



# Town of Essex Village of Essex Junction



## TRUSTEE & SELECTBOARD SUBCOMMITTEE ON GOVERNANCE

### SPECIAL MEETING AGENDA

Wednesday, November 14, 2018

2 Lincoln St. (Lincoln Hall)

Essex Junction, VT 04542

6:30 PM

*A majority of the Selectboard and Trustees will be present, but solely in their capacity as subcommittee members. They will not discuss or take action on any issue outside of the scope of the subcommittee and shall not act as the Town Selectboard or Village Board of Trustees at the meeting.*

**1. CALL TO ORDER**

**2. AGENDA ADDITIONS/CHANGES**

**3. APPROVE AGENDA**

**4. PUBLIC TO BE HEARD**

**5. BUSINESS**

- a. Review and approve minutes of October 29 Governance Subcommittee meeting
- b. Review Dan Richardson's responses to legal questions (Attorney Richardson will participate in this discussion)
- c. Discuss next steps for preparing a summary report for the next joint meeting of the Selectboard and Trustees

**6. ADJOURN**

*Members of the public are encouraged to speak during the "Public to Be Heard" agenda item, during a Public Hearing, or, when recognized by the Chair, during consideration of a specific agenda item. The public will not be permitted to participate when a motion is being discussed, except when specifically requested by the Chair.*

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Certification: 11/9/2018  
Date Posted

*Amitchell*  
Initials

1 Select Board and Trustee Subcommittee on Governance  
2 October 29, 2018 Special Meeting Minutes  
3 2 Lincoln Street, Essex Junction, VT  
4

5 Subcommittee Members Present: Max Levy  
6 Elaine Sopchak  
7 George Tyler  
8 Irene Wrenner  
9

10 Staff Present: Greg Duggan  
11 Lauren Morrisseau  
12 Evan Teich  
13

14 Members of the Public Present: Barbara Higgins  
15 Margaret Smith  
16

17 1. CALL TO ORDER

18 George Tyler called the meeting to order at 8:30 a.m.  
19

20 2. AGENDA ADDITIONS/CHANGES

21 3. APPROVE AGENDA

22 Mr. Tyler shared materials from Select Board member Andy Watts, to be added to the  
23 discussion of items 5b and 5c. Irene Wrenner moved and Max Levy seconded the addition. The  
24 motion passed 4-0.  
25

26 Mr. Tyler confirmed that during this meeting Finance Director Lauren Morrisseau would present  
27 financial data previously requested by the Subcommittee. Ms. Wrenner moved to add the  
28 presentation to the agenda as item 5b. Mr. Levy seconded, and the motion passed 4-0.  
29

30 Mr. Tyler reminded members, staff, and the audience that the Subcommittee does not have the  
31 authority to make binding decisions for either municipal board, and asked that this message be  
32 included in the warnings and agendas for future meetings of the Subcommittee. Audience  
33 member Barbara Higgins added that state statute says that subcommittees are advisory only.  
34

35 Unified Manager Evan Teich read aloud an opinion provided by special counsel to the  
36 Subcommittee Dan Richardson:

37 *This subcommittee is a public committee and a creature of both the Town and*  
38 *the Village. Its meetings are public and should be publicly warned. They are also*

39 *discussing issues that are not specifically “the business of the town” but could be*  
40 *qualified as such under a broad definition of the term. The safest course of action*  
41 *would be to indicate in the warning for the subcommittee as a note that a*  
42 *majority of the selectboard will be present solely in their capacity as*  
43 *subcommittee members, and that they will not discuss or take action on any*  
44 *issue outside of the scope of the subcommittee and shall not act as a selectboard*  
45 *at the meeting. The other part of that is that the selectboard members must*  
46 *abide by this limitation and keep their subcommittee hat on at all times.*

47

#### 48 4. PUBLIC TO BE HEARD

49 There were no comments from the public on items not on the agenda.

50

#### 51 5. BUSINESS ITEMS

52

##### 53 a. Review, amend, approve minutes of September 19, 2018

54 Mr. Tyler moved and Elaine Sopchak seconded the approval of the minutes. The minutes were  
55 approved 3-0-1 (Mr. Levy abstained) with the following amendments:

- 56 • Line 39: Change “Mr. Tyler” to “Ms. Wrenner.”
- 57 • Line 112: Change “He” to “Mr. Tyler.”

58

##### 59 b. Presentation of financial data

60 Ms. Morrisseau shared a series of charts in answer to requests for data made by Mr. Tyler at a  
61 previous meeting. Mr. Levy emphasized that the purpose of the information shared is to help  
62 the Subcommittee understand the communities’ full financial picture, and will not be used as  
63 the basis for any decisions by the Subcommittee. Mr. Tyler noted that the information shared  
64 will help illustrate the flow of funds between the Village and the Town and highlight what is  
65 being shared.

66

67 Ms. Morrisseau handed out a residential tax rate history—a chronological chart of all Town and  
68 Village tax rates, both municipal and school, dating from 1951 through 2019. She explained the  
69 chart demonstrates that currently the Village tax rate is approximately \$.31 higher than the  
70 Town’s.

