The duly warned regular Board meeting was held on December 9, 2015 in the Lanpher Memorial Library.

Trustees Present
Frederika French, Chair
Tim Yarrow
Charles (Charlie) Aronovici
Jack Anderson
Peter Gallo

Others Present
Carol Robertson, General Manager
Bob Falker
Gene Besaw
Nick Perry

Riki French called the meeting to order at 6:05 p.m., welcomed attendees and opened the floor for public comments. Bob Falker stated that he wished to comment about zoning. To eliminate any possibility of ex parte conversation relating to Development Review Board duties, the following persons left the meeting during Mr. Falker’s comments: Charlie Aronovici, Jack Anderson and Carol Robertson. Following his comments, Mr. Falker left the meeting and Mr. Aronovici, Mr. Anderson and Ms. Robertson returned to the meeting.

Gene Besaw and Nick Perry of Gene A. Besaw & Associates, P.C., Newport, Vermont presented the Independent Auditor’s Report, financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Village, as of and for the year ended December 31, 2014. There was a lengthy discussion during which Mr. Besaw apologized for failure to meet the April 1, 2015 completion date, as stated in the commitment letter. He explained the reasons for the delay, all of which related to issues at his firm. He highly complimented the staff of Hyde Park. He stated that his ability and intent to meet the deadline of April 1, 2016 for the 2015 report. Mr. Besaw and Mr. Perry left the meeting. Motion by John Anderson and second by Tim Yarrow to engage Mr. Besaw’s firm for the 2015 audit report. The motion carried unanimously.

There was a review and discussion of Village Attorney Brian Leven’s letter to the Trustees of the Village of Hyde Park, dated December 2, 2015, RE: Legislative history of the Village of Hyde Park charter. The letter began with “The attorney for the Town of Hyde Park has advanced a couple of arguments in support of his position that the Village does not have the authority to regulate motor vehicles within the Village.” The letter ended with “In conclusion, my research into the legislative history of H.584 supports what I have suspected all along. The Legislature, in enacting this bill, clearly intended to confer upon the Village all powers granted to villages by law, including those set forth in 24 V.S.A. §2291, which includes the power to regulate motor vehicles.” Motion by Tim Yarrow and second by Jack Anderson to consider this legal opinion as definitive, to include this letter with the minutes and inform the Sheriff. The motion carried unanimously.
Motion by Jack Anderson and second by Peter Gallo to approve the minutes of November 11, 2015. The motion carried unanimously.

The Chair reviewed the agenda and Jack Anderson requested an addition to the agenda: further discussion regarding Hyde Park Village Improvement Association’s requests regarding signs and trash collection within the Village. The Chair noted that the GM suggested the need for an executive session. The agenda was accepted with these two additions. Warrants were authorized and signed. Delinquent accounts were reviewed in detail. The Board Schedule was reviewed and approved.

- The Quarterly Meeting of the Village Planning Commission will be held on Wednesday, January 13 from 4:30 p.m. to 5:30 p.m. in the Lanpher Memorial Library, rear door; upstairs

Motion by Charlie Aronovici and second by Jack Anderson to
- host the solar informational meeting for HPE ratepayers on Wednesday, January 13 from 6:00 p.m. to 7:00 p.m. in the Lanpher Memorial Library,

- warn the Public Information Hearing for Hyde Park Solar, Waterhouse Project for 6:30 p.m., Monday, January 18, 2015, in the Town Community Room,

- warn the Australian Ballot to be held on Tuesday, January 19, 2015 between the hours of 7:00 a.m. and 7:00 p.m. in the Town Community Room,

- warn the Special Village Meeting for 7:30 p.m. on January 19, 2015 in the Town Community Room, and

- warn the article for Australian Ballot to be held on Tuesday, January 19, 2015.

**Warned Article**

**CONSTRUCTION AND GENERAL OBLIGATION BONDS FOR VILLAGE OF HYDE PARK ELECTRIC DEPARTMENT SOLAR GENERATION FACILITY**

Shall the Village of Hyde Park vote in accordance with 30 V.S.A. §§ 248(c) and 108(c) to approve construction of and issue bonds to finance the proposed Waterhouse Solar Project, consisting of an approximately 1.0 megawatt solar electric generating facility at a site on Silver Ridge Road, as approved by the Vermont Public Service Board in Docket No. 8614, provided such bonds, in an amount not to exceed Three Million Three Hundred Thousand Dollars ($3,300,000) and payable from net revenues of the Village of Hyde Park Electric Department, are issued under the Clean Renewable Energy Bond program with a blended effective annual interest rate of not more than 1.95%?

