



# Annotated Agenda

07/28/16

## **2. Executive Session – 1 V.S.A. § 313 (a) (1) (E) and (F)**

**Guests:** (1) Town Attorney Bud Allen

**Enclosures:** (1), (2), and (3) – The Environmental Court’s trio of Rule 59 decisions

This is warned as an executive session topic, as it involved receiving advice from legal counsel. The Board could also choose to remain in open session to discuss. Any decisions made need to occur in open session. As always, two motions are required to enter executive session: the motion finding that it is necessary and legal and the motion to enter.

*Consider a motion to find that premature general public disclosure would place the municipality at a substantial disadvantage with regards to potential or probable litigation to which the municipality is a party.*

*Consider a motion to enter Executive Session pursuant to 1 V.S.A. § 313 (a) (1) (E) and (F), to include the Town Administrator and the Town Attorney, for the purpose of discussing the Environmental Court’s Rule 59 decisions regarding Hannaford and possible appeals to the Vermont Supreme Court.*

## **5. Consider Action on the Proposed Deed of Easement and Stipulated Agreement**

**Guests:** (1) Town Attorney Bud Allen

**Enclosures:** (1) The proposed (v.06.04) Deed of Easement, Stipulated Agreement, and Attachments (single pdf)  
(2) Wetlands maps (including July 2016 revision)  
(3) Public comment period feedback (through 4 p.m. on 7/27/16)  
(4) Rules of conduct for the meeting

A reading of the rules of conduct should be the opening action. The intent of the rules is to ensure that discussion is equitable, civil, and productive.

The latest versions of the Deed of Easement and Stipulated Agreement have been reviewed by the Town Attorney, and are being reviewed by a separate attorney (Steve Stitzel of Stitzel Page and Fletcher) whose firm has experience in municipal law and Public Service Board proceedings. The hope is to have the separate review completed prior to and available for the meeting.

The Public Service Board (PSB) has set the technical hearing date for the eminent domain proceedings as August 4<sup>th</sup>. The purpose of the technical hearing and the eminent domain proceedings, generally, is to answer two questions:

1. Can eminent domain be used to “take” the easement through Geprags Park?
2. If the answer to question one is yes, then what is considered just compensation for that taking?

A Deed of Easement and Stipulated Agreement, if approved, would represent the “compensation” envisioned in question two. If not, the Public Service Board will rely on the two appraisals conducted in the spring that propose an easement value less than \$10,000 (and likely will not include the other provisions included in the two documents).

What the Public Service Board’s process does not include is the discussion regarding the wetlands delineation. The updated analysis has been conducted, reviewed on site by the State (twice), with maps created showing additional areas of wetland (see page 48 of the pdf). Whether or not an amendment of the previously issued State wetlands permit is required likely depends on construction methodology (directional drilling is not likely to require an amendment, open trenching likely will). The wetlands permit is separate from the Public Service Board proceedings.

The subcommittee convened on Wednesday night and identified potential amendments to the deed and stipulated agreement. Those amendments are being compiled and will be available for discussion Thursday night. Members of the subcommittee will be in attendance; consideration of the amendments may require the Selectboard to warn and hold a special meeting during the early part of next week (either Monday or Tuesday evening). Review and discussion is generally envisioned as the “action” at the meeting.

No motion is proposed in this document. Staff will have draft motions covering a variety of scenarios should they be needed.