71

72 Ms. Morrisseau next reviewed nine charts that corresponded to specific data requests made by  
73 the Subcommittee.

- 74 1. *FY19 Tax Type & Tax Rate* itemizes the totals and distribution for the grand lists of both  
75 the Town and Village for residential, Global Foundries, and non-residential.

- 76 2. *Town General Fund Budget* shows the distribution of contributions to the Town general  
77 fund budget by Village residents (32%), Town residents (40%), Global Foundries (3%),  
78 non-Global Foundries non-residents (18%), and non-tax revenues (8%).
- 79 3. *Town Capital Fund Contributions* illustrates the transfers from the Town FY19 general  
80 fund to various departments including assessor, community development, fire,  
81 highways, recreation, and IT. It also broke down the percentage of these transfers that  
82 are paid for by Village residents, Town residents, Global Foundries, and non-Global  
83 Foundries non-residents. This chart also showed the amount spent from the Town  
84 capital fund on stormwater projects and the percentage of Town capital funds spent on  
85 Village projects in FY18 (1.6%). This amount is expected to increase due to upcoming  
86 stormwater projects.
- 87 4. *Town Rolling Stock Fund* indicates that the Town does not have a rolling stock fund but  
88 instead funds such purchases from its capital reserve fund. Ms. Morrisseau explained  
89 that though the FY19 general fund transfer to the capital fund was almost equal to the  
90 amount of Town highway tax collected, the two items are not connected. She also  
91 explained that the Town highway tax has over time been reduced to the point that it  
92 now just about covers the capital transfer. Finally, the chart shows the amounts  
93 contributed to the Town highway tax by Town-outside-the-Village residents, Global  
94 Foundries, and non-Global Foundries non-residents. Village residents do not contribute  
95 to the Town highway tax.
- 96 5. *Village General Fund Budget* shows the amounts contributed to the Village general fund  
97 budget by Village residents (64%), Town-outside-the-Village residents (9%), Global  
98 Foundries (6%), Village non-residents (8%), Town-outside-the-Village non-residents  
99 (3%), and non-tax revenues (9%). Ms. Morrisseau explained that this chart does not  
100 include payroll costs for shared staff or transfers from the Village. The Subcommittee  
101 asked her to provide an updated version that includes those figures.
- 102 6. *Village Capital Fund Transfer FYE19* indicates the percentage contributed to the Village's  
103 capital fund by Town-outside-the-Village residents (9%), Town-outside-the-Village non-  
104 residents (3%), and the percentage of the Village capital fund contributed to the Town  
105 (0%).
- 106 7. *Village Rolling Stock Fund Transfer FYE19* shows the percentages of Town-outside-the-  
107 Village contributions to Village rolling stock (which are the same as in table 6—9% and  
108 3%). It also shows the amounts contributed by both Village and Town residents and non-  
109 residents to the purchase of the ladder truck.
- 110 8. *Essex Town – Percent of 2019 Operating Budgets Contributed by TIV* shows a breakdown  
111 of Village contributions to Town departments that have not yet been consolidated—  
112 community development (34%), recreation (36%), library (41%), fire (41%), economic  
113 development (41%).

114 9. *Essex Junction – Percent of 2019 Operating Budgets Contributed by TOV* shows a  
115 breakdown of Town-outside-the-Village contributions to Village departments that have  
116 not yet been consolidated—community development (0%), recreation (0%), library (1%),  
117 fire (0%), economic development (0%).  
118

119 After reviewing the charts, Mr. Teich pointed out that the analysis will be helpful in calculating a  
120 balanced way of paying for shared personnel. It will also help the boards better understand the  
121 financial impacts of consolidation, department by department.  
122

123 Mr. Teich also stated that the analysis revealed a policy-based inconsistency that the boards  
124 may want to consider. He explained that the Town’s policy on fund balance is to transfer  
125 unrestricted surplus to reserve. Based on this analysis, approximately 33-35% of any surplus is  
126 contributed by Village residents, but that amount has never in the past been returned to the  
127 Village. He suggested that the Select Board could review the Town fund balance policy and  
128 consider whether to transfer a percentage of fund balance back to the Village for capital or  
129 other reserve use (not for operations).  
130

131 Mr. Tyler added that this analysis is helpful in quantifying how much tax revenue comes to the  
132 Town and Village from businesses and other non-residential entities.  
133

134 Ms. Wrenner requested that, in each of the charts presented, the term “Town” be changed to  
135 “Town outside the Village” or “TOV.”  
136

137 Ms. Morrisseau stated that she will send an updated version of all of the charts to the  
138 Subcommittee. Ms. Higgins, referring to the *Essex Community Residential Tax Rate* chart, asked  
139 whether the “T.HGHY” column showed that only Town-outside-the-Village residents pay this  
140 tax. Ms. Morrisseau said she believed it did but that she would confirm this. Mr. Levy asked Ms.  
141 Morrisseau to add a column to the chart indicating amounts paid by Town-outside-the-Village  
142 residents only. Mr. Teich requested that Subcommittee members send additional questions to  
143 Ms. Morrisseau.  
144

145 c. Consideration of Additional Questions for Dan Richardson

146 Mr. Tyler reviewed the document “Additional Questions to Consider Sending to Dan  
147 Richardson.” Mr. Teich provided printed copies of an updated version that contained brief  
148 answers from Mr. Richardson to these questions. Mr. Tyler noted that Mr. Richardson’s answer  
149 to question 1 definitively addresses Mr. Watts’ concerns.  
150

151 The Subcommittee then reviewed three emails from Mr. Watts, each containing both feedback  
152 and questions. Mr. Watts' questions were added to the primary list of questions about  
153 governance scenarios, along with questions submitted by other board members.

