Village of Old Bennington
Trustees' Meeting Minutes
Oct. 6, 2026

[Clerk's Note: These minutes were approved by the Board of Trustees at their Nov. 3, 2026, regular meeting, with one change: RP asked that the records of a recent email exchange with the Village's lawyer, Merrill Bent, be included as an addendum to the minutes. It follows below, titled "Third Addendum."

[In the exchange, RP asked MB to discuss the legal implications of possible inconsistencies between the forthcoming Village Plan and the BCRC's current Regional Plan. The Clerk urges concerned residents to read MB's response. Yes, it's long, but it sheds useful light on issues that have come up again and again in the last few years. In brief, MB points out that in Vermont, neither the Regional Plan nor the Village Plan is a legally binding document. Rather, what <u>is</u> legally binding is a municipality's zoning ordinance, also known as the "municipal bylaws."

[MB urges the Village to update its municipal bylaws promptly, making sure they are compliant with relevant State law. She sees risk in applying the current, noncompliant bylaws to a specific property, and says: "Commit to a timeline for amending the bylaws, rather than deferring that update indefinitely."

[*"Once more unto the breach, dear friends, once more."*]

The meeting was held at The Barn and on Zoom. A video recording of the meeting is available at:

https://zoom.us/rec/share/px8lJbiKvkEANxagAmQDmAxNfXgEUsJvxE-cXhpPxueslaYKg2HiE2O0YA032_3z.bTH95KJ91PnzorzJ

Passcode: Bzh@G50H

Officials present: Presiding Officer Jim Thatch; Trustees Renny Ponvert, Kristin Roessner, Ed Woods, and Susan Wright; Treasurer Ron Rabidou; and Clerk Mary Walsh.

Officials absent: Auditor Kathy Wagenknecht.

Village residents participating in person: Marc Baetens, Suzanne Buchsbaum, Stephanie Cooke, Galen Jones, Colleen Kelley, Tom Melham, and Kate Musso.

A number of village residents attended on Zoom but didn't speak.

Guest presenter: Samantha Page, Bennington County Regional Commission (BCRC).

1. Call to order: The meeting was called to order at 7:02 by JT.

2. Changes or updates to the agenda: RR said that the Village's municipal insurance pool, PACIF (the Property and Casualty Insurance Fund) would soon have an annual directors' meeting where member municipalities would be expected to vote. RR could vote the Village's equity, but he would need the Trustees' authorization to do so. It was agreed that the authorization vote would take place during the Treasurer's report.

3. Approval of the minutes from the Sept. 1 meeting: MB asked for a clarification of the terminology used in September's discussion of his recent litigation. Some participants had said, incorrectly, that MB had filed a "lawsuit" against the Trustees. In fact, he filed an "appeal." When an aggrieved party in Vermont asks a court to review a quasi-judicial decision made by a body of government, the correct term is "appeal." The Board of Trustees was acting in a quasi-judicial capacity when it granted a Conditional Use Permit to the owners of 3 Seminary Lane last July. MW said she couldn't correct the September minutes because the minutes didn't contain the word "lawsuit." The errors were made orally, in the Zoom recording. JT said attention was thereby called to those errors.

EW moved to accept the Sept. 1 minutes. KR seconded the motion, and the minutes were unanimously accepted.

4. Citizen comments unrelated to the posted agenda: KM said she would like the Trustees to invite the relevant State officials to address the Board, either in person or by Zoom, so the Village could hear out about other grants that it might be eligible for. EW said that should be discussed in the Village Plan status report, because the Plan offered opportunities for grants, too.

   MB said he had a statement he would read aloud; he also asked that it be posted with the minutes. [Clerk's note: The full text of MB's comment is included at the end of these minutes, titled "First Addendum."] To briefly summarize here, MB said he didn't want to create conflict, but rather to make sure that the Village government complied with all relevant laws and required procedures. He said that in the case of the Conditional Use Permit for 3 Seminary Lane, the Board of Trustees didn't follow the correct procedure, and he could offer other examples of procedural errors. He said the citizens needed to know that their opinions were being heard, and they needed to know why the Board had come to its decisions. He said that while his recent appeal had been dismissed, he would continue to take legal action if he saw more procedural lapses.

   CK said it would be helpful to write words like, "draft, pending approval on such-and-such date," on posted minutes that had not yet been approved by the Board. RR said that was already being done. MB said there were inconsistencies. MW said she was hampered by the limitations of the Village's website builder, and she would be interested in hearing about a better one. KM said she would share information about using court transcription systems.

5. Village Plan, status update and questions answered by Samantha Page of the BCRC:

   JT said that the Planning Commission had scheduled its public hearing on the draft Village Plan for Monday, Oct. 26. But they wanted to give citizens another opportunity now to ask questions about the draft Plan.

MB said that at the last meeting he had heard that the draft Plan was still in the hands of the Zoning Board, so he didn't understand why the Trustees were now talking about it. JT said the residents still needed to be informed about the draft Plan, and tonight's discussion, at the Trustees' meeting, would help to keep the momentum up. EW said the more opportunities for citizens to comment, the better.

SP said that if residents had comments to make about particular items in the draft Plan, they might prefer to wait and make them at the Planning Commission's hearing on Oct. 26. She said she saw her role in the current meeting as providing answers to some of the general questions that had come up at the previous Trustees' meeting. In particular, people had been asking about State programs and grants that were related to the Village Plan, and about terminology, which she acknowledged was unclear.

JT said he had been at that meeting and it was clear that people were still confused about elements of the Village Plan. He asked participants to ask SP their questions.

KM said she didn't understand the timing pressure. The draft Plan still didn't have all of its required maps yet. The Plan might offer better access to grants and tax credits, but those applications didn't have to be filed until June 2027. She also wondered who, in the Village center, was going to be using the tax credits, since the two nonprofits had no interest in tax credits. She repeated that she would like the Board to invite officials of the State agencies to explain the possibilities.

SP said she wanted everybody to know that there were two levels of plans. The "Village center" designation was in the Regional Plan, not the Village Plan. The Regional Commission has been in talks with the municipalities about this since early last summer. She said the Walloomsac Inn's restorers might be interested in tax credits, but she hadn't spoken with them about that. She said there were indeed opportunities connected to the Village center designation. The State did have grants that any municipality could apply for, but a municipality with a "center" designation would have a leg up. It would be seen as a more favorable applicant.

