

TOWN OF ELMORE, VT

Monthly Select Board Meeting

Meeting Minutes – prepared by C. DeVore
Status: APPROVED

Meeting Date: July 13, 2016

Start Time: 6:31 pm **Adjourn:** 8:24 pm

Meeting Attendees: Robert Burley – ESB Chairman, Caroline DeVore – ESB, Robb Wills – ESB, Michel LaCasse – Road Commissioner

Special Attendees (all residents unless otherwise noted): Eugene Dambach, Phil Phelps, Becky Doherty, Phil Doherty, Whit Hartt, Sandra Lacasse, Leroy Furman, Bernard Jensen, Al Ryan, Don Pierce, Warren Miller, Brent Hosking, Sharron Fortune, Stuart Wepler, Mike Smith, Amy Haders, Shorty Towne

A. SPECIAL TOPICS:

1. **BEACH ROAD PAVING STATUS:** Eastern 350' section, paved to incorrect elevations has been restored to previous elevations.
2. **The immediate issues of:** 1) Property Access, 2) Vehicle Safety, 3) Water Quality were resolved within 1 week of discovery.
 - a. **METHODOLOGY:** Effective problem resolution, similar to any emergency response follows a proven sequence: 1) Eliminate/Remediate, 2) Investigate, 3) Prevent
3. **Full remediation of pavement should be completed by end of August, predictably complicated by peak construction season schedules.**
 - a. **RFPs are being sent to Pike and several other firms.**
4. **Investigation of root causes and factors is underway. A report will be available on completion.**
5. **Investigation of liability and restorative options is underway.**
6. **Corrective and preventative actions will be implemented wherever possible.**
7. **Total COSTS are unlikely to exceed authorized amounts.**

Select Board members convened the meeting and asked for questions from the audience regarding Beach Road repaving project. Board members noted that some information could not be disclosed during the current investigation phase. A detailed chronology of events was reviewed with meeting attendees. The Beach Road construction bid and contractor selection process was reviewed. A detailed discussion of meetings held on 6/15/16 with Pike Paving, Elmore's Road Commissioner and the Select Board Chairman was held.

Specific questions:

- 1) **From Mr. Dambach: Why was there a response delay to his initial email (sent on July 5, 2016 at 5:45pm) and his follow-up email (sent on July 6, 2016 at 9:27).**

SB Member DeVore explained that the SB received both emails and a response was sent from the SB Chairman (Burley) on July 7, 2016 at 4:02pm. To respond to all of Mr. Dambach's questions and requests for information, an Executive Session was required. That session was warned on July 8th and held on July 11th at the Town Clerk's Office. Following the Executive Session on 7/11/16, all public records were delivered by SB Member DeVore to Mr. Dambach's home on 7/11/16.

Mr. Dambach asserted that response to his initial email was too slow. Mr. Burley demonstrated from the records that an email was sent to Mr. Dambach within 48 hours, outlining the nature of the problem and the actions being taken. Mr. Dambach acknowledged receipt of that email.

TOWN OF ELMORE, VT

Monthly Select Board Meeting

DeVore also noted that, due to VT Open Meeting Law (OML) restrictions, the SB members may not discuss any town business via phone or email. The meeting of any two SB members (of a three-member committee) constitutes a public meeting and those interactions must be warned. Coordination of a consistent and complete response to Mr. Dambach could not be discussed absent a warned meeting. The OML presents a challenge to many 3-member Select Boards like Elmore's.

For the public record, Mr. Dambach's emails and ESB response have been attached to these minutes.

2) From Mr. Dambach: Where is the agenda for the meeting on July 11th.

SB Member DeVore noted that the agenda for the meeting held on 7/11/16 was posted along with the meeting Warning. The agenda was, "Personnel Discussion". The Warning was posted at the Town Clerk's Office and at the Town Hall on Friday, July 8th. All Warnings will also now be posted to the Town's Website to aid in broader information delivery. The Warning is available on the Town's website [here](#).

3) From Mr. Smith (home owner on Beach Rd): What was the cause of the issue? Can you offer a summary of what happened?

SB Member Wills and Road Commissioner Lacasse gave an overview of the project, the bid process and the chronology of meetings held and observations made from June 15, 2016 to July 1, 2016.

