

JOHNSON SELECTBOARD MEETING MINUTES  
JOHNSON MUNICIPAL BUILDING  
MONDAY, SEPTEMBER 26, 2016

**Present:**

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

Others: Brian Story (Administrator), Rosemary Audibert (Clerk), Brian Krause, Steve Smith, Gordon Smith, Albert Nadeau, Mike Patch, Alex Nadeau, Anthony Nadeau, Andy Glover, Chris Perkins, Eben Patch, Sam Carlson

**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**

Mike asked to add discussion of the Sheriff's Budget Advisory Committee meeting.

**3. Green Lantern Solar Group Net Metering Proposal**

Sam Carlson said Green Lantern is building a 150 kW solar array on Gould Hill Road. They are permitted by the state and they are in the process of lining up agreements to purchase the net metering credits that are generated by the solar array. Johnson Water & Light will not pay Green Lantern for electricity. They will issue credits based on kWh generated. Those credits can be used by consumers to pay down their bill. They are proposing to sell credits to the Town of Johnson at a 12.5% discount. The town would have the opportunity to buy something worth 19 cents per kWh hour and pay 17.1 cents for it, saving 1.9 cents for each kWh. Green Lantern is working with Johnson Elementary School. The school board moved to sign a net metering agreement with Green Lantern that is identical to the one the town would sign in terms of percent discount. JES needs more credits because they use more electricity, so their allocation is adjusted accordingly. Green Lantern is also talking to some of the larger private entities in Johnson. Their first desire is to work with public entities. The contract presented tonight has comments in it explaining each part. If the town wanted to go forward, Green Lantern would produce another contract without the comments. There is no upfront cost to the town, no risk, no liability, and no operating and maintenance expenditures by the town.

Mike Dunham asked Gordy if the trustees were offered a deal like this. Gordy said they were offered a deal. He is not sure of the specifics. The trustees didn't go with the deal. Mike asked if Gordy could share why the trustees did not want to be involved. Gordy said he thinks that would be a good topic for a joint meeting. On any 150 kW project, the village will lose about \$36K per year.

Eric asked, the village will lose that money whether the town signs the contract with Green Lantern or not because the village utility has to have a certain amount of renewable energy in its portfolio, right? Gordy said he thinks by January 1, the cap will be lifted.

Nat said if our voting yes would cost the village \$36K he would be very concerned. But his understanding is that if we pass on this Green Lantern will sell the credits to someone else. Sam said if they don't sell the credits there is no solar array and they go away. It is true that

the utility will lose some revenue. If he goes to Johnson State or private individuals, people are going to want to save on their electric bills and buy the credits. If he goes to private entities then the town and village lose more.

Nat asked what proportion of the credits are sold at this point. Sam said the school's allocation is about half the array's production.

Mike Patch said both candidates for governor say they want more local control over solar siting. He asked if the taxpayers of the Town of Johnson ever voted on this or knew it was coming. Eric said he doesn't think the selectboard even knew about it at town meeting so they would not have put before the voters that they were looking into it.

Sam said there is a move towards greater involvement of town in siting of solar arrays. An act was passed by the legislature that gives towns more power over solar and wind project siting. That is a lengthy process. Towns will have to redo their town plans and submit them to regional planning commissions. They will certify whether those town plans take into account the state legislature's mandated energy objectives and whether the town is doing its part to achieve them. Regional planning commissions have to have their plans certified by the Public Service Board. If those plans are certified then the town plan will be given substantial deference when the PSB is reviewing an application. He would guess the town is two years from that point. Right now, siting of solar projects is governed by Act 248. Under Act 248, permitting is done by the state. Towns can intervene if they object. Green Lantern is in a lawsuit right now because the Town of New Haven is opposed to a solar project they want to site in that town. They are appealing to the state Supreme Court.

Mike Patch said his question is whether the taxpayers should have been asked what they want to see in the Town of Johnson before this was built. He thinks we ought to see what the new governor does. Both candidates for governor have said they will allow more local control.

Sam said this solar array will be sited so no one can see it unless they go onto the landowners' land.

Gordy said he wants to make sure it is noted in the minutes that he did not come to this meeting in regard to the solar project.

Brian Story said VPPSA had some concerns about the proposed agreement with Green Lantern. They wanted to see the discounted rate improved in the town's favor. Sam was able to describe several cases where solar developers offered greater discounts and then were not able to secure funding or not able to see the deal through for one reason or another. Sam feels this discount is pretty fair. VPPSA did note that the better rates are usually seen on larger arrays. Sam and Brian did not end up changing the discount rate.

