

JOHNSON SELECTBOARD MEETING MINUTES
JOHNSON MUNICIPAL BUILDING
WEDNESDAY, FEBRUARY 23, 2022

Present:

Selectboard members: Mike Dunham, Beth Foy, Nat Kinney, Eric Osgood, Eben Patch (via Zoom)

Others: Brian Story, Rosemary Audibert, Jason Whitehill, Charlie Gallanter, Kyle Nuse, Jeff Bickford, Diana Osborn, Ken Tourangeau, Paul Warden, Jackie Stanton, Margo Warden, Steve Hatfield (via Zoom), Jen Burton (via Zoom), Lynda Hill (via Zoom), Neil Shepard (via Zoom), Marla Emery (via Zoom), Dorigen Keeney, Jan Gearhart, two other community members

Note: All votes taken are unanimous unless otherwise noted.

1. Call to Order

Eric called the meeting to order at 6:44.

2. Additions, Changes to Agenda

Brian added a proposed change to the Beautification Committee mini grant rules. Eric added scheduling the organizational meeting.

3. Scheduling Organizational Meeting

The board agreed to meet March 2 at 6:00 pm.

4. Review Invoices and Orders

The board reviewed invoices and orders. (*Jeff Bickford arrived at 6:52.*) Mike asked how diesel fuel at the garage works. We had talked about a better system to keep track of fuel usage, like with cards. Is that in place? Jason said no. Beth said if we do something like that it will be expensive so we should budget for it. Mike said he thinks the new board should look into a system where everyone has their own card. Then we could track fuel usage better.

5. Review and Approve Minutes of Meetings Past

Mike moved to approve the minutes of February 7, 2022, Beth seconded and the motion was passed.

6. Treasurer's Report / Review and Approve Bills, Warrants, Licenses / Any Action Items

Rosemary said expenditures are at 55% of budget seven and a half months into the year. Today we received a couple of grant payments for the highway department. We will get maintenance to the grand list money at the end of March. (*Diana Osborn arrived at 6:56.*)

Rosemary said about 250 absentee ballots have been sent out.

The town has received a request for a permit to serve liquor at an art gallery event on March 13 from 2:00 to 4:00 p.m. and two liquor license renewals. **Beth moved to approve the request to serve alcohol at the Minema Gallery inside the gallery and on the outdoor porch from 2:00 to 4:00 on March 13 and the motion was seconded and passed.**

Rosemary said Maplefields is renewing its second class license and Moog's is renewing its first class license and its outside consumption permit. They want to serve alcohol outside in the 20 ft. by 30 ft. deck area by the restaurant. (*Paul Warden arrived at 7:00.*) **Nat moved to approve the liquor license for Maplefields with the usual letter to be sent, Mike seconded and the motion was passed.**

Nat moved to approve the class one liquor license and the class three outside consumption license for Moog's with the normal letter to be sent and the motion was seconded. Nat asked if alcohol to go is still allowed. Eric said he thinks that ended with the end of the emergency order. Beth said she feels like there was an expiration date for that on our permits other than the emergency order. **The motion was passed.**

7. *Public Works Supervisor/Highway Foreman Report*

Jason said the crew has been doing maintenance and plowing. They took down 52 ash trees on Upper French Hill and worked with the village to take down the wall that was falling down on the building used for storage. Jason got grader quotes from two different companies.

Nat said he heard from the library that they were very pleased that the public works department reached out to them during the flood watch.

Eben asked what is wrong with the salt truck. Jason said nothing is wrong with it; it just needed to have the nozzles for spraying brine calibrated.

Eben asked how the public works department is looking for overtime. Jason said they are doing pretty well. One employee is getting close to 200 hours. They are all doing well on salt. Jason thinks the savings on salt will be greater than estimated. He noted that we would see savings if we got half our sand from our pit versus getting it all from Nadeau's.

Mike said he is having second thoughts about the previously approved trailer purchase. Jason said there is no safety rating for the trailer we have now because it was made in-house. If we got in an accident we would be liable for having a non-certified trailer. Mike asked how often the trailer is actually used. Jason said it is used quite frequently throughout the summer. Mike said he wonders how many other towns have an \$18K dump trailer. Jason noted that 2 years ago that trailer would have been 40% cheaper. Mike said he wishes we could take back the decision to buy the trailer.