4) From Mr. Smith (home owner on Beach Rd): Can you tell us what the cost will be to fix the error?

SB Member Burley: Pike has agreed to come back and regrade and repave the affected section at their cost. They recognize that an error was made and they'll be in the area over the next several weeks. The SB has also solicited bids from other graders (informally) and all other estimates are 20-40% higher than Pike's. The SB feels that signing a contract with Pike would be the best option.

Mr. Smith noted that the SB may want to consider adding the repaving work to the existing Pike contract vs. pursuing a new contract with a new vendor. Under our existing contract terms, we would be able to accept the current bid without requiring additional formal bids and we would potentially avoid any short or long-term liability that may arise from having two contractors work on sections of the same roadway. Should there be issue, having a single contractor to assume liability would be better for the town.

5) From Mr. Wepler: What is wrong over there?

SB Member Wills and Road Commissioner Lacasse outlined the grading changes that were made by Pike on June 15, 2016 which included moving base layer materials from the west side of Beach Road (State Park side) to the east side of the roadway creating a sloped run-off toward the State Park and creating up to an 18 inch elevated drop-off on the east side of the road. Driveways on the "lake side" of Beach Road were left inaccessible. The grading of Beach Rd did not meet ANR standards, created a driving hazard and did not conform to the stipulated standards outlined on the morning of June 15, 2016 by all authorized parties.

6) From Mr. Hartt: Questions on the chronology of events, possible work arounds and fixes.

TOWN OF ELMORE, VT

Monthly Select Board Meeting

SB Members all addressed the chronology of June 15, 2016 – June 20, 2016 when Mr. Burley was made aware of an issue with the paving elevations and grades.

7) From Mrs. Doherty: Why were we repaving? Was the original surface dirt or asphalt?

SB Burley and Wills, Road Commissioner Lacasse (and several attendees) responded. Beach Road was paved, though it was in such a state of disrepair, it may not have been evident that it was paved. Beach Road is the gateway to the state park, town garage, fire department, etc. Yes, it has to be paved. Equipment weights are significant and would be impossible to manage on an unpaved road. The old pavement was too thin to support the load and traffic. All culverts were changed out before the paving. The road crew had applied a plant mix (blown ledge and sand to bind) prior to Pike coming to grade and pave. 6" were put on the blacktop. Pike reclaimed the full depth and created a new base material. The reclaim was better than bringing in new mix.

8) General Question: Did we get credit for the blacktop that had to be removed.

No credit for the old blacktop. Pike didn't want it. EPA considers it to be hazardous and needs special handling.

9) General Question: Why does Elmore have to pay for the error, doesn't Pike have liability in this?

Both the Town of Elmore and Pike may have responsibility for the error. Pike has offered to repave at their cost. The SB has determined that the best course of action is the keep accounts with Pike whole (and paid), keep the good will on the project and address the problem quickly. Dragging out this "minor" paving project with a large paving company and pursuing fault through legal means would delay repairs and cost the town more in legal fees than having the repair addressed as outlined.

The SB will continue to investigate the root cause of the error and take appropriate actions based on findings.

10) From Don Pierce: Was a civil engineer involved in setting the grade for that road.

No. Specifications for the road included adhering to VT ANR standards. There were no special or unusual specification required (speed bumps, etc.). The state has already specified the grading required and the town adheres to state standards on our roadways to comply with ANR and AOT guidelines so that we qualify for state roadway grants. Pike's grader is GPS and laser guided to guarantee that grades would be correct. There was no need to involve an engineer. When Michel laid down the plant mix at 2% crown, it set the foundation that would make the new surface 4" higher. The grader settings were changed on site from the defined specifications. ESB investigation has established cause which will be detailed when investigation is complete.

11) From Brent Hoskins: Could people's driveways have been reconfigured to save money?

No. The faulty grading created a safety issue due to the pitch of the road. The pitch didn't meet the state standard for run-off. Water would shed into the ditch vs. shed properly. It wasn't a matter of the driveways alone. Two driveways would have required a complete modification. This also created a liability for the town, would have required guard rails and was a long-term issue.

TOWN OF ELMORE, VT

Monthly Select Board Meeting

12) **General Question: Is there a timetable for the repair.**

Pike will be in the area to repave for us when they are done in Johnson. Will happen as they move to their next job. Expectation is before the end of August, but the SB will keep the public updated through our meeting minutes.