For the next 10 years we get a guaranteed discount off the energy rate. After 10 years we are going to start paying a guaranteed rate. If in 10 years energy costs are higher than the guaranteed rate we will save money. If energy costs drop we could start losing money. That

was an issue of concern for VPPSA. Brian brought it up to Sam and Sam changed our floor from 16.5 cents to 15 cents, so for us to lose money the energy rate would have to drop below 15 cents. That makes the agreement less risky.

VPPSA asked for a mediation clause in the agreement. Dave Barra did not feel that was a requirement because all civil cases in Vermont are required to go through mediation. Sam said he would be happy to put in a mediation clause if the town wants it.

Brian said VPPSA gave us notes on how to allocate usage. He and Sam worked on that. The agreement is for 20 years. It will definitely save us money for the next 10 years. For the 10 years after that it depends on what happens with energy costs.

Sam said a credit is worth 19 cents. The town gets each one for less than 19 cents. The town pays about 16.2 cents per kWh hour. The only risk to the town is the possibility that 10 years from now the electric rate could go below 15 cents. Historically, rates have tended to go up. The trend over the last 30-40 years has been for rates to go up an average of 3% per year. He doesn't think anyone is predicting rates will go down.

Brian said VPPSA pointed out that this project will cost the village utility money. Meredith has figured out how much. He believes the figure Gordy quoted is correct. With Green Lantern having sold some of the credits to the school already, the project is probably going to go through. It could be us who saves money or it could be someone else.

Eric asked, our annual electric cost is around \$12K, and this would save us \$2600? Brian said a more conservative estimate is \$1500. Sam said they reduced the allocation of credits to make sure the town doesn't buy more than it needs. The town would lose money by buying more than needed.

Brian said this agreement could disincentivize energy use reduction. If we significantly reduce the amount of electricity we are using we can end up without anything to use our credits on. We could buy enough credits to cover 100% of our current usage and save more money now, but if we reduced our costs we would be throwing money away. The standard allocation is enough credits to cover about 90% of costs, but that leaves us with only 10% of our current usage to reduce. Sam said most other towns like the 90% figure.

Brian said Dave Barra has reviewed the agreement and says it is in order.

Mike Dunham said he doesn't think we should go further with this until we have a joint meeting with the trustees. Nat said we have been discussing this in open session since May. He thinks there has been plenty of opportunity for the trustees to ask us to stop if we are doing them serious harm.

Eric asked when the agreement would need to be signed. Sam said it's first come, first served. He is talking to JSC and private entities. Whoever signs up first gets the credits. The college could take all the rest. They will work with whoever wants to buy the credits. They would like it to be the town.

Mike Patch said the town will save \$1500 and the village will lose about \$30K. How is that worth it?

Sam said when the solar array starts producing electricity there is a meter that tells Johnson Water & Light how many kWh are being produced. They ask him whose bill should get the credits to pay down their bill. It could be the Town of Johnson, JSC, or private citizens. The Town of Johnson pays Green Lantern, so some of the money goes to Green Lantern and doesn't go to Johnson Water & Light.

Eric said the way he understands it, now the Village of Johnson is providing us the power and they are purchasing it. The change would be that they are going to purchase it locally. When we turn on the lights, the power we get will be from Green Lantern. Sam said from a physical perspective, that is not right. Green Lantern's electricity goes into the grid and goes wherever it is demanded. What the town is buying is credits to pay down its bill so it will not be paying so much for electricity. The advantage of solar to a utility is that solar peaks in summer when the spot market for electricity goes up the most. The spot market in August during the heat wave was \$1.30 per kWh. Johnson Water & Light was paying that much for its energy on the spot market. That is when solar is producing the most and reducing the amount the utility has to pay on the spot market. It lowers their average purchase price because they don't have to buy so much during summer peak time. That offsets some of the revenue losses. Mike Dunham said he thought VOJ didn't have to pay spot unless they went over their allocation. Sam said different utilities have different power purchase agreements for different amounts. He can't comment on what Johnson Water & Light's power purchase agreements are.

**Nat moved to sign a copy of the solar group net metering agreement with Green Lantern that does not include comments, Kyle seconded and the motion was passed with Mike opposed.** (*Sam left at 7:39.*)

**4. Gravel Pit Discussion**

Brian went over the documents he found when he did research at the Act 250 coordinator's office. One is dated June 28, 1999. At that time the town was requesting to build the access road that now provides access to the gravel pit. At the time, roads were considered part of the Act 250 process. The Natural Resources Council stated that operation of a gravel pit requires an Act 250 permit. The document states that an Act 250 permit must be obtained for operation of this gravel pit. We didn't act on this at the time. There is a letter from a couple of years later from Ed Stanak. In the second paragraph he mentions that he came to visit the property. He says, "I observed that those lands have a significant amount of tree and other growth and that the extractions have not taken place for many years." In the next paragraph he says, "I cannot conclude that the face I observed is an exempt grandfathered gravel pit." He is saying that based on his visit there may have been a grandfathered case at some point, but operations had ceased for long enough for him to feel the exempt status was broken – that we couldn't claim historical use because of the period when we weren't operating it.

