

Village of Old Bennington  
Trustees' Meeting Minutes  
Dec. 5, 2023

The meeting was held at The Barn and on Zoom. A link to the Zoom recording is here:

[https://us06web.zoom.us/rec/share/XOjx06-2GmuZHDxU-KCMHPzt5Po2ufMKdcCsOGm\\_FSAC2BOpl06Dq9ez2gK9bdU1.iZ-1nUEc1EHgJKSt](https://us06web.zoom.us/rec/share/XOjx06-2GmuZHDxU-KCMHPzt5Po2ufMKdcCsOGm_FSAC2BOpl06Dq9ez2gK9bdU1.iZ-1nUEc1EHgJKSt)  
Passcode: kHWAu@7b

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

Officials absent: Planning Commission Chair Nancy Coseo.

Citizens present included: Galen Jones; Marta and Charles Kozlowsky; Renny Ponvert; Kate Musso, Greg Brace, and others.

1. Opening: The meeting was called to order at 7:00 by AS, who notified all that the meeting was being recorded.
2. Changes to agenda: There were no changes.
3. Approval of minutes from Nov. 7 meeting: EW moved to approve the minutes; JW seconded the motion; the minutes were unanimously approved.
4. Citizen comments not related to agenda items: Renny Ponvert said that there should be a motion for the planting of trees on the Village right-of-way, clarifying that it's separate from the issue of screening for the solar project. He said it didn't matter if the trustees dealt with the issue of trees on the right-of-way tonight or at a subsequent meeting. JW moved that the trustees would deal with the right-of-way trees at a subsequent meeting; EW seconded the motion; the motion was unanimously approved.
5. Reports of commissioners
  - a. Planning Commissioner Nancy Coseo is on vacation this week, and AS provided a short update in her absence. AS said there would be a Planning Commission meeting on Monday, Dec. 11, at 7:00 p.m., where NC will go through the priorities in light of the developments of the past couple of weeks.

- b. Road Commissioner JW said salt is priced the same as it was last year. The Village has a proposal from MSK to prepare all the drawings for the work on Bank Street next year; the fee will be \$26,500. Even if the Village isn't ready to start the road work then, the documents can be prepared and put on the shelf until the Village is ready. Also, MSK can do preparatory work, like surveying the site, by the end of next March.

EW said it takes a vote of the Village to start the preparatory work. JW said we can decide this at the next meeting. JW also said that he just got the second invoice from Weaver for paving Fairview. Since there wasn't time to cut the check, that will be done next month.

- c. Tree Commissioner SA said that 11 West still has some trees that fell during the last big storm. He has approved their removal. RR asked if 32 Monument had been given permission to remove fallen trees. SA said they had.
- d. Parks and Sidewalks Commissioner SW said there were no new developments to report.
- e. Police Commissioner EW said there had been some improvement of traffic enforcement. We've budgeted for 80 hours of patrolling and we received 24 hours. There were 14 tickets issued and 4 warnings given. There will be three months' worth of policing invoices in the current treasurer's report, for September, October and November. The bills for September and October were received too close to the end of the months to be included in the respective treasurer's report.

Also, EW said the Bennington County Regional Commission has invited the Village to participate in a speed study they're performing in the Town of Bennington, focusing on what they believe are "problem areas." There is no cost to the Village for this study, and the Village has no obligation to take any actions as a result of it. EW has given the BCRC some ideas for this study.

KW asked if it will be possible to get more income from the patrols. Right now, the Village is way behind what it had budgeted for this revenue. In the past we got \$25,000 for the year, and so far this year we've received just \$1,400.

EW said he would expand on this issue at the next meeting. But briefly, after the pandemic the traffic police were told to work in "educational mode." It's just been in the last couple of months that they've been told to go ahead and start giving people tickets again. He is unable to estimate the possible revenue that will result, because all ticket payments go to the State and are put through a very time-consuming process there before the money is sent to the Village.

