

JOHNSON SELECTBOARD MEETING MINUTES
JOHNSON MUNICIPAL BUILDING
MONDAY, FEBRUARY 26, 2018

Present:

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

Others: Brian Story, Rosemary Audibert, Charles Gallanter, Phil Wilson, Lois Frey, Jeanne Engel

Note: All votes taken are unanimous unless otherwise noted.

1. Call to Order

Eric called the meeting to order at 7:02.

2. Modifications to Agenda

Eric added a discussion about the ice jam and a town meeting prep discussion.

3. Public Hearing on Form Based Code

Eric started the hearing on form based code. He asked if there was any input.

Lois asked if the code is any different from what was presented in August. Charles said yes, the Planning Commission made changes after August.

Charles said he is here in a private capacity although he is also a member of the Planning Commission. He said the Planning Commission held a public hearing on August 2. The Planning Commission minutes of June 19 stated that there would be no changes as a result of the August 2 public hearing. That was in the minutes and it was public knowledge. At the August 2 meeting it was announced that there could be changes based on testimony at the hearing, and changes were subsequently made, so the Planning Commission voted to have another hearing, but to date it has not been held. An attempt was made to hold it September 6 but it was not held because it was improperly warned. A special meeting of the Planning Commission was held on that date instead. Charles read from the minutes of September 27: "David said after consultation with the town attorney the commission had met its statutory requirement by having a public hearing on August 10." Charles wants assurance that the town attorney really was consulted and did in fact make that statement. Otherwise he thinks it is incumbent on the selectboard to kick it back to the Planning Commission for a proper hearing.

Eric said we did seek the attorney's input on this and he did affirm that the Planning Commission had had 2 public hearings.

Charles said the Planning Commission didn't hold 2 hearings. The second wasn't properly warned.

Phil said there was one a year prior.

Brian said if he recalls correctly the Planning Commission was given bad advice prior to the first public hearing on the process for making changes. It wasn't that changes couldn't be made, but that making changes after the hearing would be more involved, similar to the process for the selectboard to make changes to the code. Eric said the selectboard can't make changes without kicking the code back to the Planning Commission but the Planning

Commission has the right to make changes. He understands the Planning Commission has held numerous public hearings, maybe 3. Some others said there have been 2 public hearings that they are aware of.

Phil said the Planning Commission had one public hearing and had the intent to hold another on August 10 but it wasn't warned properly so they had a special meeting instead. So there was one public hearing. He believes there was also one in 2016. Charles said that was an information session. He is not sure that qualifies as a public hearing.

Charles said he knew of people who were ready to testify at the August 2 meeting – people who were not so in favor of form based code – but he warned them off because the Planning Commission was told they wouldn't make changes after the meeting. He thinks those people were deprived of a voice.

Brian asked, didn't the Planning Commission have another properly warned meeting after the August 2 one? Charles said no. They had an improperly warned meeting set for September 6 so that became a special meeting of the Planning Commission. Brian said the issue was that the warning was posted online a week in advance rather than two weeks in advance. As he recalls, that would have been the third public hearing.

Charles said no matter how many meetings there are, if correct information is not given out, what good are they? If you tell people changes won't be made they won't show up. He knows two people who didn't show up for that reason.

Nat said he feels this process has taken a long time. He thinks we need to look into whether meetings were properly warned but he feels there has been ample opportunity for all citizens to give input.

Charles thinks if the town doesn't do the process right it opens itself up to litigation.

Doug said he thinks we should look into the process to see if it meets the legal requirements.

Eric said we have heard this before from Charles and we brought it to our attorney and he advised that there have been two hearings. If the Planning Commission had these concerns it should have addressed them. The Planning Commission sent the code to the selectboard and the selectboard is having a public hearing. Then there will be a non-binding vote of the people of the town. They will have the opportunity to vote if they have concerns. Then the selectboard will hold its second hearing sometime following town meeting. He feels that the code has now been moved to the selectboard and the selectboard needs to progress forward. The Planning Commission had ample time to take it up at their level if they believed it was done improperly. They sent it over to the selectboard. The legal advice the selectboard got was that the process was properly done, so they are moving forward.

