

JOHNSON VILLAGE TRUSTEE BOARD MEETING MINUTES  
JOHNSON MUNICIPAL BUILDING  
WEDNESDAY, SEPTEMBER 27, 2017

**Present:**

Trustees: Gordon Smith, Walter Pomroy, Scott Meyer, Dave Goddette, Bob Sweetser

Others: Meredith Birkett, Brian Monaghan, Troy Dolan, Pam Aupperlee, Rick Aupperlee, Greg Stefanski, Luke Quoroz, Maddie Gibbons, Corey Fogg, Ellery Kiefer, Stefanie Leo, Madison Crilley, Sarah Hawley, Maria Brosseau, Alex Hoagland, Megan Joyce, Diane Lehouiller, Don Blais, John Dennis, Sarina Pesinkowski, Kyle Nuse

**Note: All votes taken are unanimous unless otherwise noted.**

**1. Call to Order**

Gordy called the meeting to order at 6:10.

**2. Proposed Changes/Additions to Agenda**

No changes were proposed.

**3. Public Comment for Topics Not on the Agenda**

No members of the public wished to make comments on topics that were not on the agenda.

**4. Discussion of Petition for Australian Ballot Elections**

Gordy thanked everyone for coming. He said the trustees respect the wishes of community members to elect village officers by Australian ballot. After receiving the petition calling for a vote on Australian ballot elections they set a date in December for that purpose. They contacted the village's attorney to make sure it was done right and the attorney raised some concerns, which will be presented. The trustees are not opposing the request, but issues were brought up and they want to proceed in the proper manner.

Attorney Brian Monaghan said when this question came to him he reviewed the petition and thought elections by Australian ballot were a good idea. His town and the town where he previously lived use Australian ballot to vote on officers. He personally likes that approach. It gives people an opportunity to vote freely without having to vote in public. He thinks it makes sense. It is how we vote for federal and state elections. He has only a technical challenge, not a philosophical challenge.

There are two problems in the petition. The most important is the reference to the village bylaws. Vermont general law regulates the governance aspects of operating a village as a municipal corporation. It talks about bylaws and when it talks about bylaws the law is not very clear. The statute was probably written more than 100 years ago. Language used then was less clear than we would like to see today. Some words might have different meanings than they do today. There are two different places where the term bylaw is discussed in the chapter regulating villages. In relation to municipalities, the term "bylaws" generally means legislative enactments. Zoning bylaws are a typical example. To him, a bylaw is a regulation that a municipality imposes with respect to conduct, actions or land development in the municipality. That is how he views the term "bylaws."

Chapter 39 of the law talks about governance provisions regarding the trustees – when they are to meet and what is supposed to happen at meetings of the trustees, the municipality or the voters. His view is that this chapter of law occupies the field, meaning that this is the full realm of regulation

that applies to this particular situation. (There are some cases in which a set of laws does not occupy the field. Sometimes they set a regulatory ceiling or floor.) Municipalities have governance charters. A governance charter is a set of local laws that applies just to that municipality. For example, the City of Burlington changes their charter every year or two. When they do that they are adopting a different set of regulations to govern them. The changes are first adopted by the city council, then approved by the voters, then approved by the legislature. The charter is special local law applying only within the City of Burlington. It lets them do things differently than general law. The Village of Johnson doesn't really have a governance charter. Meredith gave Brian a file that has been in the office for many years which shows that there are special legislative acts adopted that apply just to the Village of Johnson, but that is not a charter. It is just laws that came about when legislators representing Johnson went to the legislature and asked for a law allowing something like bonding for improvements. The Village of Johnson doesn't have a governance charter to govern the activities of the trustees.

Brian understands that the village bylaws have been in effect since 1965 at least, perhaps earlier. The village has relied on them but in his view that is a misguided reliance. He does not believe those bylaws have the legal force of law with respect to governing the conduct of elections or the methodology of voting for officers. He believes it is something that has been done incorrectly for a long time. It is time to stop perpetuating something that has been done incorrectly. Blessing the petition would be blessing a legally null act.

Brian thinks there are two correct ways to do this. The simplest option is for the trustees to set a meeting to approve a charter provision saying officers will be elected by Australian ballot. That could be approved by the trustees, the voters and the legislature. He thinks it could happen in the upcoming legislative session. Another option is for voters to submit another petition to enact a village charter with a provision that talks about that issue.

