

Village of Old Bennington
Special Trustees' Meeting Minutes
Jan. 5, 2025

The Trustees held a special meeting at the Barn and on Zoom to gather public opinion on a proposed interim bylaw. Here's a link to the Zoom recording of the meeting:

https://zoom.us/rec/share/nTtZSJxdlrEOJYHoek3eUU8I_HSHCbYTeyflPmDGAIAnTn7NPHiiVDHnXqF0mED8.wNfZ52_IWCXiTgL1?startTime=1767654036000

Passcode: q4Jnq%T6

Officials present: Presiding Officer Ed Woods, Trustees Than Marcoux, Jim Thatch, Tom Woodward, and Susan Wright; Treasurer Ron Rabidou; Auditor Kathy Wagenknecht (on Zoom); Clerk Mary Walsh; and Zoom Operator McKinley Keaffaber.

Citizens present who offered questions and opinions to the Trustees are named below, in the minutes.

Call to order: EW called the meeting to order at 6:00 p.m. and MK alerted participants that the meeting was being recorded. EW said the purpose of the meeting was to gather public opinion on an interim bylaw that the Trustees were considering. He then read aloud the hearing notice for the meeting. A copy of the hearing notice is available [here](#). A copy of the proposed bylaw itself is available [here](#).

The matter under discussion was unusually thorny, requiring citizens to understand a welter of Village, Town, and State laws and practices that were sometimes in conflict. The next two [bracketed] paragraphs are the Clerk's attempt at providing some background of the interim bylaw -- why the Trustees were considering it and

what it would do. The Clerk hopes the background will make the public discussion easier to understand:

[The interim bylaw would allow the commercial use of certain qualifying historic structures in the Village. At the moment, all property in the Village is zoned residential, with non-residential properties operating under conditional-use permits. (The Walloomsac Inn had a conditional-use permit years ago, but it expired after the building's residents stopped operating it as an inn. Therefore, according to the Village's zoning framework, the Walloomsac Inn is now residential.) Hendricks Churchill, the firm planning to restore the Walloomsac Inn, wants to return it to its original use, as an inn, but must first change its status to commercial under the Village's zoning system. (It's worth noting that when Hendricks Churchill discussed their plans with the Town of Bennington, officials told them that the Town had been taxing the Walloomsac Inn at its commercial rate all along. Therefore, the Town officials said, there was no need to change the property's status before the restoration could begin. In other words, the Walloomsac Inn stands in both the Town and the Village, but the Town and the Village have conflicting views of its status. The Town deems it commercial. The Village deems it residential.)

[In any case, changing the Inn's zoning status now is virtually impossible, because the Village's Plan of Economic Development expired last August. The State of Vermont requires all municipalities to have State-approved Plans of Economic Development in force, and municipalities whose Plans have lapsed aren't supposed to make zoning changes until they have new ones. The Village has been drafting a new Plan, in consultation with the Bennington County Regional Commission, but it does not expect the new Plan to be finished and approved by the State until this summer. That means that the Village is now going through a months-long interval when it's not supposed to make any zoning changes – and by bizarre coincidence, this is precisely the time when Hendricks Churchill has announced very well-received plans to restore the Walloomsac Inn, as long as it can get the required zoning changes. The Village is in a real bind. State law does offer a possible way forward, however: Statutes like 24 VSA §4415 allow municipalities with special circumstances to enact interim bylaws, to enable transitional zoning changes until the next Plan of Economic Development is in force. The Village's lawyer has recommended the Village take advantage of this path forward, which appears to be the only one.]

The minutes continue:

EW reminded listeners of the developers' public presentation at the Bennington Theater last November. (It remains available for viewing [here](#), starting about 30 minutes into the video.) He asked if any members of the public still had questions for the developers. No one did. He then asked if the public had any questions or comments for the Trustees about the interim bylaw.

Thomas Scheetz said he wanted to make three points: 1) that the bylaw as written might be misused in the future by a resident who deliberately let their house fall into disrepair, then came to the Trustees seeking a permit to convert it to commercial use; 2) that he thought Hendricks Churchill should be able to lawfully restore both of the Village properties that it owns, the Walloomsac Inn and 3 Seminary Lane; and 3) that he didn't understand why the Trustees, and not the Zoning Board, were working on an interim bylaw that would affect zoning.

In response to TS's second point, EW said that the hearing was supposed to be about the interim bylaw, and not about any particular properties. In response to TS's question, he said the Trustees had sought legal advice on correct procedures, and had been told that in order for the Village to adopt an interim bylaw, the process had to start with the Trustees.

Marc Baetens, of 21 West Road, said he understood the role of the Board of Trustees, but he did not understand why, in this case, an application for a conditional-use permit was going to be taken up by the Board of Trustees and not the Planning Commission.