8. *Racial Justice Committee Report*

Jeff Bickford said the Racial Justice Committee recently had two workshops put on by the Vermont Human Rights Commission – one on implicit bias and one on bystander intervention – led by Amanda Garces. Just under 20 people attended the implicit bias workshop and about 15 attended the bystander intervention workshop. When we look at trends in attendance at remote programming, that is pretty solid. The committee will put together a report for the grant that helped to cover the cost and will be planning the next couple of events covered by that grant. They will soon be putting together summer programming.

9. *Review Planned Purchases*

Brian said there are no planned purchases but he wanted to let the board know about a change in our licensing for our email addresses and Microsoft office products. In order to keep the same price we will have to commit to a year in advance. We can add or transfer licenses during that year but we can't remove licenses anymore. Normally an outgoing selectboard member would have the rest of March before their license expired. Now we will transfer their license to a new board member so outgoing members will lose access to email on March 2. The emails themselves will be backed up and can be retrieved.

Charlie Gallanter asked, the town pays each month for each person who has a Town of Johnson email? Brian said yes. Charlie asked how much it costs. Brian said \$5. Charlie said Planning Commission members have Town of Johnson email addresses and he has never seen a charge to the Planning Commission for that. Brian said it is part of the town's contract with The Tech Group. It is easier for the town to pay for all town email addresses. They have not assigned the cost to individual committees.

Beth asked if there is an option to move to a group plan where we get up to a certain number of licenses rather than paying for individual licenses. Brian said he can look into that. Beth said it would be interesting to know the cost difference.

10. Beautification Committee Facebook Page

Brian said the Beautification Committee would like to start operating a Facebook page. If they are going to create one we should modify our social media policy to list that page. Eric asked whose name it will be set up under. Kyle said she was not sure if the town would set it up and she would be added as an administrator or if she would set it up under her name. Eric said the town Facebook page needed to be attached to a person. He thinks probably all the Facebook pages are attached to some individual. Brian said ownership of the page can be transferred but it has to start with a person. Beth said she thinks the town administrator should be the owner and the town administrator email should be the associated email address. Eric said that seems like a good way to do it. (*Jackie Stanton and Margo Warden arrived at 7:20.*)

Nat moved to add the Town of Johnson Beautification Committee Facebook page to the Town of Johnson Social Media Policy, Beth seconded and the motion was passed.

Beth said she thinks we need to do better with social media in a couple of ways. One is who we are reaching out to. If we are looking for 40 to 70 year olds, Facebook is great. If we are looking for younger audiences we need to use Snapchat, Twitter, Instagram, etc. Jeff Bickford said there are platforms you can set up that allow you to post to one social media site and it duplicates the post on others. That might be something to look at. Margo Warden said it might be nice to partner with the college. There are probably students who could handle social media accounts for an internship or for experience.

Kyle said she agrees with Beth. This could be something the town addresses with the \$40K for economic development. She thinks of getting the word out and being present on social media platforms as economic development.

11. Beautification Committee Mini Grants

Brian said the Beautification Committee made all the requested changes to the rules for their beautification grants and they are suggesting additional changes. They thought it might be appropriate to extend ineligibility for the grants to selectboard members and possibly town employees and members of other town groups.

Beth moved and Nat seconded to exclude selectboard members and their families from being eligible for beautification grants. Nat said he would presume that our conflict of interest policy would cover this anyway but he has no problem making it explicit. **The motion was passed.**

12. Racial Justice Committee Name Change

Brian said the Racial Justice Committee has suggested changing their name to the Racial Justice and Social Equity Committee. They feel that better captures the work they do and their mission. **Nat moved to change the name of the Racial Justice Committee to the Racial Justice and Social Equity Committee, Mike seconded and the motion was passed.**

13. Review Updated Draft of Class IV Road Policy

Brian said he made the previously discussed changes to the draft Class IV road policy. He would still like to update Appendix A with more recent data. We discussed the section on penalties but he doesn't believe he got authorization to send it for legal review. If we are going to include penalties he would like to send it for legal review.