There was a general acknowledgement by meeting attendees that the SB had handled the issues quickly and effectively. As the SB's investigation continues, more actions will be taken to ensure that problems like this are avoided in the future.

B. NEW ITEMS:

1. **STATUS UPDATE:** ANR stringent water quality regulations for all roads and land uses begin phase in 1July16. Expect increased costs and fees.

Fee schedule will require an increase in the roadway budget to comply with new state statues/rules. Fees are being charged to farms based on size (ex. Small, Medium, Large – ambiguous at best). Fees are for any farms with animals that raise crops. \$1500 - \$3500 range annually. Legislature seeking discontinuation of till gardens to reduce sediment runoff.

Note that property owners will be charged annual fees based on property contribution to run off. (ie. roof size, driveway run off, etc.). Fees are earmarked to fund new water quality department. Every town in VT will be charged \$10k annually to have roads. All roads have to meet state standards or be closed. An inspector will be sent to review.

2. **STATUS UPDATE:** WATER SYSTEM: Intermittent malfunction in pump solenoid/valve results in hammering and shutoff. Temporary fix in place. Estimated 20K+ gallon overflow halted. System Engineer on site for assessment and repairs.

ADDED TO AGENDA:

3. **STATUS UPDATE:** Stu Weppler, Zoning Administrator and Health Officer, has tendered his resignation and would like to work with the SB to find a replacement that can work with Stu through a transition period.

C. CONTINUING ACTIVE ITEMS:

1. **Road Commissioner Update – LaCasse**

Work Completed:

- Ditching, stone lining and splash pools construction along State Park underway. Part of Better Road grant.
- Cleaned up storm damage.
- Replenished gravel stock pile.
- Sweep aprons prior to town celebration
- Grading is minimal due to a shortage of chloride used in dust control and compaction. Shortage due to high use in dry weather conditions.

Equipment status:

TOWN OF ELMORE, VT

Monthly Select Board Meeting

- Sweeper unit working well.

Employee Status:

- Summer vacations being taken.

Upcoming:

- Received word we were accepted for one of two Better Roads grants. Beach Rd in amount of \$10,684.00.
- Approved for a state structures grant to change four culverts on Elmore Mountain Road. Plans are to complete construction season of 2016 in the amount of \$44,714.70.
- Presently three weeks behind schedule for summer projects due to Beach Rd complications.

D. COMPLETED/INACTIVE ITEMS:

1. Open Action Item List reviewed by SB.

E. SB VOTED TO ENTER EXECUTIVE SESSION

Entered Executive 7:58pm

Minutes not taken during session.

Executive Session ended at 8:16pm.

Attached:

As referenced in minutes, copies of email correspondence between Mr. Dambach and the Elmore Select Board between July 5, 2016 and July 11, 2016.

TOWN OF ELMORE, VT

Monthly Select Board Meeting

Eugene F. Dambach

Jul 5 |

to rwillis, rbrt_burley, me ▾

Greetings Bob, Rob, Caroline: I am writing the ESB to gather information about the beach road project. Please send me the following information ASAP.

- 1) The bid proposal used and final contract that was agreed upon between the Town of Elmore and Pike Industries.
- 2) Reason for the rip up of the first 300+ feet of fresh laid asphalt.
- 3) Status of the repair.
- 4) Any other information, such as email correspondence with Pike and ESB/ Road Commissioner, that would be helpful to understand what went wrong with this project.

Please add me on the agenda for the next ESB meeting on Wednesday July 13th for Community concerns.

Thank you,

Eugene F. Dambach

1611 Elmore Mountain Road

Elmore, VT 05661

[802-888-5901](tel:802-888-5901)

eugene.dambach@gmail.com

Be constructive and contribute to society

TOWN OF ELMORE, VT

Monthly Select Board Meeting

from: **Eugene F. Dambach** <eugene.dambach@gmail.com>
to: "Eugene F. Dambach" <eugene.dambach@gmail.com>, rwillis@stowebuilder.com, rbrt_burley@yahoo.com, cdevorerun@gmail.com
date: Wed, Jul 6, 2016 at 9:27 PM
subject: Beach Road Bid and status of repair revision

7-6-2016

Dear: Robert Burley - ESB Chairman,

Caroline DeVore - ESB

Rob Wills - ESB

Pursuant to Vermont's Public Records Act, 1 V.S.A. 315-320,

I hereby request copies of the following records:

- 1) The bid proposal and the list of companies it was sent out for bid to.
- 2) Final contract that was agreed upon between the Town of Elmore and Pike Industries.
- 3) Reason for the rip up of the first 300+ feet of fresh laid asphalt.
- 4) Any other information, such as email correspondence with Pike and ESB/ Road Commissioner, that would help to understand what went wrong with this project.