Marta Kozlowsky said that in the past, the Village got a lot more revenue from policing. She wondered if those payments also went through the time-consuming State process. EW said it was the same process. The only difference is the police officer's name on the paperwork; the previous officer has retired. EW added that the only one that can reduce ticket amounts is the State. KW pointed out that in the past there were a lot more tickets written, so there was more revenue. JW said that in the past, the Village paid for the police car and other expenses. RR said that even after paying the cost of the patrol car, the Village got more ticket revenue in the past.

AS said that the Town of Bennington's police department lost about 33 percent of its personnel during the pandemic, so even if we were assigned to get 24-hour police coverage, we didn't get it because the Town didn't have anyone to send. There will be three new officers coming out of the Police Academy in February, so we'll get more hours of coverage then.

- f. Treasurer RR said that in November the Village received a lot of money for the property taxes. Everybody has paid their taxes except for three taxpayers who didn't pay their taxes due to the Town of Bennington either. RR has sent out delinquency notices.

EW asked about the current owner of 57 Monument Ave. The property is on the delinquency list. [Clerk's note: This property abuts the old Walloomsac Inn property, to the north.]

RR said the owner was delinquent last year too. In the past it was held through a Weingarten trust, but the settlor died; the Village got a new address to send delinquency notices to, but when RR used that address his notice was returned to him as undeliverable.

KW said the owner's address is in Provincetown, on Cape Cod.

RR wondered if we could look at the voter registration and see if that shows the owner of 57 Monument, but people said the voter registration list doesn't show the owner as being registered to vote.

Warrants for the month include the BCRC membership fee, the bill for the legal work on the solar installation, the invoice for three months of work on Fairview repairs, and three months of policing.

EW moved to accept the Warrants; JW second the motion, and the Warrants were unanimously approved.

RR provided an update on the Tax Collection Policies and Procedures that he has been working on. He has already circulated copies to the trustees. The Village will be following the model of the Vermont League of Towns and Cities. We need to have a policy in place for dealing with cases of taxes that have been delinquent for two or more years. We should also have a tax lien process, which would give the Village the ability to negotiate with delinquent taxpayers. Currently, there is one taxpayer who has told RR that he's going to take his chances, because he thinks maybe the Village won't really come after him. EW said he thinks the Town of Bennington has already placed a lien on that taxpayer's property. RR said the trustees don't need to vote on the Policies and Procedures, but he wants them to be aware of where things now stand.

EW asked if the Town and the BCRC also use the two-year delinquency standard. RR said the town uses the two-year standard, and BCRC said the Village can set any time period it wants. He added that the tax-lien process is complex, and the liens are more likely to be valid and binding if the Village gets legal counsel when using the process.

KW asked what the total amount of overdue tax was. RR said that from homeowner Tzaims Luksus, it's about \$5,000. The total of all delinquent taxes is about \$12,000. Luksus is the only one who's more than two years overdue. He is in Myanmar and shows no sign of coming back. He has a son in the United States who has paid some of the property taxes in the past, but there have been disputes between Tzaims Luksus and his son about this. The son doesn't want to be responsible for the taxes unless his name is put on the deed.

JW asked if the Vermont League of Towns and Cities says that a lien is mandatory at two years' delinquency. RR said that no, the purpose of the lien is to stake a claim on the property that becomes enforceable when the property is sold. EW said that he had seen instances in the Town of Bennington when the act of putting a lien on a property has prompted the delinquent taxpayer to pay up. In one case someone remortgaged their property to make the payment possible. "I think this is an appropriate step." RR said that the Village would get the overdue taxes, plus legal fees that might accrue from the lien process.

RR gave a summary of the bonding process to pay for road repairs. The bond will raise money to cover the construction on Fairview Street. In practice, we've already done the work on Fairview, and paid for it, but Fairview Street is the street that qualifies for bond financing. So the Village plans to use the bond proceeds to reimburse itself for the Fairview outlays; after that, the Village will have enough money to initially pay for its share of the work on Bank Street. Plans call for borrowing through the Vermont Bond Bank. Their procedures require the Village to get approval in a special meeting, with an Australian ballot, which means a paper ballot with voter anonymity. We may be able to use the Town of Bennington's

election space at the Fire Station as a dropoff or voting point for ballots. The Vermont Bond Bank issues bonds on certain predetermined dates. If we are going to vote on March 5, we will have to provide complete public information for the vote at either the regular trustees' meeting in February, or at another special meeting. RR has already posted a report on the Village website, explaining how the Village is going to finance its road repairs. The key message people need to hear is that we cannot pay for the road repairs out of our reserves without doubling our tax rate. That's why we're planning to borrow.