154

155 d. Review and Prepare Governance Scenario Questions for Dan Richardson

156 Mr. Tyler called for a brief recess. The Subcommittee paused at 10:03 a.m. and reconvened at  
157 10:13 a.m.

158

159 The following changes were made to the document "Potential Governance Options:"

- 160 • Scenario A: Ms. Wrenner asked that a new bullet be added to include the possibility of a  
161 committee within a committee model similar to that used by CCRPC and MPO. She also  
162 requested a second new bullet as follows: "The Select Board would continue to meet  
163 bimonthly and the business of the 5-member sub-boards would occur during these  
164 meetings if necessary."
- 165 • Scenario B: Mr. Levy requested the term "Rural Essex" be changed to "TOV."

166

167 Ms. Wrenner emphasized that the proposed scenarios should meet the goals established by the  
168 Subcommittee at its first meeting.

169

- 170 • Scenario E: The committee determined that this scenario could be clarified by adding an  
171 additional bullet: "Dissolve both the Town and Village charters and create a new, single  
172 charter."
- 173 • Scenario F: The Subcommittee clarified the second bullet by adding "using wards or  
174 districts" at the end of the sentence.
- 175 • Scenario I: Subcommittee members decided to clarify this scenario by adding a bullet  
176 indicating that this is the current status quo.
- 177 • A Scenario J was added to reflect Trustee Houghton's suggested scenario of separation  
178 of the Village from the Town.

179

180 The Subcommittee considered Mr. Watts' suggested Scenario K and concluded they needed  
181 more specific information from him before including it as a scenario. Mr. Tyler will reach out to  
182 him.

183

184 The Subcommittee considered Mr. Watts' suggested Scenario L regarding annexation. They  
185 discussed the example of a landowner who successfully petitioned to remove his property from  
186 within a municipal boundary. Mr. Teich stated that in most cases that property must be  
187 contiguous with a municipal boundary, and that the entity receiving the new property must first  
188 accept it.

189

190 Ms. Sopchak asked if any of the scenarios addressed the possibility of Village residents voting to  
191 dissolve the Village charter. This scenario would allow Village residents, but not Town-outside-  
192 the-Village residents, to decide whether to continue paying taxes to two municipalities. The  
193 Subcommittee decided to add this as a bullet to Scenario F. Mr. Teich noted that this scenario  
194 would require creating a special taxing district to address existing debt.

195

196 The Subcommittee reviewed the remaining questions. Mr. Teich asked for members to send  
197 him any additional questions. He said he would then forward all of the questions to Mr.  
198 Richardson.

199

200 e. Schedule Next Meeting and Discuss Progress Report for Next Joint Board Meeting

201 Mr. Tyler requested that the Subcommittee meet again before Thanksgiving for the purpose of  
202 compiling a report to be submitted to both boards prior to their joint meeting on December 5<sup>th</sup>.

203 The format of the report will be an executive summary and an appendix of backup materials.

204 Mr. Tyler requested and the Subcommittee agreed that Mr. Richardson attend the joint  
205 meeting. Ms. Sopchak will send out a date poll to schedule the next Subcommittee meeting.

206

207 Ms. Wrenner moved to adjourn and Mr. Levy seconded. The meeting adjourned at 11:24 a.m.

208

209 Submitted by Elaine Haney Sopchak, Subcommittee Secretary

## **Potential Governance Options**

### **Scenario A:**

- Retain the Village Board of Trustees as long as there are Village-specific needs (5 members).
- Create an equivalent Town-outside-the-Village (TOV) entity for TOV-specific needs (5 members).
- Also maintain and expand existing Town Selectboard (SB) to include the membership of both the above boards, so that the SB has 10 members.
- This model would entail 3 separate charters, one for each board.
- The SB would continue to meet bimonthly and the business of the 5-member sub-boards would occur during these meetings if necessary.

**Question A.1** What would be the legal process needed (to update our current town charter) in order to allow the current SB to expand from 5 to 10-members -- including having Village Trustees (so long as there is a Village Charter in force) to populate the 5 TIV seats and electing 5 TOV residents to populate the 5 TOV seats?

**Question A.2** In a town with an incorporated village, is it legal for the area not inside the village to form its own governing body, similar to the village's, to make decisions for that area, separately from decisions made by the overall town governing body?

**Question A.3** Can a committee-of-the-whole model apply to a town with an incorporated village? An example of this is how CCRPC incorporates meetings of the MPO within its own meetings.

**Question A.4** Are there decisions made by a town governing body that do not apply to its incorporated village?

**Question A.5** If this model were valid, what changes would be made to taxation? If there were a separate TOV entity making decisions on TOV-related issues,



would there by necessity need to be TIV representation on that board, since TIV residents also pay for the things the TOV entity would be making decisions on?