I am addressing this request to 3 of you in the belief that one of you are the custodian of such documents. As Sharon did not have a copy in the Town Offices.

If you are not, I request that you forward my request to the proper custodian of such documents and inform me of who that person is. I hereby agree to pay reasonable and customary costs for these copies upon delivery, that the total does not exceed \$10.00. If the charge would exceed that amount, please so inform me before incurring the expense.

If the law does not allow me to have access to some of these records, please inform me within three business days, as provided by law, and inform me of the specific exemption that applies to each record or portion of a record being withheld. If an otherwise public record has a portion that is exempt from disclosure, please redact the exempt portion and release a copy of the rest of the document together with a notation of the specific exemption that applies to the redacted portion.

If some or all of my request is denied, please tell me the title and name of the person responsible for the denial and, as the law requires, please inform me of the appeal procedures available to me and the name of the person to whom an appeal may be made.

If you have questions about this request, please call me at 888-5901

Please contact me in the any of the following ways.

By Phone: 888-5901

Email: eugene.dambach@gmail.com

Snail mail: 1611 Elmore Mountain Road Elmore VT 05661

Thank you for your assistance

Eugene F. ~~Dambach~~

1611 Elmore Mountain Road

Elmore, VT 05661

[802-888-5901](tel:802-888-5901)

eugene.dambach@gmail.com

Be constructive and contribute to society

TOWN OF ELMORE, VT

Monthly Select Board Meeting

ESB-Dambachreply-070716

From: robert burley <rbrt_burley@yahoo.com>

To Eugene F. Dambach

CC

Caroline DeVore, Robb Wills, Robert Burley, Sharon Draper

7JULY 16 Today at 4:02 PM

Mr. Dambach:

Thank you for your concerns. As of today, property access has been restored and the town is actively pursuing the final repaving of this project resulting in an upgrade of one of the most visible and utilized roads in town. Our current expectation is that the project will be completed under budget and as quickly as the busy construction season permits.

The project goes well beyond simple repaving and now must include the new, stringent water quality rules promulgated by the EPA and VT ANR for all roads and highways. This water quality work has been successfully completed by the Town Highway Department, needing only final erosion stabilization to surpass the mandated TDML requirements for the Lamoille and Champlain Basins. The Elmore Highway Department is one of the first towns in the state to have implemented practices meeting these standards.

The Elmore Select Board, consistent with town priorities and best management practices (RIC), has and will continue to manage this issue in three phases:

- 1) Remediation,
- 2) Investigation of causes,
- 3) Corrective Actions where appropriate.

Previous Select Board meeting minutes are available on the website.

The Elmore Select Board will cover this topic during the first 20 minutes of the regular select board meeting.1830hrs 13Jun16.

R. M. Burley, Elmore Select Board

IMPORTANT: PLEASE REMOVE ALL EMAIL HEADERS AND ADDRESSES BEFORE FORWARDING.
HELP PREVENT SPAM, MALWARE AND NOXIOUS PROPAGATIONS.

Eugene F. Dambach

Jul 7

to robert, Caroline, Robb, Sharon

Thanks Bob, I still would like you to send me the items I listed. Let me know when and where to pick them up.

Thanks Eugene

Eugene F. Dambach

Jul 9 (5 days ago) ☆ Share this email

to robert, Caroline, Robb, Sharon

ESB, Please respond to my request in accordance to the Vermont's Public Records Act, 1 V.S.A. 315-320, by close of business on Monday the 11th of July 2016.

Otherwise I will be calling the Secretary of States office for assistance.

Robert, I see you changed Caroline and Robs email address! Why are you and Sharon not using the towns domain for email?

Thank you for your prompt attention.