Charles Kozlowsky asked for more information the borrowing terms. RR said we are planning to borrow through a 20-year bond. The Vermont Bond Bank wants municipalities to match the life of their bonds with the life of the assets they're financing. MSK has told us that a well-maintained road lasts for 20 years. The Vermont Bond Bank pools the issuers in groups. Their bonds are marketed to investors in December and June. We are trying to be part of the June pool. Last year the municipal bond rate was 3.58 percent, and interest rates have gone up since then. Because we're doing this in a pool through the Vermont Bond Bank, the bond issue should obtain a good rating from Moody's. The rate of interest would be a fixed rate, determined at the time they sell the bonds.

Charles Kozlowsky said that for as long as he's been living in the Village, there has never been a bond issued before. He said he thought that in the past the State provided some money for road repairs, and bonds weren't necessary. What has happened to the State? Will we never get any more road funding from the State?

JW said that we did get a grant from the State, for repairing Bank Street. RR said the Village did get two State grants for sidewalk repairs, which he recalled CK opposing; the Village also just got grant for Bank Street, after having its applications for such grants rejected repeatedly by the State. He doesn't think we're likely to get any more grants soon. The reason we have to make these substantial outlays in the first place is: The Village went for years and years without properly maintaining our roads. Also, we didn't charge our property owners at the same tax rate that the Town of Bennington did. If we had been paying the same rate as the Town for all these years, we'd have more money for road repairs and we likely wouldn't have to borrow.

CK said that in those prior years, the residents of the Village were told that we were taking better care of our roads than the Town of Bennington. It's disturbing to be told now that we didn't take adequate care of the roads in the past or pay high enough taxes to cover the cost. And what has happened to the State?

RR said that the federal government does not currently offer grant programs covering our Village roads. The state currently offers grants only for Class 2 roads,

which means Monument Avenue, Bank Street and Elm Street. We may have been able to take advantage of different federal and state programs in the past.

AS said that RR's report, posted on the Village website, offers an excellent analysis of all these factors and the tax implications of different financing options. Everyone should read it. The tax implications are significant, and no one should be surprised to learn this at the last minute. The information is already available. We will also be holding a meeting for people to come to and learn about the issues.

Marta Kozlowsky said she remembered in the past that there were questions at the annual meetings about whether to raise the tax rates or not. Does anyone recall how much it cost to fix the sidewalks?

RR said he thought it was about \$65,000. MK said she thought tax money was spent on something other than sidewalks. JW said State grant money is given out for drainage systems, sidewalks, and Class 2 highways; our sidewalk money didn't reduce other funding. EW said he was glad we have well-repaired sidewalks, but now it's time to focus on roads. AS said we will need to have a meeting devoted to road-repair financing, and people should look at the analysis that's already on the website.

There was further discussion of the "Australian ballot" and whether it should be mailed out via USPS, or whether the Village could mail out postcards with a link to the voting materials. Renny Ponvert asked whether that would be fair to people who aren't computer-literate. AS said the Village should consider having an email directory so that residents can be contacted that way. This would be especially important if there are more emergencies, like the recent wind storm.

JW asked RR to outline the two bonding/funding sources. RR said the VT bond Bank provides money for Class 2 and Class 3 road work. Fairview is a Class 3 road. That's our only source of borrowing. The Bank Street work can be partially funded by the State grant that we finally got (after many unsuccessful tries), but cost of those repairs is \$500,000, and the grant is only \$200,000. We could go to the Vermont State Infrastructure Bank for the Bank Street work, but their website looks very out of date and they haven't responded to RR's recent inquiry.