Charlie Gallanter said the statement in the policy that state statute requires towns to maintain bridges and culverts is not true. It has been this town's policy but it is not required by statute. The Definitions section states that Class I, II and III highways are passable on a year-round basis but they do not need to be passable all year. That should be changed to say that they may be or generally are passable year-round.

Eric asked, this policy was presented by the Planning Commission and now Charlie is saying that what the Planning Commission presented is not accurate? Charlie said that may be the case. He did more research after Diana Osborn pointed it out.

Charlie said in the penalties section, in the statement "The notification should state clearly what the non-compliance is and what the Selectboard considers an acceptable resolution" he feels "should" should be changed to "must" or "shall." In the statement "If the Selectboard takes such action at the Town's expense, the person(s) responsible will be charged two times the cost born by the Town" he thinks "will be charged" should be changed to "will be liable for." That makes it more civil rather than criminal.

Mike asked Paul Warden if he is happy with the changes Charlie suggested. Paul said yes.

Diana Osborn said her suggestion would be that if the board chooses to go along with what has been town practice – maintaining culverts and bridges on Class IV roads – that should be made the minimum rather than the maximum. The town has set it as the maximum but that is wrong. The town has been led to believe that that was the most it could do and that is not true. It is important to take out the phrasing indicating state statute requires maintenance of culverts and bridges on Class IV roads, and she suggests making that level of maintenance the minimum not the maximum. The problem is that work is not being done on the roads.

Paul said it now says the policy to have the public works supervisor inspect roads and trails. When this was discussed previously we didn't discuss inspection of trails, just roads. He would strike "and trails."

Eric said he finds it disconcerting that the Planning Commission is now telling us that some of the work done was incorrect. (*Jan Gearhart arrived at 7:40.*) Paul said they missed this. Charlie said this was also discussed at the last meeting.

Charlie said he disagrees with something Diana said. This policy is not establishing a minimum or maximum amount of work to be done. He thinks the selectboard needs to fund a line item for work on Class IV roads, but that is a separate issue that has nothing to do with this policy.

Nat said some significant changes are being discussed. He feels we need to send this for legal review and make sure the changes pass legal muster. Beth agreed. Nat said the idea that the state doesn't require maintenance of bridges and culverts on Class IV roads is new information as of 2 weeks ago. We need to do due diligence to ensure that is true. Eric said we want a legal opinion about inclusion of penalties and we need to find out exactly what the state statute is for Class IV highways now. Beth said she wants to make sure none of the new changes go in before legal review. Brian said he does not intend to bring the policy back until a legal review has been completed.

Diana suggested that the town might want to establish parameters the foreman might use when inspecting roads and include those in Appendix A. Brian said we can discuss that. He is pretty comfortable making changes to Appendix A without legal review because it just has supporting information. It would be good practice to have information about what we are inspecting. Jason said he likes the idea of putting that in there. That way public works employees know what they are looking for.

14. Review Options for ATV Ordinance and Trial

Brian said last time the board declined to take action on ATVs because it was not a warned action item. Eben asked, all we need to do is add Railroad Street to the ordinance, right? Eric said also part of Gould Hill. The ordinance currently states that ATVs are allowed on any unpaved Class III town highway and on Class IV town highways. We are looking at some Class II highways and Class III paved highways, which are not addressed in the ordinance.

Nat said he took a closer look at what is required to change an ordinance and he found that there is no provision in law for us to make a waiver to an ordinance. This is something we have been doing but there is strict state law about the process we have to follow to adopt or amend an ordinance. There is a procedure for the public to be able to override the board's decision. If we just make a waiver to the ordinance every year we are essentially denying the public's right to override us. He tried to find what the waiver actually was and he was not able to find that in past minutes. It is not clear that waiving the ordinance is legal and we are not keeping track of what the waiver says and what the affected roads are. He thinks it is far more than just Railroad Street. The board can change the ordinance or not but he doesn't think continuing to issue waivers is on the table.

