

JOHNSON SELECTBOARD MEETING MINUTES
JOHNSON MUNICIPAL BUILDING
MONDAY, OCTOBER 23, 2017

Present:

Selectboard Members: Mike Dunham, Nat Kinney, Doug Molde, Kyle Nuse, Eric Osgood

Others: Brian Story, Jessica Bickford, Jeanne Engel, Lois Frey, Scott Meyer, Seth Jensen, Walter Pomroy

Note: All votes taken are unanimous unless otherwise noted.

1. Call to Order

Eric called the meeting to order at 7:00.

2. Additions, Changes to Agenda

It was agreed to add discussion on Mine Road and on a note from Bob Frey.

3. Review and Vote on Library Flood Mitigation Planning Strategies

Brian said Seth Jensen of LCPC has done a lot of work on this. He has been a huge asset. He had identified a plan very similar to something that was laid out in a study we commissioned. The library trustees are interested in a different plan that is more of a departure from the initial review we had commissioned (which Brian heard was not that satisfactory.) Their plan sounds like a good idea. Brian and Seth have been investigating it. Brian doesn't know if it will be cheaper. It has been studied less so it is more of an unknown but Brian feels it is a better solution. It will let us move more of our resources out of the floodplain. The biggest concern is contamination if the oil tank in the basement is damaged in a flood. The plan suggested by the library trustees uses heat pumps that can switch to resistive heating in cold temperatures. We might have to install multiple units. It looks likely that this will be close to the same cost as the plan Brian and Seth were initially considering, maybe even a little less. It seems likely it will be accepted by FEMA because it would be moving more elements out of the flood plain. *(Scott Meyer arrived at 7:04.)*

Jessica said this plan gets the heating system up to the second floor. The other plan was a two-foot knee wall that would not actually isolate the fuel tank. If we can remove the heating system from the basement, then we will not be protecting a 25 year old furnace. Eric said he would think FEMA would be very supportive. Brian agreed.

Jessica said we may want to look at flood gates at some point to protect storage. But this would address the biggest concern. Jeanne said the heat pump takes ambient heat out of the air until the temperature gets down to 14 degrees. It doesn't run on fossil fuel. It is about 300% efficient. They don't know the electrical cost for it. It will run on electricity. Brian said a brief glance indicates there will still be efficiency savings. It is efficient enough when temperatures are above 14 degrees to make up for the few months when we have to run the heating element.

Kyle asked if it also acts as a cooling system. Jessica said some of them do. Brian said that will be a cost decision when it comes to construction. Many of them will cool minimally.

Jessica said the library trustees are in favor of the heat pump plan.

Brian said we will likely have to include an upgrade to the building electrical system. (*Seth Jensen arrived at 7:08.*)

Seth said when the feasibility study was done last winter we didn't consider the option of replacing the existing fuel oil furnace with something like a heat pump. We looked at flood proofing the basement or putting in an addition for the furnace. The potential of adding a heat pump changes the dynamics of the discussion. It provides an opportunity to get the furnace out of the flood plain without doing an addition. Some unknowns relate to whether the electrical system can support the heat pump. It is possible that even the option of flood proofing around the existing furnace would require the electrical system to be replaced to get wires above the flood level.

Seth said he discussed with Vermont Emergency Management that if we pursue the FEMA grant we would start with a rough analysis of cost of the two options and the community would use the data to select a preferred alternative. From that we would develop a more detailed plan. We would also develop cost estimates for the preferred alternative. That would probably be good enough for the town to start doing incremental steps. If we wanted to do it all at once we could submit a grant application to FEMA or another funding agency. Using FEMA planning assistance doesn't obligate us to go forward with FEMA funding for implementation. We might want to investigate other funding opportunities.

Doug asked why we are doing this. Seth said it came in front of him because the library had flood damage several times in the past 20 years. The furnace and electrical systems are both particularly vulnerable. (*Walter Pomroy arrived at 7:13.*) We are not under any regulatory order to change it. But if the building suffered catastrophic damage, when it was rebuilt we would have to meet FEMA standards. This is prudent due diligence, not something we have to do a meet a mandate.

Doug asked, we aren't subject to the 50% limitation? Seth said if the library suffered substantial damage and the cost of repair was 50% or more of the building's value we would need to bring it up to at least the minimum standard. He doesn't believe previous damage has triggered that threshold.

Jeanne said in 1995 the furnace was replaced by FEMA. Seth said there are a certain number of claims you can make before you become a repetitive loss property and then they won't want to pay for another claim until you do something to address the situation. He thinks the number is 3.

Brian said he likes Seth's proposal. It lets us go forward with the design the library has proposed. If we draft a proposal for planning money like this it gives us an out if that design turns out to be more expensive than anticipated. He would like board approval to move forward. This will obligate us for a local match. We should prepare for that to be about \$3K. Hopefully it will be less.

