installations can help preserve the historic character of this place.

Second, when we decided to do a solar project, we contracted with a company that told us they were responsible for doing all the regulatory work. We assumed they really meant it. We didn't want to insult our neighbors. Without solar energy, there might not be any way for us to fight climate change. And you all know that there's not a single place on my three acres where a solar array would not be visible. If it has to be invisible, then I can't put it anywhere. "I wouldn't demonize anybody for their perspective. I'm sorry if I've offended people, but the intent is all the same: To have a beautiful neighborhood that we can all live in."

AS said that was the end of this section of the agenda, and the meeting would now move into the road construction section.

6. Special topic: Ron Rabidou, Treasurer

RR said he would post a written version of his full report on the website where everyone could read it. Tonight, the trustees are considering a "declaration of intent," which would make it possible for any bonds issued for road work to pay the bondholders tax-exempt interest.

RR said that some time ago the Village paid MSK to assess the conditions of its roads: which ones needed fixing and which ones should get priority. At the time the trustees decided that Bank Street and Fairview Street needed attention first. It was clear then that to fix the roads, there would have to be a tax increase, but at that point it was not clear how big the increase would have to be.

KW noted that we all get a credit on our Town of Bennington tax bills for the cost of repairs to the Town's streets. The credit was not proportional to the amount of the road maintenance done. In effect, we were underpaying.

RR said that in 2019 the voters approved the first stage of road work, but then nothing happened because of the pandemic and a lot of hardships. The trustees didn't think it was a good time to increase taxes. In 2021 the voters approved a second step.

The trustees decided that Bank Street should be repaired first. They learned that state road-repair grants were available only for Class 2 roads, which was not Bank Street's classification. So the trustees applied to have Bank Street reclassified as a Class 2 road, and the application was successful. Next, they submitted several applications for state grants that were rejected. This year, the Village was told it qualified for a \$200,000 grant for repairing Bank Street.

Meanwhile, the trustees decided to go ahead with the Fairview Street repairs. Those have now been done. RR's ten-year plan for the various road repairs calls for Fairview in 2023, Bank Street in 2024-25, and then Elm and Walloomsac in 2027-29.

RR put together some scenarios for financing the various repairs, either by raising taxes, borrowing money, or getting grants. The grant possibilities are poor. For borrowing there are two sources, the Vermont Infrastructure Bank and the Vermont Bond bank, but the Vermont Infrastructure Bank only does Class 2 roads, so our only option is really the Vermont Bond Bank.

We started out 2023 with about \$425,000 in reserves. Because we've done the Fairview Street repairs, we'll be down to about \$170,000 by the end of the year. To start working on Bank Street next year, we'll need \$300,000, which we won't have. One option would be to borrow to pay for the work on Fairview, even though the work is already done.

Scenario 1 would be to fund these needs through taxes. For that, the Village would have to double everybody's tax bill every year throughout the ten-year period.

Scenario 2 would be to borrow as much money as we could. In that case our tax bills would go up by about 15 percent, but the Village debt service would rise to about 20 percent of total revenues, and that's much more than what's acceptable to the ratings agencies. The debt itself would be four times revenues, and the ratings agencies would disapprove of that, too.

Scenario 3 would be to borrow as much as we need to, to cover the cost of repairing Fairview after the fact. But we'd still have to borrow to work on Elm and Walloomsac at some point, that would require tax increases too.

RR thought all three scenarios were unpalatable. A fourth scenario would be borrow now for Fairview and Bank Streets, which would increase our taxes by about 20 percent—and then we'd just wait and see on the other two streets.

The Vermont Bond Bank has some rules we must follow, like retaining bond counsel to advise us, and having an auditor vet our financial statements. That isn't cheap.

We got into this situation by deferring the maintenance of our roads for a long time, and we paid too little tax in prior years. We have only three miles of roads in the Village, used to a great extent by outsiders. This works out to an assessed value of about \$12.6 million per mile of road—and the Town of Bennington has about the same amount of assessed value per mile of road, but it has many, many more miles of road, which it manages to maintain.

KW pointed out that the Town doesn't do complete road reconstruction, just lesser repairs.

There was a motion to accept RR's report and to approve the Declaration of Official Intent. The motion was second and the report and Declaration were unanimously approved.

7. Reports of the Commissioners, Officers and Committee Chairs

--Planning Commissioner Nancy Coseo said she had nothing to report to the trustees.

--Road Commissioner Jim Warren said that we now have a formal acknowledgement that we're getting the grant from the State for the Bank Street repairs. The papers still need some corrections, though. Also, Jim said he didn't think Elm Street or Walloomsac needed extensive work.

Steve Anisman moved to have JW sign the documents once all the necessary corrections had been made. EW seconded the motion and it was adopted unanimously.

Tamara Kremer said the yellow stripes had been removed from Monument Avenue and asked if they could be removed from Bank Street too. She said they make Bank Street look like a highway and people drive faster.

EW said we need to be careful not to lose the Class 2 status that made it possible to get the \$200,000 grant.

SW said it would make sense to wait and remove the stripes when the repairs are being done on Bank Street.

AS said that compared to Monument Avenue, Bank Street is quite narrow, and with oncoming traffic it really seems tight. The lines may in fact be doing some good in keeping traffic in its own lane.