Brian didn't find anything definitive that came after these documents. There were a couple of messages from Ed Stanak asking if we were going to file an application. He knows several

people remember the meeting with Ed Stanak differently. He would love it if anyone could provide documentation of what was said at that meeting. But at this point it looks like we need an Act 250 permit. The violation already happened. We have to get an Act 250 permit before we close the property. Even if we wanted to get rid of the property we would still have to pay to clear this up. The violation has happened and there is nothing we can do about it. If we can't find any evidence that Ed Stanak changed his mind we will have to ask for a judgment and pay a fine. He doesn't think it will be too much. He has looked at other cases. He saw a lot of fines in the few thousand dollar range. The fact that we don't have continuing operations there in violation will probably work in our favor. He thinks us coming forward and asking for the judgment will also reflect in our favor. He hopes that it will also speak in our favor that we want to reopen the pit with all permits and safety requirements in place.

Eric said he went today to speak with Blaine Deslisle who was on the selectboard at the time and used to be road commissioner. Eric and Blaine were at the meeting with Ed Stanak in 1996. Willie Jewett was there. Dick Perkins was there. Bert Nadeau said he was there. He said Dick Perkins provided testimony to Ed that he worked for the railroad and extracted gravel out of the gravel pit. Eric said both he and Blaine clearly remember Ed standing there and saying he didn't see an existing gravel pit there. They were both livid because it was an obvious face of a gravel pit. Neither he nor Blaine recalls how the gravel pit got to be in operation. Eric spoke to Doug Molde today. Doug believes that the town was originally negotiating that Bert was still going to own the land and the town was going to haul gravel out and purchase it and then at some point Doug worked with the town's attorney, Dick Sargent, and negotiated a deal where the town purchased the land because there was a municipal exemption from Act 250 for a gravel pit under a certain size. If that is the case, someone from the state ought to be able to tell us that, yes, there is an exemption from Act 250 for a municipality with a gravel pit under a certain size. Maybe that is why there is no record of an Act 250 permit – because we learned we were exempt. We have to figure out if that was what happened.

Brian said the Act 250 coordinator will be able to tell us that. So far he hasn't described enough of the situation to the coordinator to put us on the hook for having to pay a fine. He hasn't been dishonest, but he has been vague. He needs permission from the board to be more direct, which will increase the likelihood that a fine will come up. He will try to make the case that we should not have to pay the fine. He will try to look up relevant statutes, but we will have to ask for a judgment. They will find in our favor or against us. He will try to make the case that we don't need a permit. He will talk to Doug Molde and Dick Sargent before going to the coordinator's office.

The board agreed Brian should do further research as discussed, then talk to the Act 250 coordinator. Brian said he will do research and tell the coordinator that we are exempt to the best of our understanding, offering all the evidence he can gather.

Brian said he had talked to Zane Burke and his supervisor Jim Logan of MSHA. He applied today for a mine ID. That will allow us to get federal educators to come and help us work through safety and training plans for free. The mine safety people have no interest in what we used to do. Bringing them in exposes us to no liability for anything we did in the past. If we

open a new gravel pit and put a crusher in it we may want to revisit the idea of hiring a consultant but he hopes we can complete our safety and training plans without using one.

Gordy asked Rosemary if past selectboard minutes would have anything related to permitting for the gravel pit. Rosemary and Eric said they think Duncan looked in them and couldn't find anything.

**5. *Purchase of New Loader***

Brian Krause said he thinks we want to stick with the same size as the current loader since it looks like we are going forward with reopening the gravel pit and possibly opening a new one. Our cost for a new loader of that size, taking into account the trade-in of our current loader, would be \$130K. He got 4 quotes for loaders. The Case was the lowest at \$125K but he strongly recommends not going with Case. He and his crew tried out 3 loaders and the John Deere was by far the best machine. All the employees agreed. Case doesn't have the service department John Deere has.

Nat asked if there will be an additional cost for an extended warranty. Brian K. said the cost of an extended warranty is included in the \$130K figure. Eric said he thinks we had discussed that when we got a new loader we would look at air conditioning. Brian said this loader comes with air conditioning. Mike asked about forks and a broom. Brian said it comes with a set of forks, but no broom. He would love to get a broom in the future.