- g. AS asked KW to summarize her work on lining up the independent audit necessary for borrowing. KW said that an independent audit is a requirement of the Vermont Bond Bank. She contacted nine different audit firms in Vermont, New York and Massachusetts, and only two of them responded. One of the two said they didn't want the job, but invited KW to follow up if we were desperate and couldn't find any other auditor. KW got a good response from Sullivan Powers in Montpelier. They do practically every town in Vermont that needs an audit, so they're very knowledgeable but very busy. They said that if we wanted them to audit the

Village's books for 2024 that would put them under a lot of time pressure, but the Vermont Bond Bank said it would be fine if the Village provided an audit of its books for 2023. The audit will cost about \$16,000. KW said Sullivan Powers was helpful and experienced. We need to vote on whether to have them do the independent audit, and since they're so busy, we don't have a lot of time to wait.

Kate Musso asked whether there were other uses for an independent audit once it's done. KW said it's something to keep on the books in case anybody else needs an independent audit in the future. RR said the audit is a one-time cost. The Vermont Bond Bank doesn't need a new audit every year for the life of the bond. We will need to have all of the paper work done in time for our application.

EW said he read Sullivan Powers's proposal and thought they had done a good job. He thought the trustees had to vote on this in the January meeting. RR said he can have all the papers ready in time.

Renny Ponvert asked if it really costs \$55,000 to borrow \$500,000. RR said RP was conflating different things. Some of the costs we've incurred already are not for the borrowing; rather, they are outlays for road work that was already done on Fairview (which the bond will cover retroactively), and there has already been some preliminary work done by MSK on Bank Street. He said that everybody should review the analysis that's posted on the website, because we do need to know if our Village can really take all this on.

CK asked why the Village needed to have MSK working on preliminaries. In the past, V-Trans did this kind of work. Lower Monument Ave. was done with assistance from the State, not from MSK. We didn't use a private vendor in the past.

JW said he wished he could ask where the money came from for Lower Monument.

MK asked why the records from that time weren't available. AS said the records exist but they need to be reviewed because people don't know these things off the tops of their heads. The records aren't easy to work with. RR said that for records prior to November 2019, the Village had to fight to preserve access. They're at a storage facility, and they're very poorly organized. Finding specific details in the records would be hard.

AS said that this matter (records access) would be addressed at the planning commission on Monday. They had to go through a process to get necessary details for dealing with the solar issue. They had to work with the records and know what it involves.

6. For the solar discussion, AS said that our counsel, Merrill Bent, had advised the trustees to follow a protocol. The purpose of these meetings is for the trustees to make decisions

on Village business. Therefore, the recommended protocol calls for the trustees to discuss the matter among themselves first, in public view, and once the trustees are done with their discussion, the citizens can ask their questions.

There are two things for the trustees to discuss. First, we've made an effort to find a way forward that would give the Village a better ability to interact with the Public Utility Commission and others. The Bennington County Regional Commission has told us that there's a policy in place that allows them to certify that when a municipality goes forward, they can be entitled to something called "substantial deference." Charles Kozlowsky has already filed an individual objection with the PUC, but by law, when the PUC gets such an objection, they have something called "due consideration," which means they don't have to respond. But once a Village like ours has prepared its own energy plan, we would be considered to have received "substantial deference," which means the PUC has to respond to our comments if they choose not to honor our proposal. Their response would have to explain why they don't think our proposal meets the standard of the public good. Currently, the Village's energy plan is very thin, and it doesn't address the laws that exist. To improve our position, we would have to prepare an enhanced energy plan. Once we have done that, we would have good standing to go to the PUC with an objection that the PUC must consider and respond to. This is a pathway the Village can take, but AS said she didn't know about it before. Most of the towns in Vermont are unaware of it. The respective law was enacted in 2017, but the BCRC is now deeply into it.

Further, AS said the trustees should discuss the memo they received from the attorney, saying that 46 Bank Street has met every requirement of the State. If we challenge it, we would spend a lot of money and it wouldn't make any difference. We need to decide to go forward and learn how to use this other opportunity, so that we can get certification is having "substantial deference."

SW said that sounded like a good thing for the future, but it doesn't apply to the current situation. The solar installation is in a very egregious location. Are you saying we can't do anything about it?