EW said that the Village's Plan of Economic Development had expired, and under those circumstances State law required interim bylaws to be taken up in the present forum. He said that the direction came from the Trustees; the decision to adopt the interim bylaw (or not) would come from the Trustees; and the administration of any adopted bylaws would fall to the Trustees. He added that any application for a conditional-use permit submitted under the interim bylaw would also be decided by the Trustees.

JT added that the process had been discussed at the most recent Zoning Board meeting, on Dec. 2, and the public could get more information by watching the meeting video, which is on the Village website.

RR said he wanted the redevelopment of the Walloomsac Inn to succeed, and he believed the Village should support the developers while also protecting the quality of life and historic character of the Village. He thought the best way to do that was to first complete the Village's new Plan of Economic Development, and then have the Planning Commission draft a permanent bylaw to govern projects like this one. He said the interim bylaw was being considered because the developers had warned that their financing for the project would collapse if work could not begin soon. He said he understood that pressure, but he was concerned that the interim bylaw approach stretched the law and could pose risks for both the Village and the developers. He said the State Legislature had adopted its interim bylaw statute to give towns time to pause development while updating their plans and bylaws, not to take shortcuts in order to permit specific projects. Using it this way might open the door to future legal challenges and developments that the Village had never intended. He said he understood that the Board had sought legal counsel, but that didn't necessarily mean the interim bylaw was the best approach. He thought the Board should have formally sought a legal opinion.

Assuming that the Board continued on its current course, RR said he had a couple of specific concerns about the draft interim bylaw. One was that it contained many findings that weren't supported by research, and that seemed to have been written simply to show that the Walloomsac Inn project met the necessary requirements. Another was that certain terms in the proposed interim bylaw were vague and gave broad discretion to the Trustees. For example, the renovated Inn was likely to have greater traffic and parking needs than the former Inn did, and there ought to be clear standards for the Trustees to follow. Also, he said it was unclear whether any other Village properties would actually qualify for consideration under the draft interim bylaw. If it turned out to have been written solely for the Walloomsac Inn, it might be deemed "spot zoning," which is not allowed.

Brian Scheetz said he wanted to support the adoption of the interim bylaw but he also wanted the drafters to add a provision that any applications from owners who had created their own dilapidation be rejected.

EW said he understood BS's concern and thought they could ask legal counsel if such a provision could become part of the interim bylaw. BS added that if there were concerns about the interim bylaw setting off a wave of applications for commercial development, adding such a provision would help prevent them.

JT said he understood what BS was concerned about, but wondered if the language couldn't be added instead to the Plan of Economic Development that's now in the

works. BS said that might be possible, but it would leave about a seven-month gap when there wasn't any protection.

SW said she wanted to clarify that an interim bylaw would protect the Village, because it would require Trustee administration and oversight until it expires. EW said the Board's ongoing involvement would add another layer of protection to the Village.

Renny Ponvert said he wanted to confirm his understanding that when the Board of Trustees adopted the interim bylaw, they would, in effect, become the Planning Commission for the duration of the bylaw. He pointed out that when the new Plan of Economic Development was finally drafted, the Trustees would be the body that had to adopt it. He said the Trustees were taking on a lot of responsibility and power, and they might choose to not accept the Village's Plan for as long as 36 months. They might also fall into an overly close working relationship with the developer, without including the expertise and experience of the Planning Commission. He wanted to know if the Trustees had been made aware of this possibility.

EW said that under the interim bylaw, the Trustees would administer only those conditional-use permits that were submitted by way of the interim bylaw.

SW said that the Board always had the power to adopt or not adopt each new Plan of Economic Development, and she didn't think the Board had ever wielded this power in a way that was not right for the whole Village.

Suzanne Buchsbaum wanted to know whether, while the interim bylaw was in place, the Trustees would also be responsible for all permitting questions.

EW said that the Trustees would be responsible only for the administration of this particular interim bylaw. That meant that if somebody wanted to open a lemonade stand in the Village, they would work initially with the Planning Commission, as usual. Only if there turned out to be no path forward without the interim bylaw would they then bring their application to the Trustees.

TW said there was specific language in the "Applicabilities" section of the draft interim bylaw that addressed this point clearly. That section lists five criteria for a property to qualify for consideration under the interim bylaw. TW read them aloud. If the applicant's property meets all five criteria, the Board of Trustees can consider it for a conditional-use permit. The interim bylaw then goes on to say that

while it is in effect, the Board of Trustees shall apply the provisions of the existing State and local laws that govern conditional uses.