Eric said when the snowmobile club makes a request to open a road we grant the request, perhaps with conditions. We got a similar request from the ATV club and we treated it in a similar fashion. When we first drafted the ATV ordinance it was because we wanted to encourage certain behavior from ATV riders. We have a lot of requirements in the ordinance. We don't have anything like that for the snowmobile club. He is wondering if we should repeal the whole ATV ordinance and address access case by case as we do for snowmobiles instead of trying to control their behavior. Nat said that is explicitly what the voters said they didn't want to do. Eric said we are treating ATVs differently from snowmobiles.

Eben asked if we could keep the ordinance and approve requests from the ATV club on a case-by-case basis? We could approve Gould Hill and Railroad Street. This has been overwhelmingly supported by the voters for years. Nat is coming with good information but it is stalling the process while the ATV club needs to get roads on maps for summertime.

Nat said it is funny to hear that now because last May 17 when he wanted to have these discussions the board, including Eben, said they didn't want to discuss it then we had ample time. Now we are in a rush to do it. He read an excerpt from the May 17 minutes when he suggested looking at the ATV ordinance and other board members were not in favor of talking about it at that time. Eric said we hadn't had the trial yet at that point. He wanted to wait until that was completed.

Eben indicated he wanted to make a motion to approve ATV use the same as last year for Gould Hill and Railroad Street. Eric said the motion would need to be to change the ordinance to include or exclude certain highways. Beth said right now the ordinance says ATVs are allowed on unpaved Class III roads and on Class IV roads and it says that the selectboard may list any specific unpaved Class III or any Class IV road where ATVs may or may not be operated by annual posting and public notice. It is already saying that for unpaved Class III roads the town can specify on an annual basis which roads are open. She thinks Eben wants to post on an annual basis paved Class III town highways that are open to ATV use. Eben asked if Railroad Street is Class III or Class II. Others said Class II. Eric said we would have to add paved Class III and Class II highways to the ordinance.

Brian said if we are going to update the ordinance at all he would like to spend some time working on other aspects of it.

Eben moved to amend section IV(C) of the ATV ordinance to include paved Class III and paved and unpaved Class II roads, seconded by Mike.

Eric asked if there are any specific changes Brian has in mind. Brian said one question is whether it is right for us to require people to be members of VASA. There is a new state statute regarding Class IV roads and he wants to make sure this policy is compatible with that. He believes he could have something prepared for the first March meeting. Eric said he is not sure we have the authority to require registration or proof of insurance. Those are probably state requirements.

Nat said at the October 18 meeting he said he felt that anyone who wanted to change the ordinance should submit a petition for a vote on town meeting day. He felt like that would be the proper way for us to be transparent about changes to the ordinance. Beth said she would support that as well.

Beth noted that there are definitions in the ATV ordinance and there are similar definitions in statute. She thinks it would be more appropriate for our ordinance to point to the statute instead of including its own definitions. Brian said he would mostly base his work off the VLCT model policy.

Dorigen Keeney said in 2020 the number of ATVs on her road exploded. Weekends have become unbearable. Seventy to eighty ATVs go by, fast enough to be extremely loud. Her ears actually hurt. She looked it up and found that the sound is loud enough to cause damage to hearing in close proximity. She has to wear ear protectors all weekend. Her farm has lost value. No one with normal hearing would consider buying it. She asked the selectboard to limit ATV use roads to residents of Johnson. She believes they would have concern for other residents. Most of the ones that go by her house are from out of town.

Diana Osborn said her personal opinion is that ATVs don't belong on any roads. It is irresponsible for them to depend on public roads to support their recreation. Snowmobile users have a history of creating trails. ATV use on roads devalues properties. The business they bring to town – buying gas, etc. – won't make up for the loss of property values.

Jan Gearhart said she lives at the end of Clay Hill Road. Her house is a mile from Ben Ober Road through the woods. The sound of ATVs on the weekend is unbelievable and she is not even close to the road.

