

Village of Old Bennington  
Trustees' Meeting Minutes  
Aug. 6, 2024

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

[https://us06web.zoom.us/rec/share/IBdJJ8Rbq2FTf21I\\_9UOWQTA1GenjL1HbhgcOo-aLWY9wqVA1oM5G7gJ8r85EmRv.HpQH88bVloU63qWE](https://us06web.zoom.us/rec/share/IBdJJ8Rbq2FTf21I_9UOWQTA1GenjL1HbhgcOo-aLWY9wqVA1oM5G7gJ8r85EmRv.HpQH88bVloU63qWE)

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Officials present: Presiding Officer Anne Slattery; Trustees Than Marcoux, Tom Woodward, Ed Woods, and Susan Wright; Planning Commission Chair Galen Jones; Former Planning Commissioner Nancy Coseo; Treasurer Ron Rabidou; Auditor Kathy Wagenknecht; and Clerk Mary Walsh.

1. Call to order: the meeting was called to order at 7:00 p.m. by AS, who noted that the proceedings were being recorded. AS introduced McKenzie Keaffaber, who is training to be the next Zoom Master, since Thomas is leaving for Harvard soon.
2. Changes or updates to Agenda: AS said she wants to have a resolution that the Village board will get a Village Trustees' debit card with appropriate security controls.
3. Approval of minutes from July 2 meeting: TM moved to approve the minutes with no changes. TW seconded the motion. The minutes were unanimously approved.
4. Citizen comments not related to Agenda: None.
5. Public Hearing on Recommended Revised Zoning Bylaws: EW moved to begin the Public Hearing. TW seconded the motion and the Trustees unanimously voted to go into the Public Hearing. AS said this Public Hearing had been warned in the Banner on July 17, and posted on signs in two locations, as required.
  - a. MW said that in "Section T, Fences and Walls," there is now a provision that was not in the Planning Commission's Revised Zoning Bylaws prior to June 10, 2024. She knows this because in May she was filing an application to put a split-rail fence around the Walsh property at 88 Monument Avenue (which includes a good-sized empty meadow), and the recommended changes to the Revised Zoning Bylaws were already posted on the Village website at that point. Under "Materials," there were only Provision A, calling for white picket fences, and Provision B, calling for Unpainted split-rail fencing with or without wire mesh. There was no Provision C. Therefore, MW thought she would be compliant with the recommended new Zoning

Bylaws. Unfortunately, the hearing on her fence application was scheduled for June 10, the same day as the Planning Commission hearing on the its recommended Revised Zoning Bylaws. The meeting was packed with opponents of split-rail fences who stated their views on preserving the historical character of the Village and asked the Planning Commission to add what is now “Provision C: Fences located on the front or with a side street view should be a picket design with wood/wood composite and painted white.” MW told the Trustees that since Provision C was added in direct response to her fence application, for the purpose of blocking it, it constitutes an ex post facto law and should be removed as such. MW stated further that it is ahistorical to require all fences facing streets in Old Bennington to be white picket fences, because white picket fences were extremely expensive in the 1700s, and the early settlers would have considered it an extravagance, and therefore a sin, to put a white picket fence around an empty field. They did fence their houses and the church, to keep grazing animals out. But Revolutionary-era architecture did not require white picket fences in all visible locations. MW quoted from the writings of Andrew Jackson Downing, America’s first landscape architect, who wrote in 1841 that white picket fences were “an abomination among the fresh fields, of which no person of taste could be found guilty.” MW said she disagrees with Downing’s blanket condemnation and finds white picket fences charming when they’re installed in appropriate places, but at the same time, Downing holds an important place in American landscape-architectural history (he had the commissions to landscape the grounds of the White House, the U.S. Capitol, and the Smithsonian Institution), and if we’re hoping to create the look and character of a village from that time, we ought to take his statement to heart, and not require white picket fences around “fresh fields” with no buildings on them.