AS said that on the last page of the attorney's letter, she said that if we challenged it, it would cost tens of thousands of dollars, and not only would nothing change but we'd set a precedent for the future of: "You guys don't count." The way it is now, we don't even have the power to demand screening of the installation. James Gallen was very careful as to what he said in the last meeting. He wasn't saying he would fulfill the Village's requirements. The Village doesn't have the authority to set requirements.

SA said that the 46 Bank Street horse had left the barn. He wasn't sure what there was to discuss about that at this point. The important thing now is to figure out what we're doing for the future.



SW said she had done some more research on alternative structures, and she didn't think a solar installation had to be so high. She showed an image of a solar pergola that wasn't an off-the-rack model from Home Depot. It's not any more expensive than the typical installations, which look industrial. Couldn't we have a neighborly discussion with James and Erica Gallen? Would they consider adjusting their design so that it blends in with the rest of the neighborhood?

EW said the board has the responsibility to deal with the law and the situation that it's in now. Had we already taken the steps that the BCRC has now told us about (which we didn't know about until now), it wouldn't change the outcome at 46 Bank Street, but it would better prepare us for dealing with things like this in the future. "Right now, I don't think this board has any action to take."

JW said he thought the same thing.

AS pointed out that it was the Gallens and GMS that stopped work on the Bank Street installation. No official from the Village asked them to stop. They did it of their own volition.

Also, it was GMS's lawyer who called our lawyer and said they'd like to come in and present their mitigation plan. Any individual citizen can go to the Gallens and say, "I have some ideas. Can we discuss them?" The board has nothing further to do on this issue. I want us to put all our energy into getting into position to address this issue in the future. This is complex and time-consuming. We have to redo the Village plan. Redo all the bylaws and ordinances, because right now they're in violation of the current law.

AS said that she asked BCRC how complex this would be. They said they were once asked to come in and write a municipality's energy plan from scratch, and it took 200 hours. Luckily, it's already been done by other villages, so now there's something we can follow.

EW said he was going to pursue neighborly outreach. He still had some questions about screening. The lawyer's memo says individual residents can approach the PUC, too.

Charles Kozlowsky asked whether the trustees had reached out to our legislators.

AS said she had had some conversations with them. But in Vermont, the legislators work only from January through May, and they're always being asked to do things. Many of them have other jobs. They sit on two or three committees and they just focus on what comes through their committee. When she talked to them, they said, If the Village or its citizens have something that they want done, they have to tell us, and what they ask for has to be specific.

AS said there were some things that she'd like to ask for, like making changes to the ten-day comment period provision, since it doesn't work properly the way it's written now. She also wants to ask them about the New Home Act. We have some very serious things ahead of us with respect to that law. When they voted on it, they didn't know when it was going to be implemented. They don't have the staff to know the topic.

EW said he had had similar conversations. The legislators said that the Village can't expect to lobby successfully for something that isn't clearly identified. So, how does the State energy law work with historic preservation? We can't really give them a proposal for that as a board of trustees. But we can give it to them as citizens.

AS said that we need to put something into our new energy plan that calls attention to the fact that we are a historic district.

KW said that a couple years ago BCRC said they had money available to help with bylaw rewrites.

AS said that was true but the next opportunity is six months from now.

Marta Kozlowsky said she would like to know whether the trustees had been aware of the ten-day comment period that doesn't require the PUC to notify affected parties.

EW said the trustees weren't made aware of it.

MK said she wrote to the PUC already, and they told her the comment period had already gone by. She said then she wanted to know how she was supposed to make a comment. She wanted to know which legislators to get in touch with. There's a committee with eight members that approved the ten-day rule. It's true that we don't have a tangible "ask," but it's wrong that PUC doesn't have to look at the Quechee Test as it applies to our situation.

AS recalled that MK had said those things before, and we've been told there's nothing else to be done about it.

Galen Jones said that Merrill Bent had told us that even if we establish "substantial deference" it would make no difference in the case of the installation on Bank Street.

AS said she thought that was because of the way our bylaws were written.

GJ asked if Merrill Bent believed that the current installation would still be allowed, even if we established "substantial deference," then what do we gain by going to the trouble of establishing "substantial deference?"