**Mike moved to authorize purchase of the loader recommended by the town highway crew as presented, Kyle seconded and the motion was passed.**

Brian said we can have the new loader in 8 weeks.

The board agreed that Rosemary should get quotes for a loan to fund the loader purchase.

**6. *Status of Village Compensation from Pike Industries***

Brian said during the School Street project there was damage done by Pike to village property. The village asked us to help them recover the money. We said it was between the village and the contractor and they should take it up with the contractor. They did, and the contractor told them they should take it up with the town. They showed that the town got a credit, which they said was for the village's damage. But the credit was actually for work not done. They did less than it was originally estimated they would do. Brian showed why we had received that credit and the village took that information back to Pike. Brian is doing what he can to help the village, but this is primarily between the village and Pike. Mike said time Brian spends on this issue is time the town is paying for.

Eric asked if Brian knows why the village has not approached their insurance. Brian said they feel it is too close to their deductible. He told them that in his experience working at VLCT, VLCT has helped many members recover money even if the amount is below their deductible. His advice was to approach VLCT. He thinks it would be worthwhile for them to ask VLCT to take care of it.

Mike asked how many hours Brian has spent on this. Brian said not much. There have been a lot of short conversations. The longest period he has spent on it was the time it took to write a letter for Meredith, which was probably about 15 minutes.

**7. *Tracked Vehicles on Highways***

Mike said he would like to talk about not allowing tracked vehicles on town highways without matting to protect the road. On a hot day with new pavement, if a tracked excavator goes across the road it digs up the road. Kyle asked if that has happened on our roads. Mike said it has happened two places recently on our new road on School Street. One damaged place is very small. One is more noticeable. He thinks we need some kind of posted ordinance with fines in place. He would like to discuss this at the next meeting. Brian said he and Mike have talked about this. He needs to review existing ordinances and state law related to overweight vehicles and see how they relate to tracked vehicles.

**8. *Sheriff's Budget Advisory Committee Meeting***

Nat said Roger said salaries will not be increasing much due to turnover in personnel. They have not gotten a solid quote yet for worker's comp but they are anticipating a 32% increase. Patrol equipment is going up 50% because officers are going to be equipped with body cameras. They are proposing a 3.56% budget increase. Johnson gets an 8.32% increase. (Though town per capita numbers have not been updated and that could change a little based on updated population figures.) They say that the credit we got last year masked a more significant increase. We tried to make the case that we got the nearly \$48K back because we had paid for services that were not provided, so that should not result in an 8% increase this year. Other member towns seemed pretty happy with this budget. Nat was the only one saying he would be uncomfortable bringing it back to his voters. Roger asked him what number he would be comfortable with and Nat said 3%. Roger seemed receptive to working with us to get the overall increase down. Roger will be at our next meeting.

Eric said an 8% increase is big, but it might not affect the town's overall budget that much. But we should look at every item we put in our budget. Nat said the Grand List isn't going up by 8% and neither are wages.

Nat said a lot of Roger's focus is on the opiate crisis. He is trying to figure out how to get more resources to put into that effort. But in this town Nat hears more concern about quality of life issues such as speeding or ordinance violations. Eric said we are looking for enforcement from LCSD related to quality of life – keeping speeding down, etc. It seems to him that the state police should concentrate on things like murder or assault investigations or opiate addiction instead of on speeding. Nat said Roger would say that all the state resources related to opiate addiction went to Rutland and Burlington because of their populations and their political power. Those resources are not getting allocated to small towns. Eric said those areas have much larger full-time police forces.

Mike said he could see that Roger had said the proportion of warnings to tickets was out of balance. Was that brought up by Nat at the meeting? Nat said no. Mike stated that he does not believe the selectboard should be requiring the sheriff's department to issue more tickets and less warnings within Johnson's borders.

Eric said the only reason we brought up the issue of warnings vs. tickets was that we were seeing a pattern of disparity with the proportion in Johnson vs. the other two towns. The same officers are covering all 3 towns. Why wouldn't the percentage be the same?

Brian said he thinks it would be in our interest to find out more about why they are making these decisions. We don't necessarily want to incentivize them to issue more tickets. If we feel they have a good reason we might be okay with them issuing fewer tickets.

Eric said we pay 42% of the budget. How does that compare to patrols? Nat said we had about 47% of patrol hours and incidents, so that is okay.

Nat said he feels like the speed of traffic through town is generally too high and should be reduced. One great mechanism to do that is through patrols. He knows there are places in Vermont where he does not speed because he knows they are patrolled rigorously.

**9. Adjourn**

The meeting was adjourned at 8:37.

*Minutes submitted by Donna Griffiths*