Mike moved and Kyle seconded to move forward with the Flood Mitigation Advanced Assistance Grant application to FEMA.

Nat said we still would be vulnerable to flooding in the basement. What else is down there? Jessica said there is a simple room with wooden benches and items that can be removed and the rest is storage. If we get enough warning things can be moved off the floor or upstairs. In the past it has been flooded and it was all right after it dried out. There is not a lot that can be ruined. There is a concrete floor. If we could get another grant for flood gates to mitigate the effect, that could be helpful.

Nat asked if the heat pump system will heat the downstairs. Brian said it will not. We would likely have to install some heat source in the basement, maybe just heat tape on some pipes. Jeanne said we may be able to put a small heat pump unit downstairs in the room used for activities. It could be placed up high so it wouldn't get damaged in a flood.

Doug asked if alternative types of units that use something other than resistance heat for backup have been looked at. Eric said that can be part of the study.

The motion was passed.

Walter said the village electric department, as part of renewable energy standards, has to move people away from fuel toward electric. There could possibly be a contribution from the village electric department. (*Jessica, Jeanne, and Seth left at 7:24.*)

4. *Review and Vote on Animal Control Ordinance*

Scott questioned the requirement to provide housing that maintains a temperature between 45 and 85 degrees Fahrenheit. He has owned a couple of retired sled dogs that preferred colder temperatures than that. Eighty-five degrees would be too hot for his husky. For a chihuahua, the temperature could probably go up to 100. He thinks the ordinance should call for a safe temperature for the breed, as determined in consultation with a vet.

Eric said this ordinance was intended to be adopted by all 3 LCSD patrol towns so the board doesn't want to alter it too much.

Lois asked about the language referring to a dog "injuring or worrying people." She questioned the word "worrying." Brian said that language is in statute. It is a more arcane use of the word. It doesn't mean making someone concerned; it is more like nipping at someone's heels.

Eric said the constables have discretion and don't have to issue a ticket for behavior described in the ordinance.

Mike said he hasn't seen anything in this ordinance to address the situation we recently had – a dog attacking someone inside a vehicle. Eric said Article X would cover that situation. Mike said there was a question about whether our old ordinance covered that situation. Brian said state law did not apply but our old ordinance did apply. However, it did not include

destruction of the animal as a possible remedy. This new proposed ordinance does allow destruction to be mandated.

Lois pointed out a typo on p. 8.

Lois said she and others had originally received an email indicating this ordinance would come up for a vote in November. Eric said originally the board planned to vote on it in November, but there was not much else on tonight's agenda so they decided to add this. Lois said she is not sure people realize the board is planning to vote on this and the other ordinance tonight. Eric said the board could defer voting until the next meeting.

Lois noted that the agenda for this meeting was not posted by the post office.

Mike said he sees Lois's point, but waiting until the next meeting adds 3 weeks to the process. If something happened we would wish we had acted sooner. Brian said the board could vote to approve the ordinance tonight and then review it at the November meeting. The board can vote to change any ordinance at any time. Mike said that would start the clock on the waiting period before the ordinance can take effect.

Lois asked, the board has to have a public hearing on the ordinance, right? Brian said no. It just has to be made available to the public. Eric said the selectboard has the right to make ordinances and the public has the right to petition for a vote.

Eric said he feels it would be cleaner if the board waited until the November meeting to vote. The board agreed to vote then.

5. *Review and Vote on Vacant and Dangerous Buildings Ordinance*

Brian said this proposed ordinance allows us to address the issue of a vacant or dangerous building but won't force us to act. It doesn't make reference to zoning. It gives us some useful leverage and tools we can use.

Nat noted the exemption for certain structures, including buildings in the process of being rehabilitated. He wonders if that is a big loophole. Someone could argue they are slowly in the process of rehabilitating. Is there a way we can bring more specificity?

Doug asked if we can refer to a building that is being rehabilitated under a plan that was submitted for a permit.

Doug said he didn't understand the reference to fees in 8.06. ("The following conditions apply to fees for a Vacant Building Permit or Interim Permit:") Brian said he doesn't know why there is a reference to fees there. He will have to take a closer read. What we are talking about is a fee for a building permit, but the selectboard reserves the right to waive it.

Eric said the top paragraph on p. 7 addresses the concern about rehabilitating buildings. It calls for a statement of intent as part of the permit application, describing what measures are going to be done, how long the building will be vacant, etc. He thinks if we referred to the

application requirements that could address the issue of rehabilitation and ensure that a building doesn't just linger forever in the process of rehabilitation.