**Question A.6** The Chittenden County Regional Planning Commission and the Metropolitan Planning Organization had been separate entities but recently the CCRPC ‘became’ the MPO. What statutes applied to this consolidation, and do they have relevance to the Essex Junction/Essex Town consolidation effort?

**Question A.7** Can an individual be voted onto more than one representative position with a single vote? It seems to me that the legal way to enact this would be to have three separate elected boards. Of course, any Trustee can also run for any open Selectboard seat but I am not sure that one can simultaneously, that is, with a single vote, be elected to two representative boards (Trustee and Selectboard with a single vote). The other way to do what is suggested here is to separate the two entities and do away with the Town. The two separated entities could then form a Union Municipal District for joint action (but this raises the question of whether the UMD is required to have an independently elected board). So, legal question is: whether one can be elected to two representative positions with a single vote?

### **Scenario B:**

- Dissolve both Village and Town charters, and write a new, single charter for one community.
- Form a new board of 5 to 7 members, all elected at-large.
- Create a TOV advisory board and a Village advisory board, the members of which would be appointed by the elected board.

**Question B.1** Are there examples of communities in VT that have advisory boards like this?

**Question B.2** What is the recommended process for writing a new charter?

## **Scenario C:**

- Create a single, consolidated board but maintain 2 charters.
- Each charter adopts the same amendment to allow this to happen.

**Question C.1** Is it legally feasible to have a single elected body execute two municipal charters?

**Question C.2** Can the Essex Junction charter be amended to allow Essex Town citizens who don't live in Essex Junction to serve as Essex Junction Trustees?

**Question C.3** Can a town board merge itself with the governing board of its village?

**Question C.4** Can each board amend its charter to allow both boards to merge into one governing body?

**Question C.5** Is it legal for the former members of the town board to make decisions regarding village business, and vice versa?

**Question C.6** If the Essex Selectboard and Essex Junction Trustees merge, how would taxation of the village be affected? Village residents would no longer have representation by a board that makes spending decisions solely on their behalf.

**Question C.7** Would taxation need to be adjusted at the same time as the joining of the boards, or could any tax changes be phased in?

**Question C.8** If the two boards merge, what would be their process for acquiring debt? How would the two communities bond?

## **Scenario D:**

- Vermont planning statues allow 'overlay districts' as designated sub-units within towns established for zoning or development restrictions or historic preservation.

- Can overlay districts apply outside of the realm of planning?

**Question D.1** Assuming we'd need an overlay district to allow proper voting for the latter, how would TOV residents set one up (with their own Trustee Board similar to the Village's) -- including: petition wording, number of signatures, who would be allowed to vote (TOV only or TIV also), sample charter, for example.

**Question D.2** If the TOV were an overlay district, which unconsolidated depts and budgets would it be fair for its new Trustee Board to take on policymaking and budgeting for -- including anticipated budgetary effects? That is, if the Essex Free Library were so designated, for example, its entire budget might be covered by TOV taxpayers only, and the entire Brownell Library budget might be covered by TIV taxpayers. No library expenses would appear in the Town budget, unless and until the libraries merged in a way that put the control of both under the 10-member Town SB.

**Question D.3** Could the Village be designated as an overlay district within the Town, with separate municipal tax liabilities for residents and businesses within the district?

### **Scenario E:**

- Create a new municipal charter (dissolve village and town charters)
- Create a single board of 7 to 9 members.
- Create two voting districts: Village and TOV.
- Elect 3 members from the Village, 3 members from TOV, and 3 at-large.

### **Scenario F:**

- Dissolve the Village charter, keep Town charter.
- Adjust Town Selectboard membership based on geography using wards or districts.

**Question F.1** Could Village residents vote to dissolve the Village charter? This scenario would allow Village residents, but not Town-outside-the-Village residents, to decide whether to continue paying taxes to two municipalities.

**Scenario G:**

- Dissolve the Village charter, keep Town charter.
- Maintain 5 member, elected at-large Selectboard.

**Scenario H:**

- Form a city with a mayor and city council.

**Scenario I:**

- Status Quo
- Maintain two charters, the Village BOT, and the Town SB.
- Complete current consolidation efforts but do not consolidate any further.

**Question I.1** Do inter-municipal MOUs provide adequate long-term stability, or should such MOUs be codified by charter changes?

**Scenario J:**

- Separate Village from Town and form an independent entity

**Question J.1** If the Village separated from the Town, would the Village need to become a city or could it become another town?

**Scenario K:**

- Tax equity is improved by Essex Junction annexing additional territory (allowed by VSA 24 Chapter 39 (1316-1321)). This would involve only the Trustees and the residents of the area being annexed. This would increase

Essex Junction grand list and spread taxes over a larger base. Yes, I understand that road maintenance, water rates, etc. would need to be negotiated but this scenario is just as valid as many of the others.

### **Scenario L:**

- Individuals, entities elect to remove their territory from the Village. Though there is a defined procedure for a Village to annex additional territory, I do not see anything in statute regarding a process for leaving a Village.

**Question L.1** Is there any way for an individual, group of individuals or any entity to petition to be removed from the territory of a Village?