Another issue with the petition is the provision that the Water & Light Commissioner be an elected officer. All the other officers listed in the bylaws are statutory officers, recognized by Vermont law. He believes it is within the petitioners' rights to request that they be elected by Australian ballot. Water & Light Commissioner is not a statutory office so he believes inclusion of that office in the article renders it legally ineffective. He thinks the voters cannot petition for that office to be elected by Australian ballot. It is a position that was probably created by the trustees and has been folded into the municipal manager position. The Water & Light Commissioner is effectively charged with day to day water and light operations. He feels that is a position that should be appointed or hired. He thinks the person in that position should be accountable to the trustees. The trustees ought to have the right to terminate the person for cause. A person in an elected position generally can't be removed from office. The voters can vote them out, but they might continue in their office for a long time even if there is wrongdoing. The modern trend with positions of that type in Vermont is for them to become more akin to appointed positions. The person in the position can be fired for just cause, which gives them quite a bit of protection, since there must be a good reason for termination.

Walter asked what authority the trustee board has to act at all if we have never had a charter. Brian said the trustees have that authority by Vermont state law. He presumes that elections that have occurred have happened in accordance with Vermont law. The language in the Village of Johnson bylaws is similar to the language in Vermont law. Nobody has questioned it up until this point. No

one has brought an action in court. Courts are reticent to overturn governmental actions. He feels everything to date, even if not done in the best way, has been good enough and is legally valid.

Walter asked, if the trustees decided to act on the petition, would someone be able to challenge the Australian ballot elections in the future because it was not done properly? Brian said that is what concerns him. We know the issue now. Now is the time to address it. He is not concerned about what has happened up to now, but he feels it is time to make a change. If we allow the current situation to perpetuate he is concerned about possible valid legal challenges to village actions.

Walter asked if it is a good idea to take the step of specifying election by Australian ballot without creating a whole charter first. Brian said he thinks it is. There are voters who feel strongly and the board should respond to the extent possible. There are many existing governance charters in the state. Many are only a few pages long. For things not covered by the charter, Vermont general law applies. It is fine to be governed by Vermont general law and also have a few issues regulated locally. He thinks it is fine to do that in a piecemeal way. Perhaps the village will want to consider having a governance committee to decide what should be in the governance charter, hold public hearings, get comments and legal advice and have a village vote, but that will take time. He thinks it makes sense to quickly address the core issue that brings us here tonight and address other issues in the future.

Walter said he looked at charters from some other villages that have utilities. He feels we can take paragraphs from existing charters. Is that possible? Can we quickly and easily do that? He would like to try to develop a charter all in one shot. Is that practical? Brian said he is less concerned about getting the charter past the legislature than about getting something voters can agree on. People may have different opinions about what should be in there.

Walter asked if we are putting the Village of Johnson at risk by operating a utility without a charter. Brian said no, that is not putting the village at risk because we have Vermont general law to fall back on. He expects the trustees will be faced with another petition that will be properly worded and will call for charter language. There is an opportunity now for the trustees to accomplish this in a more collaborative process rather than through the petition process.

Bob said he thinks it sounds like the best step is to work together with voters to get this issue resolved and work on the full charter in time.

Scott said he would want Brian to give oversight to ensure this is done legally.

Dave asked what the next step from tonight is. Brian said the trustees can move forward with Australian ballot voting for officers of the village or decide not to deal with it and let petitioners do as they wish.

Dave said the trustees have spoken publicly in support of Australian ballot voting. He agrees it is a transparent way to elect officers. He wants to move forward most in the efficient and legal way to accomplish the goals of the petition.

Brian said he thinks the best way is for this board to schedule a special meeting to have a vote on the question. The vote would have to happen from the floor. The village doesn't have Australian

ballot voting for public questions. It would be a vote from the floor to switch to Australian ballot for officer elections. He can work with Meredith on making sure the question is drafted in a legally sufficient way.

Walter said the annual village meeting is the first Tuesday in April. That would be the date Australian ballot election for new trustees would have to happen. This has to be approved by the legislature. If the legislature moved fast enough to approve the change before April 1, but it didn't happen until March, would there be timing issues regarding signatures, warnings, etc.?