Margo Warden said opening the roads just for Johnson riders is an interesting concept. She believes they would have a level of respect for others. Nat had talked about how the board can't give a waiver to the current ordinance. The board had previously decided not to enforce the ordinance during a trial period. She thinks Nat was cautioning the board not to make a big decision tonight. That is consistent with how this agenda item was warned – “Review Options.” There was discussion last time about whether the trial period was a true trial. Her understanding was that it was not truly a good trial. She is getting concerned that the board is entertaining a motion about an ordinance change when she was expecting just a review of options. What are the options?

Charlie Gallanter said he and his neighbors call ATVs four wheelers, as opposed to two wheelers – motorcycles – which can go anywhere and don't have a 25 mph limit. He believes motorcycles are as noisy as or noisier than four wheelers. Four wheelers pay for gas and pay road taxes. He does share some of the concerns but how can we allow two wheelers and not four wheelers?

Jeff Bickford said we have been talking about how we treat ATVs differently from other recreational vehicles. That's because they are basically cars. Cars are more regulated in terms of noise, muffler systems etc. If the way ATVs are being used is creating serious quality of life issues they need to be treated like a different kind of vehicle.

Diana Osborn said if the board is interested in addressing the ordinance in the future she thinks it is important to be aware that the sheriff has no interest in enforcing the fines that have been put in place with this ordinance. If they are not going to be enforced, why even include them? We don't have a municipal person who could enforce the ordinance if the sheriff is not going to. The board might want to leave those out unless the policy also says who will enforce them.

Mike said he wanted to rebut Nat's statement about the May 17 meeting. He read a paragraph from the minutes to give more context and detail. (*Dorigen Keeney left at 8:21.*) Nat

apologized. He said it was not his intent to take Mike out of context. He noted that what Mike read was not the full minutes from the meeting either. The point he was trying to make is that really changing the ordinance properly takes time to do and he was urging the board to start work on that in May. Now the board is being urged to make a decision quickly, which he finds ironic, because he wanted to start in May.

Beth said the vote everyone took last year was a vote not to change the ordinance. The ordinance now says ATVs can use unpaved Class III roads and Class IV roads.

Nat said the expectation was put out – he thinks maybe from Eric – that a petition would be raised in 2021 if we were going to make a change to the ordinance. Eric said his thoughts were that no matter what decision we made, one side or the other would raise a petition to have a townwide vote after we made the ordinance change.

Beth said there is clear polarization of opinion, with two different sides who are not settling for what is in the existing ordinance even though the vote was to keep the existing ordinance. The process to change it is to petition for an ordinance change. Eric said voters can only petition in the 44 days after we adopt an ordinance. During that period they can raise a petition and then they can overrule the selectboard in a binding vote.

Diana said the people who wanted to repeal the ATV ordinance didn't want to do it because they wanted more ATV use but so that that another ordinance could be crafted with even greater restrictions. We have to keep those people in mind.

Ken said the article that was voted on was nowhere near what was in the petition received by the selectboard. The selectboard created that article and brought it down to just a few lines. Before the 2020 town meeting he approached Eric and Brian about a trial of using the village and he said that ordinance was created on the floor at town meeting so he had to go to town meeting. Eric said that is not what he said. The selectboard adopted the ordinance and then a petition was raised and in a special town meeting the voters upheld the ordinance. Eric told Ken that since the warning had already gone out and there had been no petition for an ATV article the only way to have a vote at town meeting was under other business. Ken brought it up under other business and the voters supported a trial period for ATVs in the village.

Ken said when he asked the board to allow access on Clay Hill and Gould Hill, the board allowed it. ATV users missed 30 days out of 90 and everyone is saying it was not an adequate trial period. During COVID, more people were riding ATVs and everyone was at home to notice them so it seemed like there were more ATVs. If the board is going to say the waiver wasn't legal, is the board going to stop snowmobiles from crossing Gould Hill? Eric said there is no ordinance for snowmobiles. Ken said the club did everything the town asked them to do.

Eric said if the selectboard changes the ordinance, voters will have a certain number of days to raise a petition and if they do the board will be required to have a special town meeting for the voters to decide whether to adopt the ordinance or not. That is when the ATV club can have an effect, by raising a petition.