GJ confirmed that he’d never seen such a crowd at a Planning Commission meeting as there was on June 10, and said the people who attended were overwhelmingly in favor of adding Provision C. There was a discussion of whether white picket fences can really beautify meadows with no houses on them, and how difficult it can be to write legislative language about aesthetic issues. TW said there might be applications in Old Bennington where split-rail fences could be approved through Design Review. NC said the Planning Commission worked very hard to use homeowner-friendly language in the revised bylaws. The Commissioners did get a lot of feedback on this topic and didn’t want the recommended Revised Zoning Bylaws to be too loose. There was a discussion of whether MW’s application could still be approved upon Design Review, when it is against the Bylaws. GJ said it could still be approved (under both the Current Zoning Bylaws and the Revised Zoning Bylaws); there would just have to be a variance. NC said the Bennington County Regional Commission has advised that homeowners have the ability to request variances, and that the words “should be” in Provision C is a signal that there is some flexibility through the Design Review process.

- b. RR said there are a number of undefined terms in the Revised Zoning Bylaws, such as “sanitary code,” “building code,” and “fire safety code.” In some instances, the recommended Revised Zoning Bylaws say residents must present annual certification

of all safety inspections. It isn't clear how this can happen when there aren't such codes included in the recommended document. RR also said he'd like to be able to read the recommended Revised Zoning Bylaws in Redline format, so he and others can see what changes are being made. He recalled that when the Zoning Bylaws were previously revised in 2020, they tried to do a Before-and-After comparison and it was very difficult without Redline. NC said the Planning Commission could certainly provide marked-up copies, showing how the previous Zoning Bylaws were being changed, but they will look very messy.

- c. SW said the part of the Revised Zoning Bylaws that seemed the messiest to her was the part that talks about breaking up large buildings into small units. She said she found it very disturbing to think of grand old houses in a historic village to be chopped up into much smaller apartments. She fears the recommended Revised Zoning Bylaws will give investors carte blanche to come into this historic village and destroy everything. She asked if it would be possible to block this completely.

GJ said that the Zoning Bylaws have to be revised in response to the State's new Home Act, which is an effort to increase the availability of housing. That's the reason it discusses subdivisions of parcels and adding Accessory Dwelling Units.

TM asked if that means the State's Home Act is going to supersede anything in our local ordinances. There was a discussion about the Home Act, and whether there would be a way to prevent the situation SW is concerned about, the development of lots of little apartments in the coming years. GJ said he has heard that the legislative process behind the Home Act wasn't good. The bill was quickly and badly written, and the main sponsor didn't even expect it to pass. Others said they had heard the same thing. GJ said that given those circumstances, we could approach our legislators and request some amendments to the Home Act. RR said the Revised Zoning Bylaws still do include height and setback restrictions. NC said the Planning Commission tried to include measures that would protect land. GJ said the Village can still have control over which materials are used, but in terms of whether there can be ten houses on a single acre, there's currently nothing the Village can do about that. EW said the Home Act is written in a way that makes it impossible for municipalities to say No.

AS said the Villages needs to have a plan for going to our legislators and saying that we need to have some recognition of our situation.

GJ said that before the enactment of the Home Act, there would have been a high level of scrutiny of people building Accessory Dwelling Units, or ADUs. Now the state is making it easier for people to add ADUs.

AS said she had some specific items that needed to be addressed. First, the part on ADUs says the ADU must be in compliance with all fire and safety requirements. But we don't have any Building Codes in Old Bennington. We need to decide how to deal with the issue of Building Codes. There was a discussion of where the various Codes come from. The Building Codes are issued by the Town of Bennington, which also

has jurisdiction over building permits and the inspectors who come in to see if everything is compliant --- but the Town does not have jurisdiction over Old Bennington. The Fire Safety Code is issued by the State of Vermont.