The motion carried unanimously.
There was a discussion of the “Hyde Park Connectivity Project” commonly called “Bike-Ped Scoping Study”, which is a $31,500 joint VTrans application of the Village and Town. The grant was awarded in August 2014 and is administered by the Town. The Town noticed the public that a final report to complete the project would occur in December. The Chair attended the November 12 Selectboard meeting and asked again that the Board be allowed to represent Village interests in this important Village-centric project. She asked the Selectboard to halt the project until such time and requested a response within the month. The Selectboard has not responded to the Chair.

The Board reviewed the Johnson Street Extension sidewalk construction project and the discussions of the joint meeting with Selectboard held on July 1, 2015. With anticipated construction in 2017, it was agreed to notice the Selectboard that it may be appropriate to spread the Town contribution, which is the anticipated amount required in excess of grant funds, between budget years 2016 and 2017, either as an article for the Town Meeting or a Town budget item. Motion by Jack Anderson and second by Charlie Aronovici to request the total amount of $90,000 toward the construction of the Johnson Street Extension sidewalk. The motion carried unanimously.

The GM reported on general operations of the Village, Electric, Water and Wastewater operations. There was a lengthy report and discussion of the Hyde Park Solar, Waterhouse Project, specifically the 248 and 108 filings with the Public Service Board. VEDA plans to conduct a special Board meeting in order to accomplish our timely acceptance of the Clean Renewable Energy Bonds.

The GM reported that the state performed stormwater testing to determine the origin of human waste going into the river and found that the home located on 13 Depot Street Extension was not connected to the sewer system. This connection was shown as complete on Village maps and payments made for the connection during the 1970’s in the same manner as the home located on Church Street, which was connected to the sewer system last year. 13 Depot Street Extension will be connected following the thaw in 2016.

There was a discussion of the financial impact of the previous year’s weather on the water department. Motion by Jack Anderson and second by Tim Yarrow to reinstate the $20,000 loan to the sidewalk fund in anticipation of the winter season. A confirming article will be put forth to Village voters at the May Annual Village meeting. The motion carried unanimously.

The GM reported that HPE recently received a check for $11,565.84 in payment for a lien placed on property for unpaid electric bills. The Village charter allows for the placement of liens for unpaid electric bills and without the charter, this money would not be recoverable by placement of liens.

The 2016 budgets for the General, Electric, Water and Wastewater departments were presented and thoroughly reviewed. Motion by Jack Anderson and second by Peter Gallo to approve the budgets as presented. The motion carried unanimously.

The GM gave an update on the solar project, presented and discussed a summary of the Cost and Benefit Projections prepared by Tim Hebert, Energy New England, on behalf of Hyde Park Solar,
Waterhouse Project. His projected benefit over a 30-year life of the project is a net savings of $2,049,020. This summary is included with November electric bills. In 2016, the budget with the solar project does not show a need for a rate increase. The 2016 budget without solar shows a need for a rate increase. The solar project covers 13% of HPE’s energy requirements and reduces the amount of energy purchased from the ISO NE spot market, which is roughly 30% of current purchases, as well as help HPE meet Tier 1, Tier 2 and Tier 3 requirements under the Renewable Energy Standard. The project results in substantial net savings relative to market projections. There was a general discussion of future strategies to mitigate energy costs in future years for the balance of HPE’s portfolio.

There was a discussion of the need for trash collection in the Village and new signs. These matters will be addressed in a timely manner.

The GM requested an executive session to discuss contract terms and conditions that if made public at this time might have a negative impact on the competitive abilities of the Village. Motion by Tim Yarrow and second by Jack Anderson to enter executive session at 9:48 p.m. The motion carried unanimously.

Motion by Tim Yarrow and second by Jack Anderson to end executive session at 10:15 p.m. The motion carried unanimously. No action was taken.

There being no further business, motion by Charlie Aronovici and second by Tim Yarrow to adjourn at 10:20 p.m. The motion carried.

______________________________  _________________________
Frederika French  Date
December 2, 2015

Delivered via email
Carol Robertson, General Manager
Village of Hyde Park
P.O. Box 400
Hyde Park, VT 05655

RE: Legislative history of the Village of Hyde Park charter

Dear Trustees of the Village of Hyde Park:

The attorney for the Town of Hyde Park has advanced a couple of arguments in support of his position that the Village does not have the authority to regulate motor vehicles within the Village. His primary argument is that the section of the Village Charter that establishes the powers of the Village does not specifically state the Village’s authority to regulate motor vehicles. Instead, 24 V.S.A. App. § 225-31(a) confers the following general grant of authority:

(a) The Village of Hyde Park shall have all the powers granted to villages by the Constitution and laws of this State, together with all the implied powers necessary to carry into execution all the powers granted; the Village may enact ordinances pursuant to 24 V.S.A. chapter 59 not inconsistent with the Constitution and laws of the State of Vermont or with this charter, and impose penalties for violation thereof.