SP added that some benefits might go to commercial enterprises, but some of the more popular State grants were for helping to promote pedestrian and bicycle safety. At the September meeting, someone had asked for examples of the benefits that other municipalities in the region had derived from having “center” designation. SP distributed a handout describing some of them.

EW said he would like the timeline for the Village Plan to be revealed. The public needed to know what schedule the Village was on. He also said it would be important to further discuss the benefits of having a Village center designation, and someone ought to be keeping a list of them, because there were probably more than just the examples that SP had mentioned. He said he wasn’t trying to either promote or discourage such a designation for Old Bennington.

JT said his mind wasn’t made up yet either, but the Village center that the BCRC had included in its regional plan was pretty big. Maybe if it were reduced in size that would help more people get on board with it. He said there were also some questions remaining about “tiers” and “steps.”

RP said there was a formal process for completing a draft Village Plan, and Old Bennington was now working through it. The Village’s draft Plan had been posted on the website. Notice had been served to other municipalities in the region. The Village was currently in a 30-day comment period, which included the public hearing on Oct. 26. After the hearing, the Planning Commission would make revisions, then give the revised draft to the Trustees, who would hold their own public hearing. The Trustees might then suggest revisions to the draft, which the Planning Commission might or might not make.

RP added that the Oct. 26 hearing was an important part of the process, and it residents wanted to make specific recommendations, they should make them in writing, offering the wording of their revisions, and the page numbers that the changes would apply to. The draft Plan was long and complex and wouldn’t lend itself to free-wheeling recommendations.

MW asked if the regional plan was now done. SP said it had been adopted by the regional commissioners and was awaiting a public hearing by the State Land Use Review Board (LURB) on November 6.

MW asked if the Village's center designation was now in regional plan. SW said Yes, Old Bennington's Village center designation was now in the regional plan, as it had been mapped starting in March 2025. But if the boundaries of Old Bennington's designated center were going to change, or if the designation were going to be removed entirely, that decision would have to be taken by the Village's Board of Trustees.

JT asked if such a decision by the Trustees had to be made before scheduled the deadline. SP said No, it could be made afterward the next hearing, for example.

MW said SP had mentioned changing the boundaries, and asked if she meant changing the boundaries of the Village center or something else. SP said she meant the boundaries of the Village center. The Trustees would have to pass a resolution saying, essentially, that Old Bennington still wanted such a designation, but it should be made smaller.

SP distributed another handout, showing the parameters of "steps" and "tiers" in two columns. She said Old Bennington didn't currently qualify for the "tier" program, and she had included the "tiers" column in the handout only so that people would be aware of it. She said the "tiers" program was applicable to jurisdictions like the Town of Bennington, which could use the tier system to seek development-related exemptions from Act 250.

In Old Bennington, she said, the question of whether to have a "center" designation was in play, and that's where the "steps" were relevant. SP apologized for the confusing verbiage, noting that she wasn't the source of the jargon.

KM agreed that it had been very confusing. SP said she had tried to clarify this because everybody had to be on the same page in order to have a constructive debate about the Village center designation. She said that MW had a digital copy of the "steps" and "tiers" handout, and people who didn't get paper copies could ask MW to email a digital copy to them. [Clerk's

note: please email me if you didn't get it at the meeting and would like a copy.]

KR asked if there were any municipalities in Bennington County that managed to get State grants even though they didn't have designated Village centers.

SP said she needed to give that some thought, since the only municipality in the county that had no designated center was Glastenbury. [Clerk's note: The BCRC's regional plan, available here, cites Glastenbury as a special case, because it has been disincorporated and put under State control. It has a population of nine. See page 120.]

SP said that in the BCRC's previous regional plan, the country's municipalities without designated centers included Landgrove, Sandgate, Woodford, Old Bennington and Glastenbury.

RP said Manchester Village had received several grants for projects, and he asked if they would have been funded or not if Manchester Village didn't have a designated center. SP said she didn't know, because she wasn't present when the State agencies made those grant decisions and she didn't know what weight might have been given to the center designation. KM said this would be a good topic to discuss with the State officials who could address a Trustees' meeting.

GJ said he wanted to clarify the process as it had unfolded so far: The BCRC had mapped Old Bennington as having a "Village center;" but then, in working with the Planning Commission, the BCRC had been told that the Planning Commission found the designation inappropriate; and then the BCRC had overruled the Planning Commission and continued to map Old Bennington with a designation. He wanted to know why.

SP said it was correct that the Planning Commission had told the BCRC that it wasn't interested in pursuing Village Center designation. But at that point, the BCRC had informed the Planning Commission that the BCRC would have to get directives from both the Planning Commission and the Board of Trustees to withdraw the designation. She said the requirement was in the

procedural rules that the BCRC had to follow in order for the Village Plan to get State approval.

RP said he couldn't recall such an exchange with the Planning Commission, but SP said the BCRC had shared the information with the Planning Commission, in writing, in June, and again in August and September. She said it seemed there was still debate within the municipality about having a designated center, and that had to be resolved locally.

GJ said that in effect, the group was talking about being a municipality, and the reality was that the Village was a half-square-mile historic area that had aggressively resisted commercial development, going all the way back to the earliest bylaws. In addition, the Village was situated next to a Town, which had a real downtown. He said the nature of the Village's development was different from the Town's, and research showed the Village didn't want to become more like the Town, but somehow it seemed that the Trustees couldn't let go of the idea, and he didn't understand why.

EW thanked GJ for saying that. He said this was the downside of having a volunteer, neighbor-led form of governance. He said GJ had a clear vision, but another person coming along with fresher eyes might see things differently. He said this situation was very common in citizen government, and he wanted to encourage people to understand what was going on and not write off one or the other point of view. This debate still had to be carried out.

SC said she lived on Fairview Drive. She said that having a Village center designation was a major decision for the Village and she didn't understand why it was coming down to the Village from the State and the Regional Commission when locally the decision hadn't been made yet.

SP recalled the passage in 2024 of Act 181, which was the basis of a lot of the current mechanisms for municipal planning and governance. She said Act 181 had shifted things away from allowing municipalities to opt in to the "village center" designation, and toward the current practice of having the BCRC put "center" designations onto its regional maps first, then letting municipalities to opt out if they wanted. She said the BCRC had gone through a process where they had been in direct touch with municipalities,

and at that point, concerns about the “village center” designation had not been raised. Now, the possibility existed as an opt-out.