### **Other Questions Not Related to a Particular Governance Scenario**

1. What is the legal or logical precedent / justification for TOV (only) residents paying a sizable highway tax since at least 1951 without TOV (only) representation?
2. Is there a mechanism for TOV residents to have distinct representation on the governance subcommittee?
3. Much has been made of the ability of Village residents (who happen to be Trustees) to sit at the board table and discuss the future of the Town government, while the very idea of TOV residents sitting at that same board table has been rejected. Under the Town Charter, who (if anyone) has the legal right to formulate Town policy alongside Selectmen?
4. What statute, if any, suggests that uneven numbers of board seats are preferable to even numbered ones?
5. What statutes speak to the formation/advantages/disadvantages of at-large seats vs wards vs districts?

6. If the two boards merged, but kept two charters, would there still be an annual meeting required for each municipality?
7. What impacts are there on municipal committees like planning commissions if the two boards merged?
8. Title 24, Chapter 39, section 1302 of Vermont statute allows for the alteration of Incorporated Village boundaries. While the Chapter includes details regarding annexation of additional territory, there is no explicit procedure for removing territory from an Incorporated Village. Is there such a process? Can the residents/owners of property within an Incorporated Village boundary petition to leave the Incorporated Village? Regarding annexation, can residents/owners outside of the boundary petition to join an Incorporated Village? Or does such an annexation petition need to be originated by/within the Incorporated Village? (I understand that there are significant details regarding taxation, infrastructure maintenance, etc., that would also need to be worked out. My question is specifically about processes related to alteration of Incorporated Village boundaries).
9. Title 24, Chapter 49, Section 1483 of Vermont statute states that a plan of merger can include provisions where specific areas or groups of voters have access to special services not available to all areas/voters and that such services would be paid for only by those with access to them. There is no reference to specific representation requirements for those areas/voters that receive those services. Is it correct to assume that statute does not require unique representation but that the merging entities could stipulate such representation within the plan of merger?
10. Title 24, Chapter 87, section 3252 allows for “special assessments” for public improvements that benefit a limited area of a municipality. Could special assessments be used generally to separate Village projects from TOV projects after merger or are special assessments specific to those types of projects listed in the Chapter? It appears that a vote would be required by the entire Town to approve a special assessment that affected a smaller area of the Town. Is this correct? Do all Town voters have to approve a special assessment that affects only one neighborhood?

11. Many Town charters that included provisions related to merger with a Village also had sections that were empty except this exact phrase “[Transitional provisions].” My question is whether those sections were empty from the start or whether they were deleted after Merger was completed. I’d like to understand if there were other provisions that do not appear in current statute.
  
12. If a Town chooses to exercise its right to have a special service area, is it implied that those benefiting from access to those services have voting rights related to those services or does a charter need to explicitly state that right? Similarly, does the right to establish a special service area within a Town only come from merger with a former Village (Title 24, Chapter 49 is explicitly about Mergers) or can a Town establish a special service area without that area having been a former Village? That is, can a TOV area ask to have a special service area established outside of a former Village?

## Potential Governance Options

### **Scenario A:**

- Retain the Village Board of Trustees as long as there are Village-specific needs (5 members).
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- Also maintain and expand existing Town Selectboard (SB) to include the membership of both the above boards, so that the SB has 10 members.
- This model would entail 3 separate charters, one for each board.
- The SB would continue to meet bimonthly and the business of the 5-member sub-boards would occur during these meetings if necessary.

**Question A.1** What would be the legal process needed (to update our current town charter) in order to allow the current SB to expand from 5 to 10-members -- including having Village Trustees (so long as there is a Village Charter in force) to populate the 5 TIV seats and electing 5 TOV residents to populate the 5 TOV seats?

There would have to be a charter amendment process. This is a three-step process:  
Step 1. The relevant legislative bodies votes to approve the proposed changes (selectboard, village trustees and both as a town/village entity) or the requisite 10% of registered voters submit a petition to amend the charter with the proposed language.

Step 2. The changes are put on a ballot at either annual town/village meeting or a special meeting and a majority of the voters approve the changes.

Step 3. The approved changes go to the legislature, if approved by both houses, then to the governor.

**Question A.2** In a town with an incorporated village, is it legal for the area not inside the village to form its own governing body, similar to the village's, to make decisions for that area, separately from decisions made by the overall town governing body?



Yes, but this depends on how the corporate charge is laid out in the charter. A Town cannot govern another Town or extend its municipal authority beyond its territory (*City of Montpelier v. Barnett*, 2012 VT 32 held that the City could act as a private land-owner for land it owned around Berlin Pond, but it could not exercise regulatory authority over the pond.) However, if the Charter for the Town of Essex is written to make the territory of the village of Essex Junction part of its territory for certain purposes, then it can exercise that authority, while another municipal authority would overlay this district and provide other municipal services. This already exists with special districts. For example, the Town and Village are part of the Chittenden Solid Waste Management District, and this special district has authority over all solid waste disposal within the Town.

**Question A.3** Can a committee-of-the-whole model apply to a town with an incorporated village? An example of this is how CCRPC incorporates meetings of the MPO within its own meetings.