Tamara said she didn't think the drivers perceive the yellow lines as something they have to obey. She added that water runoff from Bank Street was a problem. Her property needed levelling and grading to make the water run down the sides of the lot. It was a big outlay, but it didn't seem to have solved the problem. She didn't know whether the Village's deferred maintenance had exacerbated the problem.

JW said he thought the Village had paid Bowdoin Paving to build an asphalt edge around a storm grate.

TK said the edge they put around that grate doesn't catch the water, and there are problems with another grate on the other side of the property. She wondered if the Village could apply for a grant to improve the drainage, or whether the Village could provide compensation for the work done so far.

EW said the trustees would have to go look at the situation in person.

KW said the previous owner of that property regraded the driveway and did other work to solve water runoff problems, but the problems persisted. "I think it's just an unfortunate siting of the house."

AS said the board needed to determine what's the homeowner's responsibility and what's the Village's responsibility.

--Tree Commissioner Steve Anisman said he had nothing to report.

--Parks and Sidewalks Commissioner Susan Wright said all she had to report was that the overgrown vegetation on the Babcock Property was being pruned; the people she wrote to were apologetic. But the owner of the other neglected property (who is in Myanmar) wrote back to say that everyone in the Village was mean and horrible, that he doesn't want to come back, and that Peggy Hammond is the only person allowed to go onto the property. He said he did not want to pay for groundskeeping work "because that's why he pays taxes."

EW said that if the trustees determined that the overgrowth and neglect were causing a safety issue, then they could send in a cleanup crew and lien the property to recover the cost.

Peggy Hammond said it was a William Clark Bull property and a valuable asset.

RR asked whether the Village would have the overgrown vegetation removed.

AS said that since there had already been complaints and even damage to cars, the Village would remove it. She so moved, EW seconded the motion, and the trustees unanimously agreed.

--Police Commissioner EW said the Village got just 12 hours of policing in the past month. There were three tickets and seven warnings. The Town of Bennington has been holding special events that they assign their police officers too, and no officers are left over to police the Village.

He had previously suggested a special committee to address speeding offline. But the police told him that for any changes in signs or speed limits to be enforceable, had to go through the normal Village procedures for updating ordinances. A committee couldn't do that.

Tamara Kremer said she would like to have a stop sign at the corner of Bank and Catamount. That would help people slow down.

There was discussion of who had the authority to place stop signs. RR said that the Village had Bylaws and Ordinances, which were up to the trustees, and Zoning Regulations and Zoning Subdivision regulations which were handled by the Planning Commission, then submitted to the trustees.

KW said that there also needed to be a stop sign on the lane directly in front of the Church. Nobody notices the yield sign that's there now and there are lots of close calls.

TK said that speeding is an issue on Monument Avenue and now we aren't getting very many hours from the police, the trustees could consider putting temporary speed bumps underneath the each of the three street lights. She said she understood that the trustees didn't want to put in speed bumps that would interfere with snow plowing, but the temporary kind could be removed for winter.

AS asked where the information was coming from that the trustees didn't want speed bumps.

SA said on Zoom that residents in general oppose speed. The board has considered speed bumps in the past, and residents voted against them four to one because they didn't want to slow down.

TK said she had tried to find out about those votes but people told her they couldn't remember.

EW said this had come up in the Town of Bennington, too. When you put in speed bumps, it adds to your maintenance costs.

TK said she sensed a negativity, which might make people think they'd be wasting their time if they brought this up.

SA said the board had tried to have speed bumps installed but it was soundly defeated by the voters.

TK said she was getting piecemeal information, and she wanted to clarify the issue and see if the Village could agree on it. "The Village can change."

Megan Schwarzkopf wanted to report that she was working in her yard as it got dark around 5:00 p.m., and noticed a group of men in the dark, taking pictures of deer. Then someone fired off a shot, which made all the birds fly up. So she called the police and said someone's discharging a rifle on my property. The police didn't come but someone tried to make the men go away and they said, "It's not posted."

JW said it was against the Village bylaws to discharge guns.

EW said that if someone calls the police and they don't show up, he would like to be notified so he can take it up with the police department.

--Treasurer RR said that property tax payments have been arriving, and he had received about \$25,000 so far. The highway fines are way short. For warrants there have been payments to MSK and Pembroke. JW moved to accept the warrant, AS seconded it, and the board approved the warrant unanimously.

RR said that he had been moving the Village's money to the Bank of Bennington, where it's getting interest of 3% instead of the previous 0.2%. He has finished transferring all but \$10,000.

RR also said he'd like the trustees to approve the tax collection policies and procedures, so that he can take necessary measures without always having to ask permission. For example, he needs to know the time frame for starting foreclosure proceedings. There's currently one tax non-payment case that's four years old.

KW said that particular homeowner did actually pay for the more recent two of those four years.

AS said that was illegal; the money is supposed to pay off the oldest years first.

RR asked the trustees to give serious thought about what the foreclosure deadline should be.

--Auditor KW said she had sent out requests for proposals to nine auditors. Four said they would not submit proposals. Sullivan Powers in Montpelier gave a positive answer, saying they would do the audit for \$20,000, and they would work with the Bond Bank. KW intends to ask for a firm proposal. That may be the only proposal the Village gets. She has been told that that's not a surprising price. Everybody seems to be getting out of this business.

EW moved to adjourn the meeting and everybody voted with their feet.