KM asked about the hearing on Oct. 26 and asked if that would be the next step in the ongoing debate. She also asked about the Nov. 6 event. SP said that was when the Land Use Review Board would be reviewing the regional plan. If the LURB approved the regional plan, its map would show a designated “village center” for Old Bennington.

KM said that meant it would be locked in. SP disagreed.

SW asked SP to state the pros and cons of having a “Village center” designation because it seemed she and others were expected to form viewpoints without knowing the pros and cons.

SP said she saw no downside to having the designation. Many municipalities in the County have had designations for ten years. Some communities had two or three designations. Many municipalities in the area saw the designation as a way to commemorate their history.

SW asked if the designation would make Old Bennington more susceptible to commercialization. SP said it would not if the Village kept strong restrictions in place. The designation itself cannot change a community’s local zoning rules. She said the designation offered opportunities for the Village itself, as well as for its local non-profits, and any commercial enterprises. She said many communities saw the designation as a way to make their historic places great.

KM asked whether, if Old Bennington chose not to have a designation now, it could opt back in later. SP said yes. If the Village wanted to, it could just make the change eight years from now, when all municipal plans would be expiring and need renewal. Or it could work on opting in while its Village Plan was still in force.

GJ said that the Agency of Commerce and Community Development saw the “center” designation as a mixed-use designation, which was intended to promote growth, both commercial growth and housing growth. He said the designation would be a pathway to commercial development. At the

moment, the Village didn't know what the parameters of that growth would be, because for now, the Village had no pathway to commercial growth. He said the Village would have to start thinking about whether it wanted high-end inns, or video shops, or other forms of commerce.

SW said that in Old Bennington, "commercialization" would mean that the Village could take advantage of grants for historic restoration, and to make itself a place that could be "commercialized" by attracting visitors. But that didn't mean the Village would have more forms of commerce than it currently had. She said commerce didn't necessarily mean retail businesses and video stores.

SP said there were other municipalities, such as Sandhurst, that had used their "center" designations to build up things like their town halls, or cemeteries. Woodford's designation had been used to improve its town hall and an elementary school. Pownall aimed its improvements at a couple of existing stores, its town hall, and a skate park. All of those communities also used grants to improve the nearby residential neighborhoods. She said "mixed use" was a very wide-ranging term. A goal of Act 181 had been to expand the access to certain funding opportunities to small localities that had no commercial business at all. Or in the case of Rupert, there wasn't interest pulling in new businesses, but rather to restore the Victorian-era Sherman's Store. They weren't seeking new commercial development, she said. They just wanted to heighten and enhance what was already there.

GJ said that he wanted to clarify: Currently, Old Bennington's bylaws didn't allow commerce except as a Conditional Use. And now it appeared that the State, or the BCRC, wouldn't have any objection if we kept all of our bylaws intact but just added a Village center designation.

SP said that was correct. The State, and the BCRC, weren't requiring municipalities to change their zoning bylaws just because they now had designated centers.

GJ said seemed inconsistent, because local bylaws were supposed to flow out of the community's Plan. He said the original draft Village Plan had called for commercial activity all up and down Monument Avenue from the

big intersection on West Road up to Monument Circle. He said that would be a lot of commercial developments.

SP said she didn't remember it that way. The first draft, she said, reflected only the Village's interest in having the Walloomsac Inn restored, with a restaurant. The BCRC extended the designation up to the Monument, because the Monument was a source of pride in the Village, not because they saw the Monument as an engine of commercial development.

SC said she was concerned about a possible conflict between Old Bennington's zoning bylaws and a designation from the State of a pro-commerce "Village center." She said that depending on how things were worded, she could imagine the prospect of a lawsuit if somebody wanted to open a restaurant in the designated center, and the Village said no because the zoning bylaws didn't permit it.

SP said that when the BCRC mapped "village centers" in Bennington County, it created two types of centers: growth-oriented centers and history-based centers. There were a number of municipalities, like Old Bennington, that really didn't want any more commercial development. SP said she understood that concern, but there was no mandate for commerce in Old Bennington's designation. She said she did not anticipate any conflict with the Village's bylaws.

EW said that the Village's designation was already in the regional plan, so the question now was whether our land-use regulations provided the level of protection that we need.

JT said that was what should be discussed at the Oct. 26 hearing.

RP said he would talk to Brian Scheetz (the Planning Commission chair) and find out about the best way for people to participate.

6. Update on traffic calming:

KR said that at the last meeting she had asked people to send her emails about their particular traffic concerns. Now she had a list of many streets and

intersections that were seen as dangerous, sidewalks that were inadequate sidewalks, the lack of provisions for bicylists, and so on. She said she wanted to convene a committee to list every single concern, and delete those that had already been vetted and discarded. She said there was a report from 2014 with a lot of recommendations, but it stopped short of estimating the costs. She moved to create a traffic-calming committee. JT seconded the motion, and it passed unanimously.

CK asked how to sign up for the committee. KR said anyone interested should email her.

EW said a committee was only advisory under law, so its meetings didn't have to be warned and it didn't have to keep the same type if minutes.

7. Update on the Planning Commission vacancy:

   RP said that Chris Ponessi had moved away, leaving a vacant seat on the Plannint Commission. The Commission had been interviewing possible candidates and wished to recommend Tom Melham, of 17 Fairview Road. RP moved for the Trustees to approve TM. JT seconded the motion and asked TM if he had any comments to make. TM said he did not. He was unanimously approved to serve out the rest of CP's term.

8. Update on the petition to repeal the Interim Bylaw: There had been no activity since the last time the petition had come up. JT said the discussion would happen in the future.

GJ said he still wanted to know whether the Interim Bylaw rode alongside the other Village bylaws and became permanent, or was it added.

[Clerk's note: In case it adds clarity, the Interim Bylaw contains this provision:

"4. Duration. These Interim Bylaws shall remain in effect for a period of two years from the date of adoption or until superseded by duly adopted amendments to the Zoning Bylaws, whichever occurs first, except that these Interim Bylaws may be extended or reenacted for a one-year period in accordance with 24 V.S.A. § 4415(f). Any permit issued pursuant to these

Interim Bylaws shall be valid and effective notwithstanding the expiration or termination of these Interim Bylaws."]