To my knowledge this has not been done in Vermont with general municipal government. The dominant model has been the special district, but there is no statutory restriction on the concept per se.

**Question A.4** Are there decisions made by a town governing body that do not apply to its incorporated village?

That often depends on the services offered. The most common example, which usually flows the other way, is zoning. It is common for a village (or a town with an unincorporated village center) to adopt zoning that does not apply outside of village. Another example is the highway and road budget that may be kept separate.

**Question A.5** If this model were valid, what changes would be made to taxation? If there were a separate TOV entity making decisions on TOV-related issues, would there by necessity need to be TIV representation on that board, since TIV residents also pay for the things the TOV entity would be making decisions on?

This could be spelled out in the charter, but if there were three entities: TOV, TIV, and the joint Town and Village, each would budget and tax according to the services offered. My recommendation would be that any service or budget item that served both TOV and TIV should be put into the joint Town and Village entity's budget. This also raises a question and distinction of contracting and sovereignty. If a Village contracts with the Town for services (or vice versa), the Village may, by agreement, pay taxes money to the Town, but unless it is in the charter, then this is more of a contractual obligation that arises out of an agreement rather than a statutory obligation to contribute tax funds.

Think of it this way: every year the county sets a budget, which it collects from landowners in the various towns. This funds the sheriff's department, but this funding is different than the contracts that may towns have with the sheriff's department to fund police and law enforcement services for the town. In this hypothetical, the Town and Village would have to figure out what services it wanted to assign to the TOV, the TIV, and the joint entity, but it may mean assigning it to one entity and allowing the other to contract for such services.

**Question A.6** The Chittenden County Regional Planning Commission and the Metropolitan Planning Organization had been separate entities but recently the CCRPC 'became' the MPO. What statutes applied to this consolidation, and do they have relevance to the Essex Junction/Essex Town consolidation effort?

They do not. Regional Planning Commission are governed by 24 V.S.A. §§ 4341–4352, which states that the RPCs are created by member towns and the Agency of Commerce and Community Development. Under 24 V.S.A. § 4341(b) are the provisions for merger, which only require a vote of the member communities to such merger. The driving criteria for RPC is that they should constitute a “logical geographic and a coherent socioeconomic planning area.” Mergers and formation of RPCs do not require approval by the General Assembly only the Agency of Commerce.

**Question A.7** Can an individual be voted onto more than one representative position with a single vote? It seems to me that the legal way to enact this would be to have three separate elected boards. Of course, any Trustee can also run for any open Selectboard seat but I am not sure that one can simultaneously, that is, with a

single vote, be elected to two representative boards (Trustee and Selectboard with a single vote). The other way to do what is suggested here is to separate the two entities and do away with the Town. The two separated entities could then form a Union Municipal District for joint action (but this raises the question of whether the UMD is required to have an independently elected board). So, legal question is: whether one can be elected to two representative positions with a single vote?

Generally, it is not the individual but the office that counts so that a selectboard gets five votes and the trustees get five. But this issue has not been directly addressed by the Vermont Supreme Court. If this had the potential to occur on a regular basis, you could simply define the two as incompatible offices and restrict people from serving on both simultaneously. Moreover, you would want to clarify this issue because of the quorum question it raises. If you have a 10-member board, then six members constitutes a quorum. If five members attend, and one member is an officer of both the trustees and the Selectboard, then it raises the fundamental question of whether they are one-vote or two in terms of whether the Board's actions are valid.

### **Scenario B:**

- Dissolve both Village and Town charters, and write a new, single charter for one community.
- Form a new board of 5 to 7 members, all elected at-large.
- Create a TOV advisory board and a Village advisory board, the members of which would be appointed by the elected board.

**Question B.1** Are there examples of communities in VT that have advisory boards like this?

Burlington is the first example that comes to mind. They have several boards. Some are enumerated under 24App. V.S.A. § 3-120, and others are listed and described more specifically in the charter. Of the latter, a good example is the board of finance. It is composed of the Mayor, the President of the City Council,

the CAO, and three additional city councilors. The board of finance is charged as trustee of all public money held by the city and authorized to invest it. It also oversees all public buildings and properties.

Other towns and cities have standing committees and subcommittees in lieu of formal boards. These committees serve at the discretion of the Selectboard/council and can be composed of different individuals. The City of Montpelier has several examples ranging from a Complete Streets Committee to a Social and Economic Justice Advisory Committee.

Whether a board or committee, the key question is whether the need is short-term or likely to be perennial. If the later, then it can be laid out and incorporated into the charter, if not, then it is probably best to set up through the selectboard.

**Question B.2** What is the recommended process for writing a new charter?

See my memo dated November 9, 2018. This lays out what I would describe as the key initial questions. I would suggest identifying the vision of the merger, then building the mechanics of it.

### **Scenario C:**

- Create a single, consolidated board but maintain 2 charters.
- Each charter adopts the same amendment to allow this to happen.

**Question C.1** Is it legally feasible to have a single elected body execute two municipal charters?

No. Each charter represents a distinct municipal entity. If you want one board, you need to merge the charters.

**Question C.2** Can the Essex Junction charter be amended to allow Essex Town citizens who don't live in Essex Junction to serve as Essex Junction Trustees?