Lois asked if form based code will require a development review board if it is passed. Brian said the code does call for one. Eric said there is an appeal process. Lois looked at the code

and asked, so there will be a development review board of 5 members and 2 alternates? Eric said yes.

Lois said there is also an administrative officer administering the code. Who will that be? Eric said that has not been determined yet. Charles said there are definitions of who it can't be. He doesn't believe any selectboard member or Planning Commission member can be in that role. Eric said there was some discussion of having Brian's position include serving as administrative officer.

Lois asked if administrative costs have been built into the upcoming budget or if that will be in the budget in subsequent years. Eric said it will be in subsequent years. The selectboard can't put that expense in not knowing if the voters will pass form based code or not. He does not see the town incurring any significant cost for administering the code.

Lois asked what role the alternates serve. Do they have to go to all the meetings? Doug said he thinks they probably stand in when others have conflicts or are absent, so there can be a full board, but that is just speculation.

Brian went over some typographic changes he would like to make.

On p. 1 the tab on the third paragraph needs to be fixed.

The bullet numbering/lettering for the different levels of bulleting is not consistent throughout the document and it needs to be made consistent

In 1.01 there are 3 bullet points, then we tab in to cover 2 other things. It is not clear whether those are part of the third bullet point or not. We need to mark that in a way that makes it clearer.

In 1.03, Section A is not bolded as it is in other places.

Sections 1.04, 1.05 and 1.06 are in a different font.

There is a missing space in the last sentence of 1.07.

In 1.08 bullet points are not bolded.

In Section 2.02 bullet points are not bolded and are in a different font.

In Section 2.03 bullet points are not bolded and bullet b is in italics

Section 2.04 a3 refers to a detailed map on 8 ½ x 10 inch paper. He assumes 10 was meant to be 11.

The title for section 2.05a is in bold. Titles in other places are not in bold.

In 2.05a the bullet points are bolded. In other places, bullet points are not bolded.

The first letter of 2.06 is bolded.

Charles noted a place where there is an extra comma.

Brian said bullet points throughout the document need to be made consistent as far as whether numbers or letters are used first, whether they are bolded or not bolded, and how they are indented. 3.01 and 3.02 need to be adjusted for consistency.

In 3.02 one bullet point uses parentheses, which are not used in other places.

In 3.02 there is a b2 and a b2a. Brian is not sure there needs to be a 2a if there is not a 2b. If we don't put 2a in a separate bullet point we need to change the wording of the sentence. Eric said we don't want to make any substantial changes. Does that change the meaning? He doesn't know. Phil said he thinks we can get rid of 2a as a separate bullet point. Others agreed.

Charles said he thinks 3.02 b2 should be run by a lawyer. He doesn't think the administrative officer has the power to waive anything, though the DRB can. Doug said he thinks the administrative officer would just be saying something was irrelevant or inapplicable. Charles said they can't waive anything. But he sees what Doug is saying – they would not really be waiving it since it would be irrelevant.

302 g1 is indented too far.

Brian suggests moving page numbers to the outside edge. Some page numbers are incorrect and need to be fixed.

Brian said there is inconsistent bolding in the village general building envelope standards.

Charles said there is a sentence that says "generally" where it should be "general."

In the village neighborhood building envelope standards, some titles are bolded and some are not.

Charles said in 6.02 it refers to "Johnson village form based code."

In 6.01 2, bullet points need to be adjusted to make font, bolding, italics and capitalization consistent.