9. Commissioner Reports:

   a. Presiding Offficer: JT gave a brief status report on the Walloomsac Inn's restoration. He said the developers were close to submitting their proposals to the Planning Commission, but the State had recently changed the wetlands overlay. The developers hoped to resolve that quickly. Once they have, they hope to be in touch with the Planning Commission to schedule a public hearing on their site plan.

   b. Roads Commissioner: EW said he had found two vendors to do this winter's plowing of the streets and sidewalks. He recommended that Pembroke Landscaping plow the sidewalks, because it already owned equipment for narrower sidewalks like ours. Our cost would be based on Pembroke's experience plowing the sidewalks last winter. It will be around $22,000, but could vary depending on the number and severity of storms.

      For the roads, he said he had negotiated terms with the Town, which had based its cost estimate on how much it had cost them last winter to remove the snow from one mile of the Town's streets. There is no level of cost to be deviated from within the contract, but if this winter's experience is a lot more expensive, the Town my want to change the terms. Also, the Town doesn't care when it gets paid – that isn't an issue, as it would be for a for-profit vendor. So RR can time the payments in the way that best suits Village needs.

      EW pointed out that the estimated total cost of the two contracts was less than the amount budgeted for the current fiscal year.

      CK recalled that Pembroke's equipment was heavy enough to damage the marble sidewalks that still exist. EW said that issue was included in the negotiations, and Pembroke had offered extra protection for the marble sidewalks in exchange for additional time to clear them.

KM said that if snow remained on streets long enough for cars to drive over it and pack it down, it could become a worse hazard than fresh snow. EW said the Village would have snow removal done to the same standard as the Town of Bennington. He said he wanted residents to report any problems to him, because he wanted the relationship with the Town to work.

SB said before plowing started there needed to be follow-up on the places where cobblestones had been knocked out of position on the swales.

EW moved to accept the two snow-removal contracts as executed. JT seconded the motion. They were unanimously approved, with KR effectively abstaining because she had to leave early.

SB asked where the electronic speed sign was. EW said the Village was waiting in line for that. The sign positioned on Monument Extension belonged to the Town of Bennington, not the Village.

RR said there was also $2,000 for general road repairs in the current budget, and the Village had earlier committed to repairing its deteriorating storm drains.

c. Sidewalk Commissioner: SW said the sidewalk repairs had now been finished. They ended up costing more than the estimate, because the scale of the repairs was larger than estimated. The concrete ended up costing $12,000 instead of the estimated $8,000. But SW said the work was well done and even with the larger scale, the total cost was less than the budgeted amount.

   SW also said that she had Nancy Coseo had developed a “welcome” tote bag for new people moving to the Village. It included small gifts, advice about local activities, and a copy of the Village bylaws.

d. Tree Commissioner: RP said there were three deteriorating trees that needed to be removed soon. Plans called for putting new saplings into the ground now, so that they could start growing before the old trees are removed. JT made a motion to get three new trees from Pembroke, probably salt-tolerant red maples.

RR said there was currently $5,000 in the Village Tree Fund, and another $5,000 in the current budget. EW said that if RP's proposal went forward, the Village would be out of money for any other trees until FY 2028, which starts next April 1. RP's proposal was unanimously approved, with KR's abstention.

RP also said he had written new guidelines for how current and future Tree Commissioners would operate. His draft included preferred species and a number of resources for homeowners. RP asked that it be posted in the website.

[Clerk's note: To keep the limited space on the Village website from being used up, RP's draft is posted below, titled "Second Addendum."]

10. Treasurer's Report:

With the late hour, RR referred citizens to the written version of the month's Revenue Statement, which he had already posted on the Village website. Expenditures in the Warrant included bills from Concrete Impressions and the Village of North Bennington, both for sidewalk repairs. There was also a permit issued erroneously to a person from outside the Village, and that permit fee would have to be refunded.

EW moved to accept the Warrant. JT seconded the motion, and the remaining four Trustees voted unanimously to accept.

RR said the discussion of how to respond to recent interest-rate increases could wait until the November meeting.

On taxes, RR said that 57 Monument Avenue had been sold, with the closing scheduled for November. That meant the delinquent taxes would be paid (out of the sellers' proceeds).

RR said that the Property and Casualty Intermunicipal Fund (PACIF), a non-profit municipal insurance pool administered by the Vermont League of Cities and Towns (VLCT), was holding its annual meeting soon and

electing its board, and member municipalities had to authorize someone to vote their equity. EW moved to authorize RR to vote. JT seconded the motion, and RR was unanimously authorized to vote Old Bennington's equity at the PACIF annual meeting.

11. Auditor: There was no auditor's report. KW was travelling.

12. Old business: There was none.

13. Adjournment: The meeting was adjourned at 9:02.

[Please continue to the next page to read the two Addenda.]

First Addendum

The following is a copy of the statement that Marc Baetens read aloud during the Board meeting of Oct. 6, 2026:

Statement to the Old Bennington Board of Trustees
October 5, 2026

Members of the Board,

I want to address the Board tonight in a constructive spirit. My objective is not to create unnecessary conflict. It is to make sure that Old Bennington follows the procedures required by law and that residents can have confidence that their concerns are heard and considered.

The Environmental Division's September 24 decision raises a serious concern about the Village's procedures. The Court determined that the Board's July 2 eligibility vote concerning 3 Seminary Lane was a **final and appealable decision**. I appealed that decision on July 15. The Court then specifically observed that, because an appeal generally transfers jurisdiction to the Court, **"the Trustees may have lacked the authority"** to decide the conditional-use application after my appeal was filed.

Although my appeal was dismissed on standing grounds, that procedural concern should not simply be ignored. I intend to continue using the lawful appeal and review processes available to citizens when I believe municipal procedures have not been followed.

I also want to say something about the tone of this process. During the court proceedings I was approached by a participant in a manner that I experienced as intimidating. That will not discourage me from exercising my legal rights. I will continue to do so respectfully and through the proper channels.

Every appeal also costs the Village money in legal fees. I do not control the Board's decision to retain counsel or how the Village chooses to defend its actions. Those decisions—and the resulting expenditure of Village funds—belong to the Board. The best way to reduce unnecessary disputes and legal expenses is to make sure procedures are clear, transparent and followed correctly the first time.