In theory, it is possible, but it goes against the general and fundamental rule that an elected official must come from the pool of eligible voters. This proposal is unlikely to pass the legislature.

**Question C.3** Can a town board merge itself with the governing board of its village?

Yes.

**Question C.4** Can each board amend its charter to allow both boards to merge into one governing body?

Yes, but it also has to be approved by the voters and the legislature.

**Question C.5** Is it legal for the former members of the town board to make decisions regarding village business, and vice versa?

I am not sure what you mean by “former members.” To the extent that the Town and Village remain separately chartered entities, each would be responsible for its own governance. Only if the charters merged the two into a single entity would an officer ostensibly elected from the Town have the authority to legislate over the Village.

**Question C.6** If the Essex Selectboard and Essex Junction Trustees merge, how would taxation of the village be affected? Village residents would no longer have representation by a board that makes spending decisions solely on their behalf.

Taxation would be unified and the cost of the budget would be apportioned across the entire unified grand list.

**Question C.7** Would taxation need to be adjusted at the same time as the joining of the boards, or could any tax changes be phased in?

Parts of it could be phased in over time, but I would recommend unifying it as quickly as possible.

**Question C.8** If the two boards merge, what would be their process for acquiring debt? How would the two communities bond?

In the same process as now. A single unified entity would go through the bonding process and seek approval from the unified group of voters.

### **Scenario D:**

- Vermont planning statues allow 'overlay districts' as designated sub-units within towns established for zoning or development restrictions or historic preservation.
- Can overlay districts apply outside of the realm of planning?  
**Yes. These are special districts.**

**Question D.1** Assuming we'd need an overlay district to allow proper voting for the latter, how would TOV residents set one up (with their own Trustee Board similar to the Village's) -- including: petition wording, number of signatures, who would be allowed to vote (TOV only or TIV also), sample charter, for example.

The easiest way would be follow the same process that the Village of Waterbury used to convert the Village into a special district as a successor to the Village. This would go through the

**Question D.2** If the TOV were an overlay district, which unconsolidated depts and budgets would it be fair for its new Trustee Board to take on policymaking and budgeting for -- including anticipated budgetary effects? That is, if the Essex Free Library were so designated, for example, its entire budget might be covered by TOV taxpayers only, and the entire Brownell Library budget might be covered by TIV taxpayers. No library expenses would appear in the Town budget, unless and until the libraries merged in a way that put the control of both under the 10-member Town SB.

That could work. The libraries could also be merged into a single department that would look to utilize both resources in a manner that best served the entire municipality, but if there were reasons to keep them separate, they could effectively be kept separate by an overlay district. We should discuss the costs of such a district in proportion to the services to be rendered. The cost of running a special district should be justified by the size of the services provided.

**Question D.3** Could the Village be designated as an overlay district within the Town, with separate municipal tax liabilities for residents and businesses within the district?

Yes.

### **Scenario E:**

- Create a new municipal charter (dissolve village and town charters)
- Create a single board of 7 to 9 members.
- Create two voting districts: Village and TOV.
- Elect 3 members from the Village, 3 members from TOV, and 3 at-large.

### **Scenario F:**

- Dissolve the Village charter, keep Town charter.
- Adjust Town Selectboard membership based on geography using wards or districts.

**Question F.1** Could Village residents vote to dissolve the Village charter? This scenario would allow Village residents, but not Town-outside-the-Village residents, to decide whether to continue paying taxes to two municipalities.

Yes, but there will need to be a designated successor the Village's assets and liabilities. Ultimately, the Town would have to vote on whether or not to accept these or a successor entity (like a special district) would have to be created to manage the assets and/or retire the debt.

### **Scenario G:**

- Dissolve the Village charter, keep Town charter.
- Maintain 5 member, elected at-large Selectboard.

### **Scenario H:**

- Form a city with a mayor and city council.

### **Scenario I:**

- Status Quo
- Maintain two charters, the Village BOT, and the Town SB.
- Complete current consolidation efforts but do not consolidate any further.

**Question I.1** Do inter-municipal MOUs provide adequate long-term stability, or should such MOUs be codified by charter changes?

They should be codified as charter changes. That provides the greatest stability. An MOU or other agreement is effectively a private agreement that can be modified or cancelled by the parties. Charter changes carry the force of law.

### **Scenario J:**

- Separate Village from Town and form an independent entity

**Question J.1** If the Village separated from the Town, would the Village need to become a city or could it become another town?

It could become a city or it could remain a village. Towns carry a slightly different connotation in Vermont, which implies a larger territory and base of land.

### **Scenario K:**



- Tax equity is improved by Essex Junction annexing additional territory (allowed by VSA 24 Chapter 39 (1316-1321)). This would involve only the Trustees and the residents of the area being annexed. This would increase Essex Junction grand list and spread taxes over a larger base. Yes, I understand that road maintenance, water rates, etc. would need to be negotiated but this scenario is just as valid as many of the others.

### **Scenario L:**

- Individuals, entities elect to remove their territory from the Village. Though there is a defined procedure for a Village to annex additional territory, I do not see anything in statute regarding a process for leaving a Village.