AS asked another question about the new buildings that the Home Act contemplates for the future: Would the developers be permitted to do anything they wanted to on the inside? EW said the Town of Bennington has no interest in regulating Electricity or Plumbing in Old Bennington.

AS said the Village needed to get some Codes in place to protect property values. She cited the provision saying that the owner “must present annual certification of all safety inspections.” It didn’t say which type of safety it’s referring to. Fire safety? Should a requirement like that be in the Bylaws if there aren’t any underlying facts? There was a discussion of the possibility that the Trustees vote on the recommended Revised Zoning Bylaws now, with the proviso that we’ll come back to address certain issues.

NC said the Revised Zoning Bylaws could specify that we’re referring to the Building Codes of the State.

RR asked why the recommended Revised Zoning Bylaws contained a requirement that multifamily buildings be at least 25 years old. NC said that same requirement is in the Current Bylaws, and the Planning Commission did not know why it was there. GJ said that might be in conflict with the Home Act.

AS said the section on Illumination raised questions. For one thing, it’s written with references to watts, but now a lot of lighting specifications use lumens. Also, if you look under “Applicability,” Provision B2 says exterior lighting must not be used to deter theft. That doesn’t really make sense. EW said he is currently using light to deter theft. NC said she understands the concerns, but the Planning Commission was thinking about the future, when development of more housing might happen, and the idea here was to keep light from intruding into people’s properties. AS questioned if “deter theft” should be removed.

GJ said there have been numerous complaints in the Village about light intrusion. Until now, there hasn’t been anything in the Bylaws to manage that. The recommended Revised Zoning Bylaws would grandfather existing lighting, but it still isn’t clear exactly what is being grandfathered, the bulb or the fixture.

AS said she has a barn behind her house with a motion sensor that doesn’t turn on unless she’s standing right beneath it. She’s concerned that she wouldn’t be allowed to have a motion-sensored fixture for a door that’s right on the street. She said the Trustees need to be sensitive to residents’ security needs. We can’t just say No to people who have street-facing doors.

There was a discussion of the meaning of “off-street parking.” GJ said it means parking on a resident’s driveway. Parking on the swales is considered “street parking.” AS said she wanted to know, if a resident had a small driveway and received houseguests who all parked on the lawn, would the recommended Revised Zoning Bylaws, as written, forbid that? RR said that the previous Zoning Bylaws permitted that for seven days, but the Revised Bylaws had reduced it to two days. EW said the next-door neighbors to the Old First Church Barn currently park right on their lawn. NC said the Village currently has no way of knowing which residents are using their houses as Airbnbs, but reducing such parking to two days might be a way to keep track of that. There was a discussion of the difference between “enforcement” and “policing.” GJ said it’s worthwhile to keep in mind that no one will enforce these Bylaws unless there is a complaint. But if an activity isn’t in the Bylaws at all, then there won’t be any enforcement power. TM said that if this section had been written with short-term rentals in mind, maybe the Village needed to establish a rental registry. NC said one was in the works.

RR said he wanted to point out some repetitive language about trees on vacant lots. NC agreed that it was duplicative and said she would remove it.

AS asked why the Planning Commission had proposed removing the whole section on solar installations. Was it a good idea to remove the whole section on solar installations, while we wait to issue an Enhanced Energy Plan? GJ said that for home solar installations, the law is murky, but if we have Bylaws then we can at least have some rights. NC said she asked the Bennington County Regional Commission and they told her it wouldn’t hurt to put this measure in, but the language has to be made to harmonize with the Current Bylaws.

After a short discussion of the meaning of “contributing historic structure,” EW moved to end the Public Hearing and return to the regular Trustees’ Meeting. TM seconded the motion and the Trustees voted unanimously to return to the regular meeting.

6. Trustees’ action on Public Hearing: There was a discussion of whether the Trustees should 1) vote on the recommended revisions to the Zoning Bylaws as currently written, 2) vote to revise certain portions, or 3) continue to think about the best next steps. AS asked if there was a motion to approve the recommended revisions to the Zoning Bylaws in full, as written. There was no such motion.