That includes the Interim Bylaw. Questions remain concerning whether all required procedures surrounding that bylaw, including the pending citizen petition concerning its repeal, are being followed. I will continue monitoring those procedures and, where appropriate, use the legal remedies available to me.
But there is a larger issue here than my individual appeals.

A substantial number of residents of this very small Village have attended these hearings because they care deeply about what happens in their neighborhood. Concerns have not come from one person alone. Neighbors have

appeared and spoken, and even members of the Village's own land-use process have raised concerns.

I fully respect that the Trustees are elected and ultimately have the responsibility to make difficult decisions. But being elected should not create distance between the Board and the neighbors it represents. **The authority to make the final decision and the responsibility to listen to fellow citizens should go together.**

When a significant number of neighbors take the time to attend a hearing and express concerns—and when those concerns are also raised by people involved in the Village's own planning and decision-making process—residents may not ultimately get the decision they requested. **But they should at least leave the process knowing that they were heard, that their concerns were genuinely considered, and why the Board reached a different conclusion.**

That is why written decisions are so important. Decisions should not merely exist somewhere in a file. **Participants should receive the written decision, or at minimum prompt notice that it has been issued and where it can be obtained.** Permits and decisions should clearly identify the date of issuance, the property and application involved, the action taken, and the information necessary for citizens to understand when their appeal rights begin.

Meeting minutes should likewise accurately record decisions, votes and dates and should be made publicly available promptly. These are simple safeguards that protect everyone—applicants, neighbors, the Board and the Village itself.
I am not asking this Board always to agree with me. **I am asking the Board to listen, to document, to communicate, and to follow the required procedures consistently.**

I will continue to hold the Village to those standards and to use the checks and balances available to citizens when necessary. I hope the Board will see that not as hostility toward the Village, but as part of maintaining a transparent, lawful and respectful local government.

Marc Baetens
Old Bennington

Second Addendum: Guidelines for Old Bennington Tree Fund

Version 3 DRAFT, September 2026

Submitted by Renny Ponvert at the Oct. 6, 2026 Board meeting

Village of Old Bennington
Tree Maintenance, Removal, and Replacement Guidelines

DRAFT 9-30-26

Executive Summary

This document serves as the Village Shade Tree Plan and provides an outline for the plans and procedures to be used by the Village of Old Bennington Tree Commissioner in fulfilling his/her duties. The intent is to make the job duties clear, provide a list of potential resources, and generally clarify the long-term plan for maintaining and planting trees along the Village of Old Bennington rights-of-way. There is a useful table at the end providing links and phone numbers to relevant articles, VT state law, and reliable vendors.

The Village conducted a formal survey of the Village residents in late 2025 as part of its Village Planning process. One of the findings in that survey was overwhelming support and appreciation for the mature trees that line the roads and sidewalks of Old Bennington. The mature hardwood tree canopy along our roads and in the Village Center is a major element of the identity of the Village and a significant contributor to property values. Vermont law describes these as Shade Trees. Some years ago, Villagers voted to create an annual budget line to support the planting and maintenance of the large shade trees in the Village rights-of-way (25' from the median of the roads) and parks. The annual budget figure also accrues any unspent annual allocation into a reserve fund so that there is a

compounding growth effect in the Tree budget. The Tree fund is for the planting of new/replacement hardwood trees but can also be used generally for the trees in the Village green across from the Church. It may not be used for, or to supplement the cost of, tree removal. Removal costs are the responsibility of the property owner. Similarly, tree "maintenance" and other sundry needs for the street trees in the Village rights-of-way should be separately budgeted for each year as a discrete expense item.

Hardwood shade trees are an integral part of the history and property values of the Village. The Tree Commissioner should endeavor to make sure that periodic maintenance/pruning of trees in the Village right of ways is done. Additionally, new 100 year hardwood specimens should be planted on a regular basis to anticipate the future decline and loss of major trees either from age or episodic reasons like storms, etc. Village policy is to help fund the planting of new 100 year hardwood, native species, provided that the applicant has complied with Village Bylaws and has first ground the stump of any prior tree requiring replacement.

Introduction: Street shade trees are essential to the character and environmental health of our community, providing shade, improving air quality, and enhancing aesthetic and timeless values of our historically significant community. For these reasons, the preservation and care of the Village's street trees should be approached thoughtfully and as part of a plan. Balancing the natural and historical aspects of the Village with the sometimes conflicting pressures of maintaining roads, sidewalks, and the preferences of homeowners is part of the Tree Commissioner's job. Vermont State law 24:2502 explicitly gives "Tree wardens" power to maintain and preserve shade trees in the Village. All of the hardwood trees along Monument Avenue are considered to be statutory shade trees under law and may be removed only by prior written permission of the Village Tree Commissioner. Permission granted, the actual property owner is responsible for the full cost of removing the tree and grinding the stump down to ground level. Residents must remove the entire tree and grind-down or remove the stump along the rights-of-way. At its sole discretion, the board of Trustees may choose to "match" up to 30% of the cost incurred by a property owner in planting a new "100 year, native species, hardwood" tree, such funds to come from the Village Tree Fund.

NOTE: The Village of Old Bennington Zoning By-laws provide formal guidance regarding permitting and approvals for the removal of any tree within the public

right-of-way (the area within 25' from the center of all Village roads). Refer to OB zoning ByLaw #82. As a general rule, the Village Tree Commissioner governs decisions pertaining to all trees along the Village road right-of-ways or "ROW." The Village Planning Commission governs the decisions pertaining to the removal/planting of large trees, shrubs, and any vegetation along property lines and the 25' set-backs between abutters. No "dead tree" of more than 30" diameter or 9" caliper, measured at 4.5 feet above the soil line may be removed without the prior written approval of the Tree Commissioner or the ZBA. Larger trees may require the signed "dead" or "dying" appraisal of an approved arborist or tree company such as Greater Heights or Pembroke which must be provided to the Tree Commissioner prior to the tree's removal.