Charles said he thinks changing "Johnson village form based code" to something else would be a significant change. Eric agreed. He said he doesn't think the selectboard can change that. Phil said if we leave it as is, it refers to something that is undefined in the document: "Johnson village form based code." Doug said he thinks it is a clear error that we can change. He would ask our attorney. Nat said there are village districts. Doug said it's a town ordinance regulating things in the village and referring to things in the village. Eric said if the terminology is meant

to identify a section of the town it should probably be left as is. Nat said this document doesn't make reference to the village as a municipality. Clearly someone put "village" when they meant "town." It is clearly an error. Charles said he doesn't think it was an error. Nat asked, then why is "Johnson village form based code" not defined in the document? Charles said he thinks that was the error. Eric said the form based code districts don't even encompass the whole village. The descriptions just refer to neighborhoods, not the whole village. He thinks probably the use of "village" is all right. It is not used in the same sense we usually think of it. He would leave it the way they have it written. It may be appropriate for the intent of how they are using it. They aren't using it to mean the village government they way we usually would. Nat said they are talking about a particular development review board. Brian said they are referring to this ordinance, not to the review board. The ordinance is defined in 1.01 as the Johnson form based code regulation. Phil said "Johnson village form based code" does not exist. Doug said he considers this a minor change – a clear typo. Nat said he not opposed to running it past the attorney. Doug said he thinks we have to.

Brian said there are missing periods in a couple of bullet points in 1.01. And there is a sentence he doesn't think is indented properly.

Brian will make indenting and bullet points consistent throughout the document.

Eric said we will check with our attorney about the waiver question and the question of changing the wording of "Johnson village form based code."

Charles said 1.01 refers to "accepted agricultural practices," but those are now "required agricultural practices." Doug said that would not be a substantive change. That is just the successor naming.

Brian said in 6.02 the references to "Johnson village form based code" will probably be changed to "this regulation" or "Johnson form based code regulation." Doug said he likes using "Johnson form based code" rather than "this regulation" as it makes it clear it is not referring just to this specific section.

Doug said his suggestion would be that for any change that is not merely a font change or clear editorial change we make a clear record of what changes there are and why we determined they were not substantive.

Eric said we should have a cleaned up version available for town meeting.

Kyle asked if the Planning Commission plans to have an information booth at the back of the room at town meeting. Phil said yes.

Jeanne said the last time she went to a form based code meeting it was a two page sheet. What happened to that? Phil said he thinks the administrative portion was always separated out and that the short thing Jeanne saw was the diagrams with information about how to comply within each district. Eric said if someone comes in and asks what the code is, this whole document is not what would be handed to them. This describes administrative positions, etc.

Someone who wants to know if they comply or not won't need all this. Kyle asked if Phil has the 2 page checklist. Phil said he doesn't know that he ever had that.

Eric said years ago in statute voters had the ability to reserve the right to approve any zoning in a town and the voters of Johnson did take that action, reserving approval of zoning to them. Since then the statute has been changed so the voters can no longer approve zoning. It must be approved by the legislative body. But a prior selectboard promised the voters they would still bring it to them and honor their vote. This selectboard is not held to that commitment. After the voters approve form based code or vote it down, if the selectboard approves it then a petition could be raised by 5% of the voters asking for a special town wide vote and then in that case the voters would decide.

Eric closed the hearing at 7:59.

4. Ice Jam Discussion

Eric said there was a conference call today with Vermont Emergency Management to talk about the ice. The long term forecast of warm days and cool nights is looking promising for melting the ice without flooding. It appears that the ice is softening. If we had a huge rain event or rapid rise in temperature there could be more flooding but now it looks good.

One of the parties that has been involved is the Cold Regions Research and Engineering Lab. They are experts on ice. They are willing to do a pilot program in Johnson on our river to come up with a management plan regarding mitigation efforts we could take. Eric told them we would be interested. They would just ask us to provide some local people with historical knowledge of flooding events. Hardwick has big granite blocks in the middle of the Lamoille just upstream of the village. Eric assumes that is something CRREL did to mitigate ice problems and apparently it has been successful.

5. Town Meeting Preparation

Eric said we did not add the total amount of interest for the Holcomb House loan in the budget. Half is paid by the Historical Society and half by the town. The budget was short what it should have been by about \$72. Adding in what was left out would increase the bottom line. Eric will have to talk to Dave Williams to see how to handle that on town meeting day.

6. Adjourn

The meeting was adjourned at 8:05.