EW said the Trustees could table this issue and return to it next month for a vote. Or they could agree to use the remaining time to continue this discussion and get the measure ready to be voted on. If the changes are small, the Trustees won’t need another Public Hearing, but it would be different if they make extensive changes. AS said in that case the role of the Planning Commission would be to apply the Trustees’ changes, and then the Trustees would have another Public Hearing on those. There was a general consensus that it would be better to take a little more time to think about the Revised Zoning Bylaws and changes that might be made, and check with the Bennington County Regional

Commission. NC pointed out that there will be another chance to update the Zoning Bylaws further after the Village Plan of Development is done. It was agreed that the Trustees would explore having a special meeting to continue to discuss and vote.

## 7. Reports of Commissioners

- a. Planning Commissioner, GJ: The only current issues are a possible complication relating to the Monument Sculpture and to 2 Church Lane possibly making some color changes of the siding and the front door.
- b. Roads Commissioner, TM: There was a question about whether the Old First Church had to have any permits to close the road during maintenance. So far, they would need a permit only if they closed both lanes, and the Town would deal with that. Later in the maintenance process, when they're putting the top back on the steeple, they'll need a crane. For that, they expect to have a police officer directing the traffic around the crane. The Town needs to be notified but no permit is required.
- c. Trees Commissioner, TW: Citizens have expressed concern about the emerald ash borer and wanted some shrubbery pruned on Bank Street, so he did that.
- d. Parks and Sidewalks Commissioner, SW: Nothing to report.
- e. Police Commissioner, EW: Next month Mark Anders, BCRC's traffic expert, will be attending the Trustees' meeting to present the results of a recent traffic study conducted on Village roads. The presentation will include recommendations for traffic calming.
- f. Treasurer, reports and warrants, RR: The Village has received \$12,000 in State highway funds. RR had been told the amount for the full fiscal year for our Class 1, 2, and 3 highways would be \$16,000, and he thinks the \$12,000 represents three quarterly payments rather than just the first quarterly payments and may be a mistake.

RR now has the payroll register from Gusto for our new administrator. He also applied to the State Department of Taxation for a tax withholding number. For Unemployment Insurance he has applied to the Department of Labor for an account number. He has learned that the Village will not get a number unless our premiums are more than \$1,500 in one quarter.

RR has still not received a property tax payment for the Weingarten house, or from Tzaims Luksus. Tzaims has been emailing people and saying his email address is no longer active. For the Board of Abatement meeting we'll have to notify him by paper mail. Mail sent there isn't being returned. We can wait on Tzaims and the abatement issue as long as we don't impinge on the Village and Town's tax sale process.

There was a discussion of getting a Trustees' debit card, and establishing a process for using it. SW moved that they get the card with the provision that everything spent on it will be a warrant. EW seconded the motion and it was unanimously approved.

g. Auditor, KW: Nothing to report.

8. Old Business:

- a. Village/Town roads update. AS, EW and RR: AS said the Trustees would have to wait until the Aug. 13 primary to find out who the Village's potential legislators would be. After that, we can approach them and explain what we've been trying to do and what the Legislature's role has to be. AS noted that ballots for the primary had been printed prior to Dick Sears's death, so his name will still be on the ballot. Voters will need to write in a name.
- b. Zoom/Cloud storage: RR looked at Google Cloud for a free trial but learned that they won't let five people use one account. To get permission for that you have to get a corporate account, which costs more, so for now we'll just use more space on GoDaddy.

9. New Business, AS: AS said she is going to get a dedicated Village laptop, so that we have something that can be used exclusively for Village purposes.

EW said he'd like to consider starting the Trustees' meeting at 6 p.m. All agreed.

10. Adjourn: EW moved to adjourn. TM seconded the motion, and the meeting was unanimously adjourned.