Brian said that is a fair question. We have to think it through. It is rare for a bill to be effective on passage. Most are effective as of July 1 of the legislative year. We need local representatives to push this through. Walter said it would almost be necessary for them to enact it immediately with a retroactive date, so practically it may not be able to happen in time for the April meeting. He would like to honor the voters' request and put together a committee to have something ready to go for the following legislative year. It will be slower but it will be done right and solve a lot of issues.

Brian said it is virtually impossible to get things done in time for the April village meeting. But the meeting still needs to be held on schedule to vote for those whose terms are up. Maybe the village annual meeting is the best time for a vote on a charter change and there can be Australian ballot elections in subsequent meetings.

Meredith said there will be a lag from the time the legislature gets our charter approval request and the time it will take effect. If we wait until next year, there will be another year lag. There will be a year lag from whenever we do it.

Gordy said he wonders if we should do the first part this year rather than wait until next year.

Diane Lehouillier said she was wondering if the board could change the date of the vote in April, but it sounds like they can't.

Gordy asked what those who signed the petition want to see happen tonight.

Don Blais asked if the Water & Light Commissioner question is taken care of already or if we should talk about that first. Is that one off the table already because we can't do it legally? Brian said his view is that that position is not recognized by the charter so he thinks it is outside the purview of the voters to petition concerning it unless the charger is changed to include it.

Kyle Nuse asked, wasn't it Duncan's recommendation that the board consider eliminating the position of Water & Light Commissioner? Walter said the board had discussed that it was probably not a good idea to have that position up for election. The board was planning to have an article on eliminating that position, then have the vote on Australian ballot elections. It has become something of a moot point now. In the future we just need to be careful not to include that position in the wording of an article.

Kyle said the position still exists. Walter said it exists in the bylaws, but not by statute. Meredith said this is a separate issue that does not impact the Australian ballot question.

Walter said he would like to do the whole charter at once and go to the legislature once and include Australian ballot elections as part of it. But doing it all at once may delay it another year. Are voters comfortable waiting an extra year? He wants to do it all at once so issues don't keep popping up.

Greg Stefanski said it sounds like doing the charter all at once is a pretty big project. He thinks the spirit of the petition was to make sure as many people in the village as possible could participate in votes. He sees where Walter is coming from, but he wonders if it may lead to a multiple year delay, with votes happening meanwhile that are not by Australian ballot.

Walter said he doesn't feel it will take that long. We can pick and choose language from existing charters. He thinks there are about 10 items that really need to be discussed and decided. He feels it could be done in a couple of good meetings. He would hope that in late 2018 we would have a special meeting on it so it would be ready for the legislature the following January. He would promise not to stand in the way of anyone trying to get that one item before the legislature if it seems like it is going to take longer than he expected.

Greg thanked the board for letting his Call to Action class from JSC come to the meeting. Gordy encouraged the students to get involved in their communities. *(Greg and his students left at 6:59.)*

Gordy said the existing board can't predetermine what a future board does. If we put this off for two years, new board members in the future may not want to proceed. Walter said voters can always petition for a charter change. They can petition now.

Rick Aupperlee said it sounds like we are starting at the end, with the legislature, and we don't even have anything to bring to them. Let's not worry so much about the end date because we don't know what we will find until we get together and discuss next steps.

Rick asked, in the absence of a village charter, we do have a limited charter, right? Some legislative ramifications of resolutions brought to Montpelier? Brian said yes, but they are really limited. The information in the municipal manager's office is about special acts of the legislature that apply to Johnson. Most are granting the village authorization to enter into bond transactions, which is allowed by Vermont general law.

Rick said we don't have something that needs to be amended. We need to have something ratified that is particular to the Village of Johnson. Brian agreed that we don't have something that needs to be amended. We need to start from scratch.

Rick said general law has rules around Australian ballot voting. He read from state statute: "Unless specifically required by statute, the provisions of the Australian ballot system shall not apply to the annual or special meeting of a municipality unless that municipality, at its annual meeting or at a special meeting called for that purpose, votes to have them apply." He thinks that indicates we have the authority to go forward with voting for Australian ballot elections. Brian said that is true. It would not necessarily require a charter change. The petition could be corrected if it were to remove any reference to village bylaws or the Water & Light Commissioner (and potentially the Constable/Collector; he believes that the trustees have the ability to appoint a Constable/Collector through one of those special acts.)