BS said that since they were discussing the roles of the Board of Trustees and the Planning Commission, he wanted to comment, as Chair of the Planning Commission. He said that under the interim bylaw, the Board of Trustees would make the yes-or-no decisions on whether to give conditional-use permits to applicants. But after the Board had made that decision, everything else would continue to fall to the Planning Commission, as it does now.

Rafe Churchill (of Hendricks Churchill) said that the interim bylaw was responding to a need for regulation. He noted that there wasn't any paperwork for the buildings in the Village. He asked listeners to imagine what it would be like to move to a place, to buy an empty property that had long been known as a commercial building, to announce plans to restore it, to receive the well-wishes of everybody in the community, to review the building's tax records with Town officials and be told it had always operated as a hotel and paid hotel taxes every year for more than 100 years, to be advised that there would be no need for any status change – and then to speak to Village officials and be told not that only was a status change needed but the Village was in a period when it couldn't make one. That was what had happened to him.

EW interjected that the Town of Bennington had a commercial tax rate, but the Village of Old Bennington did not. The share of the Walloomsac Inn's taxes due to the Town were set at the Town's commercial rate, but the share of its taxes due to the Village were set at the Village's residential rate.

RC said that was correct, and wanted listeners to understand that the lack of consistent, accurate paperwork for buildings in the Village was causing big problems and delays. The proposed interim bylaw had been written by lawyers, he said, not by him or his business partners, and it was intended simply to give the Trustees the legal authority to accept or reject applications for conditional-use permits. Once the Trustees had approved an application, the matter would go to the Planning Commission, which would fulfill all of its usual duties.

EW said he agreed with RC's interpretation of the interim bylaw and paused the discussion to confirm that all the other Trustees did too.

RC then said that because of the way zoning and permitting were being handled by the Village, anyone else with a conditional-use permit for their property could lose

it by suspending operations for six months, because the property would revert automatically back to residential status, and the owner would be in the same predicament that RC was in now.

EW said that everyone who wanted to ask a question so far had had a chance to ask it, so now the meeting would enter “round two,” and people could ask second questions if they had them.

Marc Baetens said he had read the draft interim bylaw and he couldn't understand what the purpose of it was. Under the current bylaws, he said, if a developer submitted an application, the Zoning Board would consider it. He didn't see the reason for the Board of Trustees to take over that responsibility under the interim bylaw.

Brian Scheetz said that while the Village bylaws say that the Zoning Board could be involved with variances, their power to grant them under State law was very limited. He said that in the absence of the interim bylaw, no applicant could expect to get a decision by the Zoning Board.

MB continued to explain that he didn't understand why the deciding power was going from the Zoning Board to the Board of Trustees, and he wanted to know if something was going on behind the scenes that would cause the Board of Trustees to decide the issue differently than the Zoning Board.

EW said that there was nothing going on behind the scenes. He said the Board was considering the interim bylaw simply because it had consulted its lawyer and received legal guidelines on how best to protect the people of the Village. He said the Trustees believed that the interim bylaw was necessary because that was what the lawyer had told them.

BS said it appeared that people were conflating two things: eligibility to apply for a conditional use permit and the review criteria for deciding whether to grant a conditional use permit. He said that they were two separate things, and the draft interim bylaw would change only one of them. It would add a new class of property owners who would be eligible to apply for a conditional-use permit. But it would not change the review criteria for a project from what was stated in the current bylaws (which boil down to whether a proposed development project would be good for the Village). He said he didn't think MB's questions were without merit, given that the language in the draft interim bylaw was rather confusing, and he was trying to clarify it.

Kay Goble, also of 21 West Road, asked whether the under the current bylaws, anybody could apply for a conditional-use permit.

BS said that the current bylaws did not allow anyone to apply. The current bylaws require owners to be in a certain category in order to apply, and the only property now in that category is the Old First Church. He said the draft interim bylaw would add a new class of property owners that would be eligible to apply.

RR asked if he was correct in thinking that under the interim bylaw, the Board of Trustees would make a decision only on whether an application met the requirements for a conditional-use permit, and after that the Planning Commission would put the plans through the usual evaluation process.

BS said that was correct. He added that the design review process for a commercial project could be very extensive, but design review wasn't on the agenda for the current special meeting.

RP said that until a moment ago he had been thinking that the Planning Commission wouldn't have any input under the interim bylaw, which would be in force until a new Plan of Economic Development had been approved. But now it appeared that the Board of Trustees would determine whether or not an application could proceed under the interim bylaw, and after that the plans would go to the Planning Commission for the usual design-review process.

BS confirmed that that was correct.

SW said that to put it very simply, under the interim bylaw the Board of Trustees would decide whether a proposed project met the requirements for a conditional-use permit, and after that, the Planning Commission and the Zoning Board would take all the steps they normally would.