EW said Merrill understood that the Bank Street installation had been placed in a way that would give it maximum efficiency. We don't have any authority to write a bylaw to prevent any installation from being built on a Village property. If we get the "substantial deference," then it might lead to an outcome where, if someone applies for a solar approval, the Village could say, "You have to put slate-like tiles on your roof." It can't be an outcome where the Village says, "You can't put any a solar installation on your property at all."

GJ said he didn't think anybody was asking for that. Our current bylaws already allow for solar energy. We would just want a framework that dealt with the location, is it on the ground or the roof, how big can it be, and how will it be screened off from public view? He doesn't know what those parameters would be at this point. But might the Gallens be able to put in a smaller installation? It wouldn't be so bad if it were on a roof. The current bylaws say you can't put rooftop installations on historic buildings.

GJ also noted that the legislature seemed to think these 15 kw installations are small and inoffensive, and people should be allowed to have them. But in our Village, this is not small, and it can't be that we have no control over this. It's not that I think we could fight this and win, but the situation now seems to be saying that anybody can go in and build one of these things. That's transformative for this Village. "I can't believe it's what our legislators intended.... The Village needs to stand up and say, This doesn't make sense."

AS said the Gallens had a document from GMS that says they're going to be putting in some screening.

Greg Brace of 41 Bank Street said he had bought his house knowing there were certain historic preservation rules he had to follow, like not putting air conditioners in your front windows or painting your house a disapproved color. "There's clearly a hole in the regulations." This is more fundamental than just an individual saying, "I have an 'ask.'" Screening is a real issue. There should be input on the design. There should be a maximum allowable height. He said he wasn't trying to take a stand for or against the project, but wanted the board to be able to say there were enforceable rules.

AS said that's what the planning commission has to do, work on the requirements.

MK said that the schematic diagram we received did not show proper screening.

Mary Walsh said she thought there should have been some entity, maybe the Vermont League of Towns and Cities, that notified the municipalities that were going to be affected by the new energy law while it was still just a bill. Then there would have been time to send a lobbyist (the VLTC?) to urge the lawmakers to revise their bill, so that it wouldn't trample the Village's rights the way it has. Now we have a situation where we're being told we can spend thousands of dollars and it won't make the slightest bit

of difference, because the law has been enacted. The same thing happened with the Home Act. Shouldn't someone be alerting us when there's a bill that's going to affect us, that we might want to have input on while there's still a chance to make a difference?

RR said the League of Towns and Cities gives out such notifications, but only when the legislature is in session.

EW said the issue of notifying neighbors of a planned installation was something he intended to address, as an individual. He also planned to stay close to the screening process.

Kate Musso said the statute seemed predisposed to optimization.

GJ said he had been researching the issue and it just appeared that Vermont had enacted a bad law. The secret ten-day notification period seems to show that they designed this so as not to allow public comment. The ten-day comment period seems to be in there just to give other utilities a chance to say they won't accept net metering. It's not for residents of a Village to comment. It's designed to make it possible for any project below 15 kilowatts to be built. We owe it to ourselves to find out if our outcome is really what the legislators wanted.

RR said he thought the legislature did things the way it did because they wanted to make it easy to have solar power. They wanted to give local communities no control at all over small energy installations.

GJ said that these are the same lawmakers who see we should try to make Vermont beautiful because we want to promote tourism.

Greg Brace said he wasn't against the installation, but there's no reason for the legislators to say there's to be no local input whatsoever. If we don't allow air conditioners in front of houses, then why wouldn't we also want more control over the screening of energy projects?

Renny Ponvert said he didn't think the trustees should be comfortable stepping away from situations where there are economic implications for the neighbors.

AS said the people who are interested in screening and related issues should really attend Mondays Planning Commission meeting, because they would be discussing possible amendments of the bylaws. There are 87 structures in this Village, and look how many people have come to today's meeting to object—maybe four. This shouldn't be left solely to the Planning Commission. Everybody needs to be committed. "It's a Village and it's got to start acting like a Village."

EW said the issue of screening is under the Planning Commission's jurisdiction, and he planned to engage with them.

JW moved to adjourn the meeting at that point. EW seconded the motion, and the meeting was unanimously adjourned.