> **"Removal of any tree within the public right of way (the area within 25 'from the center of the roadway) requires a Zoning Permit as well as the approval of the Village Tree Commissioner. A dead tree can be removed on the authority of the Tree Commissioner. However, removal of a live tree requires the approval of the Tree Commissioner and a warned public meeting."**
>
> **"Should a homeowner not approach the Village about the removal of a dead tree in the public right of way, the Village can choose to approach the homeowner and request removal of a dead tree which is deemed a public hazard. If the homeowner does not remove the tree, the Village may have the tree removed and bill the homeowner for the cost."**

Historic districts like the Village of Old Bennington are defined by their unique architecture, streets, and cultural heritage. Trees that have been in place for decades or even centuries are part of the Village's history. The management of these hardwood shade trees, however, requires special consideration due to their role in maintaining resident's property values and the larger historical and cultural integrity of the Village. The Tree Commissioner should therefore be sure to formally budget for regular tree maintenance and care each year and have a future planting plan to use as funds are available. These maintenance and planting funds are separate line items in the Village budget. Maintenance funds, unlike the Tree Fund, can then be spent at the direction of the Trustees to maintain and enhance trees in the right-of-way and in the Village green.

<u>Tree Commissioner Objectives</u>:

Protect, manage, and enhance the mature green canopy along the Village roadways.

- Provide a central point of contact for all elements relating to the planting, removal, and maintenance of the trees within the Village rights-of-way (25' from the roadway median line).

- Preserve the historical and aesthetic value of sizeable hardwood, native species, shade trees within the context of the Village and its history.

- Provide a constructive liaison with the Town of Bennington DPW which owns the short stretch of Rt 9 Main Street and Monument Ave abutting the Cemetery and Old First Church.

- Ensure public safety and health by proactively seeing to the maintenance of street trees and proactively addressing issues with those trees that pose risks due to disease, structural issues, or other hazards.

- Promote ecological sustainability by maintaining a diverse, resilient tree canopy that contributes to the sustainable environmental goals in the Village Plan. The Tree Commissioner should be mindful and avoid the dangers of a mono-culture blight that has often decimated large shade trees canopies in other communities. Native hardwood species diversity provides risk diversification and ecology benefits and better longevity on Village streets and parks.

- Enhance community involvement in the care and decision-making process regarding street trees. Actively enlist support for tree planting and maintenance and make specific recommendations for the deployment of the Tree Fund planting and maintenance monies.

- Provide clear recommendations and assistance to Village homeowners for the maintenance, removal, and replacement of trees in accordance with the Village's historic preservation standards.

1. **<u>Maintenance of Street Trees</u>**

    a. Regular bi-annual Inspections and pruning of trees (at least every three-to-five years):

Street trees along the Village roads and rights-of-way should have a walk-around annual inspection by the Village Tree Commissioner and/or a certified arborist or urban forestry specialist. Make an effort to know your streets and the major shade trees along them. It is important to speak from a position of familiarity. Maintenance Pruning should be done to:

- Remove dead or diseased limbs.
- Improve tree structure and aesthetics, while avoiding damage to the tree's historical character. Beware of root "girdling" that can slowly kill trees.

- Ensure that branches do not obstruct street signs, traffic signals, or impede pedestrian sidewalks. Identify "risky" overhanging limbs and determine a course of action to prevent future risk and damage.

- Work with your fellow Roads and Parks Commissioners to minimize or eliminate the use of poisonous road salt in the Village. Salt is a major threat to Maples and other hardwood trees' root systems. See Road Salt and Trees information here.

-When Pruning trees adhere to best practices for mature historic trees, avoiding excessive cutting or alterations that might diminish the tree's historical long term health, structural integrity, significance or unique form.

-Seek to schedule pruning in November and plantings in the late fall or early spring.

b. Preservation of Historic Tree Varieties

When possible, large mature tree specimens currently in place should be preserved and maintained as long as possible unless they pose an imminent structural threat. If a tree is found to be failing, efforts should be made to determine why and then replace it with a similar New England hardwood species that maintains the historical integrity of the Village.

In Old Bennington, our native species hardwood tree varieties include: Maples, Oaks, and Beeches. Avoid Pin Oak as it grows quickly but has a

relatively shorter life span. In 2026 there was a significant increase in Anthracnose blight in Norway Maples.

c. Soil and Root Management

Urban soil conditions in historic districts can sometimes be problematic for tree health. Road and sidewalk salting is the principal threat to street trees. Maintaining some diversity of hardwood species provides multiple ecological benefits and better longevity on Village streets. Beware of mono-culture susceptibility to blights (think Dutch Elm disease). Village shade trees should be chosen for their likely 100+ year lifespan and New England native species. Besides Maples, consider Red, Burr, and White Oak, Sycamore, American Linden, and Horse Chestnut. Avoid planting: Norway Maple or Silver Maple, Ash (blight), and Littleleaf Linden.

2. Removal of Street Trees

a. Criteria for Removal: While the preservation of street trees is a priority, there are circumstances under which removal may be necessary. These include:

- Clear and present public safety concerns: Trees that are diseased, structurally compromised, or have become a real and present hazard to people, cars, and homes. There may also be maintenance pruning needs that help keep Village roads clear of debris and dry, helping to extend the life of the asphalt paving.

- Irreparable Damage from construction: Street trees that are irreparably impacted at the roots by building or infrastructure projects (e.g., road work, sidewalk installation, utility installation, driveways) that cannot reasonably be mitigated through preservation efforts.

Before any Village shade tree is removed or substantially pruned, an on-site inspection must be conducted by the Tree Commissioner. Any removal should be approved in writing by the Tree Commissioner and in conjunction with the regular permitting process with the Planning Commission's Zoning Administrator for coordination. Unless it is an imminent emergency, notice of the intent and action should be shared

by email with all Trustees and property abutters at least 10 business days in advance of action. Public notification at a Village meeting is required when a live tree of greater than 6" caliper removal is planned in any Village ROW by either the Tree Commissioner or a property owner. Notification must also include formal communication with immediate abutters as a matter of courtesy. A failure to advise and consult with abutters in advance may result in permission denial and can cause ill-will among neighbors. For Village shade trees along the rights-of-way, a public meeting to warn of the removal is necessary if the removal is of significant aesthetic, visual, cultural, or historical importance.

3. **<u>Replacement of Street Trees</u>**

a. Tree Selection. Replacement trees should be selected based on the following considerations:

New trees should reflect the native species that historically grew in New England. New Village shade trees must be native, 100 year+, hardwood specimens, greater than 4"-6" in Caliper.

- Ecological sustainability: Species biodiversity, hardiness and local environmental health are important considerations. Locate the tree as far from salting threat as possible.