**Question L.1** Is there any way for an individual, group of individuals or any entity to petition to be removed from the territory of a Village?

It would follow from the same annexation section 24 V.S.A. §§ 1316-1321. Those seeking to remove themselves from the Village would petition, it would go to a vote and then the legislature.

### **Other Questions Not Related to a Particular Governance Scenario**

1. What is the legal or logical precedent / justification for TOV (only) residents paying a sizable highway tax since at least 1951 without TOV (only) representation?

There is no justification other than it has the force and momentum of history. At one point, this may have made financial sense to the parties, but it sounds as if the policy and costs have changed.

2. Is there a mechanism for TOV residents to have distinct representation on the governance subcommittee?

No automatic mechanism, but it could be written into a charter, and there is no reason that a board could not appoint such individuals if it made sense.

3. Much has been made of the ability of Village residents (who happen to be Trustees) to sit at the board table and discuss the future of the Town government, while the very idea of TOV residents sitting at that same board table has been rejected. Under the Town Charter, who (if anyone) has the legal right to formulate Town policy alongside Selectmen?

This is a political process. The parties can do it however they want, but the real proof is always in the public's acceptance. At the end of the day the Town and the Village need to come to agreement and consensus on the path forward, and the process should support such an end result.

4. What statute, if any, suggests that uneven numbers of board seats are preferable to even numbered ones?

There is no statute that requires this. It is implied by the selectboard statutes that allow for 3 to 5 members, but this is more of a practical requirement. Odd numbered boards never have ties, and the quorum requirement is the same as the preceding even-numbered board. Some boards will give even representation to districts and create an odd-number of at-large members or designate a mayor who acts as either a tie-breaker and/or holds veto power. It just helps avoid unnecessary ties or procedural log-jams.

5. What statutes speak to the formation/advantages/disadvantages of at-large seats vs wards vs districts?

There are not any. Statutes set the default for municipal government, and the default is the selectboard with members elected at-large. Wards or districts make sense when towns diversify and at-large elections are not likely to accurately reflect the composition of the Town, or large, naturally occurring neighborhoods that have distinctive interests.

6. If the two boards merged, but kept two charters, would there still be an annual meeting required for each municipality?

Yes, in theory, this would work like Town and School Districts where there could be separate meetings. If the two entities adopted the Australian ballot, then the voting day in lieu of annual meeting could occur at the same time.

7. What impacts are there on municipal committees like planning commissions if the two boards merged?

That would depend on the nature of the merger. In practical terms, I would recommend there be a merger into one commission, even if there were two sets of zoning bylaws. This may require some additional research to fully answer.

8. Title 24, Chapter 39, section 1302 of Vermont statute allows for the alteration of Incorporated Village boundaries. While the Chapter includes details regarding annexation of additional territory, there is no explicit procedure for removing territory from an Incorporated Village. Is there such a process? Can the residents/owners of property within an Incorporated Village boundary petition to leave the Incorporated Village? Regarding annexation, can residents/owners outside of the boundary petition to join an Incorporated Village? Or does such an annexation petition need to be originated by/within the Incorporated Village? (I understand that there are significant details regarding taxation, infrastructure maintenance, etc., that would also need to be worked out. My question is specifically about processes related to alteration of Incorporated Village boundaries).

Yes, it would follow Chapter 39. I would need to do more research to flush this out, but my understanding is that Chapter 39 allows de-annexation.

9. Title 24, Chapter 49, Section 1483 of Vermont statute states that a plan of merger can include provisions where specific areas or groups of voters have access to special services not available to all areas/voters and that such services would be paid for only by those with access to them. There is no reference to specific representation requirements for those areas/voters that receive those services. Is it correct to assume that statute does not require unique representation but that the merging entities could stipulate such representation within the plan of merger?

Yes, that is my general understanding, but I would need to do additional research on this particular provision.

10. Title 24, Chapter 87, section 3252 allows for “special assessments” for public improvements that benefit a limited area of a municipality. Could special assessments be used generally to separate Village projects from TOV projects after merger or are special assessments specific to those types of projects listed in the Chapter? It appears that a vote would be required by the entire Town to approve a special assessment that affected a smaller area of the Town. Is this correct? Do all Town voters have to approve a special assessment that affects only one neighborhood?

Yes, it is part of a single town vote.

11. Many Town charters that included provisions related to merger with a Village also had sections that were empty except this exact phrase “[Transitional provisions].” My question is whether those sections were empty from the start or whether they were deleted after Merger was completed. I’d like to understand if there were other provisions that do not appear in current statute.

I would have to research the history of the charter. My guess is that these provisions were never included as they would have simply been repealed if they were removed.

12. If a Town chooses to exercise its right to have a special service area, is it implied that those benefiting from access to those services have voting rights related to those services or does a charter need to explicitly state that right? Similarly, does the right to establish a special service area within a Town only come from merger with a former Village (Title 24, Chapter 49 is explicitly about Mergers) or can a Town establish a special service area without that area having been a former Village? That is, can a TOV area ask to have a special service area established outside of a former Village?

The Town can create a special service area. If it creates a special district, then it can enfranchise the members and allow them to vote and manage the special district. This is how fire districts are often managed and organized.