Walter said there is no need for voters to submit a changed petition. He is willing to call a meeting. He just wonders if we should do all the work of developing a charter at once.

Rick said this statute gives us authority to go forward with Australian ballot voting even before the annual meeting. Brian said that is correct. Another option is to call a special meeting to move toward Australian ballot elections. It doesn't have to have anything to do with the charter. There can be a special meeting in November to vote on Australian ballot elections. Walter said, with our annual meeting being held in April, we probably won't have the legislature's blessing before that meeting. Rick said we don't need it. Brian said that is right; we don't need it.

Scott asked if the trustees can just agree to move forward with Australian ballot voting. Brian said it requires a vote by the citizens. It would be effective immediately if the voters approved it.

Rick said he thinks there is a 60-day period when a vote can be overturned. Brian said if Australian ballot election is approved it becomes effective immediately, though there can be a petition for recall. He thinks there is 30 days for a recall petition to be submitted. But he thinks the likelihood of that is low given that there seems to be a groundswell of support for the idea.

Scott said he thinks most of the trustees are in favor of Australian ballot voting. If the petitioners had had a conversation about it with the board, the board would have been moving forward with it. In the future when there is an idea he thinks the trustees should be approached and there should be a conversation.

Walter said the original plan was that at the October meeting the trustees were going to warn a special meeting for December 4. He feels we should stick with that plan but just change the warning slightly. Brian and Meredith will put together verbiage for a warning for a special village meeting that the board can adopt at its October meeting. The board will plan for a December 4 special meeting. On that same night should we also warn an article about forming an ad hoc governance committee to start the process of developing a new charter?

Gordy said we don't want to leave the charter issue hanging. Walter said he would like to get the ball rolling to get a charter before the legislature next year.

Gordy asked the voters if what is being discussed is satisfactory. Kyle said she feels it is. She would like the board to warn a special meeting in order to have Australian ballot voting in place for the next annual meeting.

Rick asked Brian if it is possible for the board to make a motion and approve the use of Australian ballot voting without a public vote. Brian said no. The board can move to warn a special meeting without the need for a petition but Australian ballot elections must be approved by voters.

Walter he wants to stick with the plan to warn a meeting for December 4, but just change what people are voting on. He would also love to have a discussion item to have voters approve the concept of forming a governance committee to create a village charter.

Brian mentioned that a good reason to put Australian ballot voting into a charter is that it would become state law. It couldn't be reversed simply by a vote of the voters. It would also need a vote of the legislature.

Bob asked if we want to lock in Australian ballot voting by having the legislature approve it. Walter said the voters will decide. They have to approve it before it is sent to the legislature.

Rick asked if Australian ballot voting would require a Board of Civil Authority. Brian said the Village Clerk would count ballots. Walter said we have had to have Australian ballot votes in the past. That is not new.

5. ***Trustee Vote on Australian Ballot Petition and Next Steps***

**Walter moved to reject the petition for a vote on Australian ballot election because, based on the advice of legal counsel, the petition as filed with the clerk is improper, Dave seconded and the motion was passed.**

Brian said the trustees can establish an ad hoc governance committee without a vote of the voters.

**Walter moved to direct Meredith to bring to the October trustee board meeting a new article to present to the voters of the Village of Johnson to elect the officers of the Village of Johnson by Australian ballot, Dave seconded and the motion was passed.**

Gordy said Meredith was going to check with school that the space is available for December 4.

6. ***Other Business***

Kyle asked the trustees to consider having their monthly meetings upstairs rather than downstairs. She prefers the environment in the upstairs room, rather than the board having their backs to visitors, visitors not being able to hear and being squashed in the corner.

Bob said it is hard to hear upstairs with the air conditioner running. And if the meeting is downstairs Meredith or Rosemary can find a file or make a copy without having to run up and down stairs.

Gordy said at the last meeting the trustees discussed this and said if there is going to be a group of people coming they will move the meeting upstairs but otherwise will keep meetings downstairs.

Dave said he has no problem with meeting upstairs, though he agrees with Bob about the sound of the air conditioner.

7. ***Adjourn***

**Walter moved and Bob seconded to adjourn at 7:28 and the motion was passed.**

*Minutes submitted by Donna Griffiths*