

MEMORANDUM

To: Select Board

From: Stuart A. Hurd, Town Manager

Re: North Bennington discussion

Date: August 6, 2007

This memorandum is written to discuss, in general, the various options the staff and I believe must be thoroughly reviewed before any decision by the Select Board or the Trustees can be made regarding the current request involving permitting and economic development services. It appears evident that in two cases the Town and the Village come together. In the other two cases, the Town and Village move further apart. We believe it to be in everyone's best interest to try to move together. This discussion will conclude with a general discussion about such tax opt-outs using information provided by the Vermont League of Cities and Towns.

Option 1 Consolidation

Perhaps the easiest and cleanest option to achieve positive results. Certainly, it would bring the two entities together in the truest sense. It would provide the services sought. However, it is perhaps the least likely to occur. Therefore, we did not spend much time on this. This would require a vote of the residents of North Bennington. The residents of Bennington have already voted as evidenced by our Charter language. The language that North Bennington voters would consider in a vote is contained in the Bennington Town Charter, page 24. Articles of consolidation that create the basis for the vote would be mutually developed.

Option 2 The Town provides the services sought (Permitting and Economic Development)

When we last looked at this proposal, we were concerned about the employee/Trustee relationship, enforcement dollars, liability for enforcement actions and costs, and how best to provide the service without over burdening the Town employees.

It occurs to us that North Bennington lacks only the single-family, owner occupied construction or building code coverage. The Village has land use regulations, a part-time zoning administrator, a Planning Commission and a Development Review Board (DRB). Public building code enforcement is provided by the State. We estimate that the Village issues 10 - 15 construction permits each year. Most are residential, single family in nature. If a commercial or industrial project is proposed, it requires State review as well.

Proposal

If North Bennington would agree to cede the actual permitting and enforcement of local land use regulations and local building codes to the Town and adopt the Bennington Building Codes, staff believe that we can provide the inspection and enforcement services necessary. The following conditions must be met: the North Bennington Planning Commission and DRB would remain intact as does the Village's Land Use Regulations. All required hearings on applications, including notices, minutes and findings of fact would be developed and adopted by the appropriate North Bennington entity. The North Bennington Planning Commission would continue to handle all Village Plan and Bylaw reviews and amendments for North Bennington. All building and zoning applications for construction or use alterations in North Bennington would be handled at the Bennington Permitting Office. Appeals of the Zoning Administrator decisions regarding the North Bennington Land Use regulations would continue to be handled by the North Bennington DRB. Decisions of the North Bennington DRB would be forwarded to Bennington's Planning Administrator for action and enforcement. Permits issued would include a construction approval as well. Initially, the State would continue to handle all public building permits. Fees for the zoning or land use permits and building permit fees would remain with the Town. Appeal fees of decisions by the Bennington Zoning Administrator or of the North Bennington DRB would be turned over to the Village to defray its costs. Enforcement actions brought by Bennington staff under North Bennington regulations would be paid by the Town. All fines would be kept by the Town to defray its costs. Appeals of North Bennington DRB or North Bennington Planning Commission decisions would be at the sole cost of the Village. Over time, Bennington staff would determine if additional staffing is required including any staff required to ultimately provide the State permitting and inspection services as well. Both the Select Board and the Trustees would work with Town staff to review staff recommendations and costs to meet those recommendations. All costs would remain in the Town's General Fund and be subject to adoption by the Bennington Select Board and the voters.

The Economic Development Office would provide needed services as it did in the Vermont Arts Exchange grants. Determination on grant requests, time demands, and other issues would be worked out cooperatively to the best of everyone's abilities. In the case of competing grant applications, the Select Board shall determine which grant application will be prepared by Town staff.

Option 3 North Bennington adheres to its Charter exclusively

In this option, the North Bennington Charter would be reviewed and literally interpreted. The Village would cease to use the Bennington Police Department as its police unit. It would "appoint a Chief of Police and not more than five additional police officers" to carry out law enforcement responsibilities in the Village. In March 1972, the Town and the Village mutually agreed to provide Bennington's police services to the Village. The Village essentially appointed the Bennington Police Department to act under its Charter. The Trustees "shall have the care and supervision of the public sewers and drains of the Village" much as they now control the water system. Currently, the Town provides the care and supervision of the public sewers within the Village. The Village Charter provides the Trustees with the authority to contract for water and lights. However, the Charter is silent on that same authority for police and public sewers.

To create and pay for both a Police Department and a Sewer Department would most likely take

time and perhaps an increase in the budget and taxes of the Village. Perhaps it would be appropriate to work cooperatively with the Village over a period of five years to help give the Village time to make this happen. Village permitting authority would remain with the Village under this scenario.

This option, if followed, would move the Town and the Village further apart. And although, it would place responsibility for police and public sewers in the hands of the Trustees, the use of the Bennington Sewer Treatment Facility and the Bennington dispatch services would remain issues to be resolved.

Option 4 Secession

This option is now being explored by the Village. It would appear to force the Village to create a land records office similar to Bennington's Town Clerk's Office. The cost to separate the North Bennington land records from those of Bennington would appear to be very high. The Village would create a Listers' Office for the keeping and maintaining of its Grand List. All current support from and facilities of the Town such as recreation, transfer station and recycling, animal control, county tax payments, library support would have to be altered since the residents of North Bennington would no longer be residents of Bennington. North Bennington's ability to vote on budgets and issues of the Town would cease. Residents of the Village would no longer be able to serve on the Select Board, the Development Review Board or the Planning Commission of the Town of Bennington. Its ability to influence decisions in the Town would be severely limited. Would the State Legislature support the creation of a new municipality in this manner? That remains to be seen.

This option would fully separate the Town and the Village. As "clean" as it might be, it is not a goal the staff here see as mutually beneficial to the residents of greater Bennington.

Conclusion and recommendations

It appears clear to us that Option 2 is the best approach to the current issue before the Town and the Village. Furthermore, the "carve out" or "opt out" discussions and past practices may not be legal. If possible, the Town and the Village should formalize the current practices for highways, police services, fire protection and public sewers while moving forward on the permitting and community development issues.

Taxes and taxing authority

As part of my research into the options noted above, I contacted the Vermont League of Cities and Towns (VLCT) to determine how other similar municipalities were handling such Village/Town relationships in Vermont. In general, VLCT believes that Vermont statutes require that all residents of a given community should pay all taxes of that community. In the case of incorporated villages, the residents of the village are residents of the town first and have all rights and responsibilities conferred on them as any other resident of the town. Therefore, the opt-out arrangements we are discussing now and have in place regarding Fire Departments and

Highway Departments may not be possible under Vermont law. If a village votes to provide a specific service to its residents, it does so at an additional cost to its residents.

The caveat as it relates to the Highway Departments lies in the Charter language contained within each Charter. I attach a cursory opinion from Jim Barlow, VLCT legal staff, which indicates that the Charters may allow what we are doing in our Highway Funds because the Town Charter exempts road commissioner responsibilities for the villages “as may vote not to surrender their charters”. The North Bennington Charter specifically authorizes the Village to take charge of the roads and tax for said efforts.

According to recent comments by the Secretary of State, Vermont statutes do contemplate villages contracting with towns for services so our relationship in the case of the Police Department may be valid. Our proposal for the Town to provide permitting and community development departments activities within the Village appears to be valid.

This discussion only strengthens our original conclusion and recommendation. We need to mutually undertake a review of our historically developed relationships and clearly establish a legal basis for what we are now doing or stop doing it.