Galen Jones said it seemed to him that the interim bylaw would empower the Board of Trustees to make a critical decision about whether a project could go forward, without first getting input from the Planning Commission.

EW said that on the other hand, the Trustees would have the guardrails of the Planning Commission around them when they made their decisions, and he felt sure the Planning Commission had the required expertise.

GJ said it would still be a good idea to have a lawyer consider this aspect before the Trustees voted on the interim bylaw. EW said all the lawyering had been done already.

Ann Kremers wanted to know whether, at the end of the Planning Commission's work, the proposal would then go back to the Board of Trustees.

EW said the Board of Trustees would be responsible only for accepting applications under the interim bylaw.

JT said there was no reason to make this so complicated. The Village didn't have a Plan of Economic Development in place, as required by the State, and the interim bylaw offered a way to move forward without one, for the good of the Village. He said he would rather gamble on possible future lawsuits than on the likelihood of the Inn's roof collapsing under the weight of the snow this winter.

SW said the Village had been watching the Walloomsac Inn deteriorate for at least the 30 years since she had moved here. Now, the Village had an excellent opportunity to stop its decline, and the Trustees had sought legal counsel and devised a path forward. If the Trustees failed to approve the interim bylaw, she said, the excellent opportunity would get up and walk out the door, there wouldn't be another, and the residents of the Village would have to go back to watching the Walloomsac Inn deteriorate until it either fell down or burned down.

EW said he had been hearing valuable input and wanted to be sure everyone who wanted to contribute had had the chance.

MW said that since moving to Old Bennington she had seen a number of cases where the Village had to do illogical things in order to comply with State requirements that had no apparent connection to the needs or capabilities of a small, single-purpose municipality, governed by volunteers, and seated within another jurisdiction (the Town). She said she had no complaint about the interim bylaw, but was concerned that without sorting out the conflicts and inconsistencies in the laws of the different jurisdictions, crises like the current one would keep on cropping up.

EW said he could understand why the interim bylaw looked "clunky," and he wanted everybody to keep in mind that the Village was in its current predicament because it had allowed its Plan of Economic Development to expire without preparing a new one.

Ilze Melngailis said that after five years in Old Bennington, living in a house across from the Walloomsac Inn, she was aware that the Village had many other gems that were being allowed to languish, to the detriment of all residents. She said she wanted to thank the officials and other participants for working constructively to make sure the Walloomsac Inn would be restored.

TW said that the problem now facing the Walloomsac Inn arose from the Village's lack of a Plan of Economic Development. Now, as the drafting of the next Plan of Economic Development was moving forward, he said it was crucial for everybody in the Village to participate in the process, and really create a vision for what Old Bennington should look like. Old Bennington should not become ossified. He said he appreciated TS's ongoing work cataloging each building in Old Bennington and wanted to point out that Old Bennington today has fewer buildings than it ever did, and certainly fewer commercial buildings. He thought Old Bennington had a responsibility to look toward the future and spot more opportunities.

TM said he had two considerations: Can we do this, and should we do this. And based on all the feedback he had heard, the answer to both was Yes.

JT said that all members of the Board of Trustees took historical preservation very seriously. It had been a mistake to let the Plan of Economic Development lapse, and he didn't want to compound the mistake by not passing the interim bylaw. He said there were four reasons for adopting it: 1) the Walloomsac Inn's shaky condition and the likelihood that it would deteriorate further if the owners couldn't protect it against the winter weather; 2) Hendricks Churchill was a firm with a known track record, and residents could be confident about its ability to carry out this much-needed renovation; 3) The Village Green in front of the Walloomsac Inn was one of the most important historic sites in all Vermont, where virtually all the events leading up to Vermont's establishment as a state had happened; and 4) public opinion was strongly in favor of the restoration of the Walloomsac Inn. This could be seen at the November board meeting, where Hendricks Churchill made their presentation. 175 people stepped up to the microphone and all of them were in favor of what the developers planned to do. Some of them were even in tears. They weren't just from Old Bennington but the surrounding area too.

EW said he wanted to explain why it was important to move forward on this project now, rather than later: People in business can't put money into something and then just wait indefinitely. They will pull back and say, We need to put our money somewhere productive, where we'll get a return on our investment. That's

why EW sees a need to move forward now and not wait for months until a Plan of Economic Development is in place.

EW asked if there was a motion to go into executive session, but no one so moved. JT moved that the Trustees adopt the interim bylaw. SW seconded the motion. The motion passed unanimously.

TW moved for the meeting to adjourn. JT seconded the motion, and at 7:04 the meeting was unanimously adjourned.