Doug said he has some trouble with this ordinance. He thinks we need to distinguish between vacant buildings and dangerous buildings. There is a question about whether the definition of "building" includes an accessory structure like a garage. If he were defending a case for someone who had a problem garage he would say the ordinance doesn't regulate the garage because it is not for personal occupancy. He thinks the language regarding vacant vs. dangerous buildings can be cleared up. He would change the title to say "Dangerous Buildings and Vacant Buildings." He wonders about the definition of "building." There are accessory buildings like barns or garages that are not included in the definition. He would include "walls" along with "having a roof, windows, and doors." He thinks accessory buildings ought to be addressed in both the vacant and dangerous sections. He is concerned about saying that "owner" shall mean "all owners of record." He is concerned about being able to move ahead if we have to deal with all owners. He thinks we should exclude banks that have mortgages but not titles. Brian suggested we could say "any or all." Doug agreed that would be a good change. We should serve as many owners as possible but he would like it not to be a roadblock.

Doug said in 5.02 if the owner of a mobile home can't be located it says the owner of the property where it is located will be responsible. A lot of property owners would have no ability or authority to do anything with a mobile home on their property. We need to not try to transfer obligation to a non owner.

Eric asked if Dave Barra has looked at this. Brian said yes.

Doug said 6.03 talks about the administrator being able to commence an abatement action if a building appears to endanger public safety. He wonders about the relationship between that and the 10-day period to appeal to the selectboard mentioned at the top of p. 4. Shouldn't 6.03 say something like "if not appealed or if appealed and the selectboard rules in favor?"

Doug said 6.04 says the administrator shall enter upon the premises and cause the building to be made safe and secure. That gives us an obligation to protect the public. He would rather say "may."

He wonders if 6.08 is the same thing as the other reference to an appeal. He would almost like to take a scenario and walk through the whole ordinance.

Eric suggested the board should authorize Doug to share his notes with Brian and maybe Dave Barra and Brian could come forward with a revised ordinance.

Walter suggested a change to the definition of "vacant building." He suggested changing "vacation or resort facilities" to "recreational, vacation or resort facilities." That would exempt shelters on the Long Trail, which otherwise would be covered by the ordinance as they are not seasonal. They are available year round, though they get limited use in winter. The board agreed to that change.

Walter said there are a number of buildings that would fall under the definition of vacant building, such as the Masonic Temple or some of the Studio Center buildings that are not used during most of the winter. Eric said we need exceptions for places like that. Brian said if they are shut down for the winter then they are used seasonally and are exempted.

Walter said this ordinance probably applies to the village's power house building and the old talc mill building owned by the village and town.

Doug asked how we will treat a mobile home that is turned into storage. Is that a warehouse? Aren't there some accessory structures, such as some garages in town, that we want people to take care of? Brian said he thinks there are some we want people to take care of and some we wouldn't want to get involved with. It is tricky to write an ordinance that distinguishes between them.

Scott said there are some definitions of farm buildings that could be found in state statute.

Scott asked if we have talked to Rutland about what they use for an ordinance. Eric said they have a city charter so they can do things we can't do. Brian said Bennington has also been successful with their ordinance. They make a lot of use of zoning and he believes Rutland does too. Scott said it would be interesting to get information on what challenges they have faced. It would be interesting to look at our proposed ordinance and see if it would hold water with those challenges.

Brian said he will take the ordinance to VLCT also.

Doug said in the definition of "building" he would say "permanently" rather than "relatively permanently." Scott said the old talc mill building that is not enclosed so would not fall under the definition of a building. Walter said it only has 2 walls now, but he thinks the definition of "dangerous building" would apply to it. Doug said he is concerned about including "enclosed" in the definition of "building." Someone could say the building is not enclosed because the wall fell down. He thinks we need to revisit the definition of a building.

Lois asked about fees. Brian said it is \$100 for a vacant building permit. He thinks it has to be renewed annually. Doug said he didn't notice a time period.

It was agreed that Brian should work on the ordinance in consultation with Doug and Dave Barra and bring it back to the board. (*Walter left at 8:18.*)

6. Mine Road

Eric said he and Mike went today with Bobbi Rooney, Linda Jones, Andrea Sargent and another woman and located the cemetery near Mine Road. He and Mike observed that the logging or sugaring operation in that area has been doing a lot of destruction to our highway. Eric doesn't think the person running that operation ever got a permit. He should not plow in winter without a permit. We should put him on notice for that. He did some modifications to the road that never should have been done.

Nat asked what reclassification is planned for Mine Road. Eric said about half of it is Class 2 now. We will reclassify it so it is all Class 4.

Mile said a fallen tree should be pulled out of the cemetery and the brush should be cut away. It would be a nice project for JSC or UVM. Eric said it is on the mine company's private property. We should share with them that we found it and require them to protect that area. A sugar operation goes right through it.

The board agreed to visit Mine Road on November 27. Board members will meet at 3:00 at the intersection of Ben Ober Road and Mine Road. The board will reconvene at the municipal building after viewing Mine Road.

7. Note from Bob Frey

Eric said Bob Frey had sent a note bringing to the board's attention the non-perpendicular attitude of many road signs. He suggested that Brian pass that on to Brian Krause.

8. Adjourn

The meeting was adjourned at 8:30.

Minutes submitted by Donna Griffiths