- Community preference: Local residents and certified Arborists are helpful resources for selecting appropriate street trees, including trees that are salt tolerant, can be found here.

b. Planting Guidelines:

The Village may provide Village Grand List residents with up to a 30% match for out-of-pocket expense in planting previously approved hardwood shade trees along the Village roads. Such match will be at the discretion of the Tree Commissioner in consultation with the Treasurer from available Tree Fund monies. In the case of a tree replacement, Tree Fund use is only available if the applicant agrees to grind down/remove any stump of the prior tree. Initial cuts must take the stump down to less than 6" from the ground to allow a "grinder" to fully remove the stump.

Replacement trees should be planted in the late fall (dormant) in accordance with best practices for urban tree planting. These guidelines include:

- A minimum of 6 to 8 feet from the side of the roadway. Ensuring adequate space for root growth to prevent damage to curb or utilities. A minimum of 2' from any sidewalk.

- Use only high-quality nursery stock and professional planting methods. Professional planting ensures that trees are set at the correct depth to ensure long-term survival and structural stability.

- Consideration of the surrounding landscape and architectural features to maintain the Village's visual continuity and accomodate future canopy growth.

c. Tree Canopy Goals

Replacement trees should contribute to the long-term goal of maintaining or enhancing the tree canopy in the Village historic district. Consideration should also be given to improve diversity in hardwood tree species to prevent future problems with pests or diseases.

4. Historical and Cultural Considerations

a. Historical Significance of Trees:

Certain street trees in historic districts may have significant historical or cultural value due to their age, size, or association with particular events, buildings, or figures in the historic district's history. These trees should be given special consideration regarding maintenance, removal, or replacement. Abutting neighbors are often a good source of information regarding significance.

b. Coordination between the Tree Commissioner, Planning Commission and Zoning Administrator is important. When in doubt, simply cc people on pertinent emails. Any changes to street trees within the 25' ROW easement should be coordinated with the tree commissioner and zoning administrator

for review and permitting as outlined in the Village By-laws. In cases where trees have a direct connection to the history of the district (e.g., trees planted by notable individuals or that commemorate historical events), their preservation or removal should be publicly discussed, in advance, at a Village meeting.

5. **Funding and Resources**

The cost of maintaining street trees, per the Village of Old Bennington By-laws, is primarily the responsibility of the property owner. Depending on Village discretion and finances, there may be funding available to assist with the replacement/planting of Village street shade trees.

Conclusion:

Hardwood shade trees are a vital element in the Village of Old Bennington's aesthetic value, residential property values, environmental health, and historical character. Our certified historic district takes special care to preserve and protect these trees in a way that balances the needs of the individual property owners, natural environment, and the goals of historic visual preservation. By adhering to the Village's clear guidelines for maintenance, removal, and replacement, the Tree Commissioner and Village residents can ensure that Old Bennington's tree canopy remains a vital and cherished aspect of their heritage for future generations.

Useful Links:

Vermont Statutes Pertaining to Municipal Trees

Old Bennington Officials: https://oldbennington.org/officials

Town of Bennington DPW:
https://www.benningtonvt.org/services/public_works/index.php

UVM Forestry Site & News: https://www.uvm.edu/extension/forestry

State of MA Urban Tree Selection Info: https://www.mass.gov/doc/selecting-trees-for-your-urban-and-community-forests-fact-sheet/download

Shelterwood Forest Farm:
https://www.shelterwoodforestfarm.com/blog/2018/7/24/street-trees-for-climate-resiliency-in-the-northeast

Elhannon Tree Nursery & Pricing: Connor Sutton, https://www.elhannon.com/

End, Second Addendum

Third Addendum: Village Plan, Village Bylaws:

R

Renny Ponvert <rponvert@gmail.com> Wed, Oct 14, 10:07 AM

to James, Brian, David

Jim,
As per Monday's meeting here are the 3 questions we need to ask Merrill. Time and cost efficiently, it might be better to ask her by email and then we can follow up with a verbal discussion if we see anything that warrants further discussion.
1. Vermont is a Dillon's Rule State. I think that means in the event of any conflict of law or regulation, the State or its agents (BCRC) prevail if the State hasn't already granted specific authority to the Village. So, if the BCRC Regional Map designation of Old Bennington says it is a Village Center, and the Village's own Village Plan likely says it is not, and only "rural general," which authority prevails?
2. Regardless of how a conflict is eventually adjudicated, if there is an initial inconsistency between BCRC and the Village in a zoning matter, "commercial" v "rural general" does that Inconsistency create a window for a commercial developer to claim that they are grandfathered as a commercial entity?
3. Is there any concern that allowing a zoning inconsistency between the new BCRC's Regional Plan and the new Village Plan of Old Bennington might create "standing" for a commercial developer to sue the Village for

economic damages if such inconsistency can be shown to have somehow disrupted their commercial entity? There are 2 case precedents of concern:
Winooski Hotel Group, LLC v. City of Winooski, No. 2:25-cv-890 ('26) and,
Larkin v. City of Burlington, 172 Vt. 566, 772 A.2d 553 ('01)
We have a week and a half before the public hearing on the Village Plan. We should be able to answer these questions clearly and cite Merrill's written response as having done our fiduciary duty to decide accordingly.

Best Regards, Renny

Renny Ponvert
301 455 5886

M

Merrill Bent Thu, Oct 15, 2:31 PM

to Dane, me, James

PRIVILEGED AND CONFIDENTIAL {waived Jim Thatch, 1026/26}

Hi Renny and Jim,

If I understand your question correctly, you are asking what happens if there are inconsistencies between the Regional and Village Plans, and whether/how that impacts zoning matters and potential liability exposure for the Village. First, you should be aware that in Vermont the zoning ordinance—in other words, the municipal bylaws, is the only legally binding document by which a municipality can directly regulate land use and development. A zoning bylaw is supposed to implement the broad policies set forth in a regional and/or village plan. When the zoning bylaws are adopted or amended, the planning commission is supposed to issue a report indicating how the bylaws conform with the municipal plan. But zoning permits are

judged against the text, maps, and provisions of the zoning ordinance, not the broader aspirational policies in regional and village plans.

Regional plans are broad policy and coordination documents created by a regional planning commission, but they do not constitute binding, enforceable regulation of land use and/or development. The municipal plan (also not an ordinance) must be *compatible* with the regional plan if the town wants its plan to be approved by the regional planning commission. In the event that a regional plan and village plan conflict, that does not mean a regional plan automatically overrides the village plan, but it could lead to the BCRC not approving it, or revoking its approval. But the whole point of the review exercise is to make sure that the two are compatible with each other.