I have previously advised the Village Trustees that this general grant authority confers all of those powers enumerated in 24 V.S.A. § 2291, including that set forth in subdivision (4):

(4) To regulate the operation and use of vehicles of every kind including the power: to erect traffic signs and signals; to regulate the speed of vehicles subject to 23 V.S.A. chapter 13, subchapter 12; to regulate or exclude the parking of all vehicles; and to provide for waiver of the right of appearance and arraignment in court by persons charged with parking violations by payment of specified fines within a stated period of time.
The Town’s attorney has also argued that the 2000 legislative act (1999, No. M-11 (Adj. Sess.)) that approved the Village’s comprehensive rewrite of its charter repealed a Village Highway District established in 1904. He argues that this repeal is “proof that the village is no longer responsible for the highways within its bounds . . .”.

I have a differing opinion of the implications of the highway district repeal. While Act No. M-11 did repeal the Highway District, it also set forth the general powers provision referenced above. The repeal provision simply cleans up outstanding charter provisions that are addressed in the comprehensive rewrite.

In this case, the black letter of the law is clear. The Village Charter clearly and unambiguously gives the Village all powers granted to villages by law, and the § 2291 clearly and unambiguously grants to all villages twenty-eight specific powers, including the power to regulate motor vehicles. When the law is unambiguous, there is no need to turn to legislative history for clarification. Nonetheless, the legislative history of Act No. M-11 provides further support for the Village’s authority to regulate motor vehicles.

Prior to the 1999-2000 Legislative Session, the voters of the Village approved a comprehensive charter rewrite and, as required by law, submitted it to the Legislature for introduction as a bill, H.584. This version set forth the general powers of the Village in a version similar to that which ultimately passed into law. However, it also enumerated twenty specific powers of the Village.

H.584 as introduced was referred to the House Local Government Committee, which spent almost a month and half with custody of the bill. When the bill was voted out of the committee it was as a strike-all amendment. In other words, the committee did a comprehensive rewrite of the Village’s comprehensive rewrite. They arrived at this amendment after a number of hearings and an exchange of questions and answers with the Village Clerk.

At the State Records Center, I located a couple of cassette tape recordings of the House Local Government Committee that are particularly telling. On January 18, the committee reviewed H.584 as introduced. They discussed the specific powers provisions. At one point, one representative asked why the specific powers needed to be enumerated and why not simply reference 24 V.S.A. § 2291. This suggests that the committee felt that enumerating specific powers would be redundant given the general powers provision. One of the questions submitted to the Village Clerk was whether or not enumerating the specific powers was necessary.

I did find the letter from the Village Clerk to the Committee in response to the Committee’s questions. On the question of the specific powers provision, the Clerk’s response was in agreement with the Committee and was fine with referencing 24 V.S.A. § 2291 and the ordinance adopting authority set forth in 24 V.S.A. § 1971.

The general powers section in the version of the bill ultimately approved by the Committee is the version that was enacted into law. While this version does not specifically reference 24 V.S.A. §
2291, it is clear from the Committee’s approach to this section that they were comfortable removing the specific powers enumerated since the section states, “[t]he Village of Hyde Park shall have all the powers granted to villages by the Constitution and laws of this State”.

(emphasis added) The Committee was primarily concerned with redundancy in this section and felt that the general powers provision conferred all the specific powers to the Village, as is clear from the plain meaning of Act No. M-11. Of particular importance in the legislative committee records is a “Summary of Committee Amendment”. In reference to the general powers section, this summary states, “[w]ith concurrence of Village. Amendment simplifies Subchapter 3, § 31 ‘General Powers’ to refer to existing statutes which address these issues.”

In conclusion, my research into the legislative history of H.584 supports what I have suspected all along. The Legislature, in enacting this bill, clearly intended to confer upon the Village all powers granted to villages by law, including those set forth in 24 V.S.A. § 2291, which includes the power to regulate motor vehicles.

Sincerely,

STACKPOLE & FRENCH LAW OFFICES

Brian H. Leven, Esq.

cc: Carol Robertson