A caveat to all this is that a village or regional plan provision can be used to deny Act 250 and/or Public Utility Commission (e.g. Section 248) Petitions, notwithstanding what the zoning ordinance says, usually under the orderly development criteria.

You have specifically asked whether the designation in the Bennington County Regional Plan of Old Bennington as a "Village Center" conflicts with the draft Village Plan's designation as "rural general." You also characterize "Village Center" as "essentially commercial," and seem to contrast that with "rural general," as something that excludes commercial uses.

In the Regional Plan, Old Bennington is considered to have characteristics of both categories. With regard to "Rural General," the Regional Plan includes all municipalities except for Glastenbury. It also says that rural general allows "low-density residential and some limited commercial development that is compatible with productive lands and natural areas." P. 106. Page 115 of the Regional Plan also has a bullet point list of what Rural General includes.

With regard to "Village Center," the Regional Plan breaks it up into two types of Village Centers. There are "Growth-oriented village centers," which are "typical of larger regional towns." Old Bennington is not listed among the Growth-Oriented Village Centers. The other category is "Historic and Civic Village Centers," which are "predominant in smaller, more rural municipalities," and "often have very few commercial establishments, and instead are characterized by municipal and civic structures, like town offices, post offices, schools, historic churches, and other historic resources." P. 123. Old Bennington is listed among the Historic and Civic-Oriented Village Centers. P. 125. The Regional Plan says that "The four new [Historic and Civic] canters (Landgrove, Old Bennington, Sandgate, and Woodford) recognize historic settlements and important civic and cultural assets, and highlight

opportunities for renewed investment in placemaking and limited, context-specific development." I do not think that the Regional Plan views these two designations to be in conflict.

I also do not see the "rural general" or "village center" as a zoning designation contemplated in the Draft Village Plan currently posted on the website. Instead, I see a Future Land Use map using a category "Residential Village," that is not among the Act 181 categories that are used in the Regional Plan. The Trustees could address that discrepancy before adoption, so that the Village Plan designation uses the same nomenclature and matches the Regional Plan categories.

The goal as you review the Village Plan is to ensure that it is compatible with the Regional Plan. The Bylaws are how you actually enforce the policies espoused in the Regional and Village Plans, so after the Village Plan review is complete, the best practice is to next turn to your Bylaws to see what revision is required in order to give effect to the new Village Plan, and to comply with state law, such as Act 47. By way of example, the Village's 80,000 square foot minimum lot size as expressed in the Bylaws may conflict with state law under Act 47 which allows for 5-units-per-acre for properties within Village Centers that are on town water and sewer.

I want to emphasize that I have <u>not</u> performed a complete review of the Regional and Village Plans to identify all inconsistencies. That is typically something that the Planning Commission would do, with BCRC's assistance. I have just focused on the definitional and conflict questions specifically raised in your email.

The two cases that you reference raise an interesting point.

Winooski Hotel Group is a federal case, which holds that under current federal precedent, a property owner may bring a federal takings claim under Section 1983 directly in federal court. The case holds that a landowner's failure to appeal a municipal decision—in that case a condemnation decision—does not bar that claim. The practical effect of the case is that the Village cannot assume an unappealed Planning Commission denial closes a matter off from liability for a takings claim. It does not suggest in any way that a discrepancy between a regional plan and municipal plan effect a taking.

Larkin is a state law case, which says that under Vermont law, zoning disputes generally lead to an appeal and a remand, not to damages. So that is a positive case that weighs against municipal liability in connection with adverse land use decisions.

Read together, the cases suggest limited risk to the Village, but that risk arises from how the Village regulates under its Bylaws, *not* from what the regional or municipal plan say. As outlined above, a municipal plan is a policy document. An inconsistency between the Village Plan and the Regional Plan does not take anyone's property or create a damages claim. However, liability could arise, theoretically, when the Village applies a regulation to a specific property. Thus, the current Bylaws may pose some risk for the reasons explained above—that it may be inconsistent with state law in some respects. Thus, if the Village denied or restricted a project under the 80,000 sq ft minimum standard, for example, it would be enforcing a provision that state law likely overrides, which could result in a claim similar to that asserted in *Winooski*. I also note that *Winooski* also does not decide if that claim is meritorious—the decision just permits it to proceed past the motion to dismiss stage. The current Bylaws also potentially conflict with the Regional Plan's designation as a Village Center.

To minimize such exposure, you should:

1. Before adoption, revise the Future Land Use map to reflect the statutory Act 181 categories consistent with the Regional Plan, and ensure complete review for consistency has been adequately done.
2. Commit to a timeline for amending the bylaws, rather than deferring that update indefinitely.
3. Amend the Bylaws promptly to meet state law requirements, such as Act 47 and 24 V.S.A. Sec. 4412, and so that they actually are consistent with the Regional and Village Plans.
4. Until the Bylaws are so amended, take care to ensure that you do not deny projects based on standards that have been superseded by State law.
5. Continue to have us review significant contested decisions before they issue.

I hope this is helpful. Please let me know if you have any other questions.

Sincerely,

Merrill

From: Renny Ponvert <rponvert@gmail.com>
Sent: Wednesday, October 14, 2026 5:14 PM
To: Merrill Bent <merrill@greenmtlaw.com>
Cc: James Thatch <Thatchj@gmail.com>
Subject: Fwd: Questions for Merrill

Merrill,

I hope and trust this finds you well. As per my note to Jim et al below, 3 important questions came up at our recent Old Bennington Planning Commission meeting that we would like you to opine and provide guidance on. We have a new Draft Village Plan currently posted and warned for a public hearing on Monday, October 26. It currently envisions a "rural general" zoning designation for the Village. However, there is another County level Regional Plan, also authored by BCRC, that has already designated (by default) Old Bennington as having a Village Center, Step 1. BCRC advises that Unless we instruct them to "Opt Out" of their current Draft, that Regional mapping will become effective and final on November 6th, shortly after our initial hearing on our Village Plan. All that said, hopefully the rest below is self explanatory and the questions clear.

Can you be sure to send us your written comments and any suggestions prior to next Thursday, October 22nd, so we will have time to digest and confer before the public hearing.

Many Thanks,
Renny

Renny Ponvert
Trustee
Village of Old Bennington
301 455 5886

End, Third Addendum