Ken said the ATV club has a permit to do work on Coddington Hollow Road. If the town takes away access they may not be able to get to that area. Last year the ATV club put \$36K into roads. If the board doesn't allow access to the village, Johnson residents who live on the south side of the river will only have a 2 ½ mile circle to ride on. Would that be fair to them?

Mike said Eben previously said he wanted to leave the ordinance alone and now he has made a motion to amend it. Eben said the voters overwhelmingly rejected the idea of repealing the ordinance. Any time anything has come up with ATVs the voters have supported it. Some members of the public disagreed with that statement.

Mike withdrew his second. The motion died for lack of another second.

Nat said the ATV ordinance from 2006 is online. VLCT has information online about the process we have to go through to change the ordinance.

Eric asked if the board wants to proceed in any way on the ATV ordinance or leave it for the new board. Brian asked if this board would agree to have him bring the new board a proposed ordinance revision. Beth asked what else he has going on. Brian said he does have a decent amount of work to do but there is an up to date model ordinance that he would compare to our existing one. He might not have a complete ordinance for the next meeting but he should have something that would move the conversation forward. Beth said she feels it should be up to the new board to give that direction. Maybe Brian should just show them the model policy to start with. The board agreed to that.

Ken asked if the board can approve an extension of the trial period. Eric said the things Nat identified make that a problem for the board.

Ken asked if the board can sign the landowner permission form for ATV use the Jewett property. Nat said to get to that property ATVs would have to travel on a road that is not open according to the ordinance. The board had previously approved it and he recognizes it isn't fair to the club to take the access away but legally he doesn't think it can be used. (*Ken Tourangeau and Margo Warden left at 8:46.*) Eric asked Ken to bring the form to the next board. Beth said Nat's point will still be valid once there is a new board. Eric said he thinks the new board should decide whether to authorize the use.

15. Vermont Electric Co-Op Public-Private Stormwater Partnership

Brian said we participated with Vermont Electric Co-op in a public-private partnership program that helped create a design to address the increased stormwater mitigation requirement they have because they have more than 3 acres. A solution was designed with excess capacity which we might be able to use as part of our stormwater mitigation plan for the light industrial park. The project has been granted funding for the next stage. There is no cash match needed from the town. Brian will attend some engineering meetings on the project.

16. Block Grant Resolution for Jenna's Promise Partnership

Brian said the Community Development Block Grant we applied for for the Jenna's Promise coffee shop is ready to progress and pay out. In order for that to happen, we have to adopt a resolution that says we will follow the grant agreement document, which has standard state language about using a procurement policy, following all the state's oversight requirements,

how to use the funds, what is eligible and that we are the administrator and Jenna's Promise is the subgrantee. Jenna's Promise provides the documentation to certify that they are in good standing. We are getting assistance from LCPC for this.

Beth asked who is paying the in-kind match. Brian said Jenna's Promise.

Nat moved to approve the Grant Agreement Resolution for the Community Development Block Grant for Jenna's Promise. Mike asked if we are exposing the town to any issue by doing this. Brian said we are agreeing to be a party to this. If Jenna's Promise were in gross violation of the law and the state thought we should have had oversight and been aware he supposes there would be some liability. We are working with Jenna's Promise and LCPC. He feels there is quite a bit of oversight. **Beth seconded.** Beth said Brian is a bit biased in oversight. What protections do we have for the town? Brian said our liability insurance is our protection. Beth asked if it would cover an amount this high. Brian said he would have to check the limits but half a million dollars is not an unusual exposure for a town. He would expect it to be covered. Nat said this grant is being used to revive an important building downtown and to bring recovery services to the area. Eric said we had more exposure with Sterling Market and that was over half a million dollars. **The motion was passed.**

17. Executive Session for Equipment Sale/Trade-In

Beth moved to enter executive session as allowed by 1 V.S.A. § 313(a)(1) to discuss equipment sale/trade-in because premature public knowledge about the negotiations for the purchase and sale of a grader could cause the town to suffer a substantial disadvantage because confidential discussion of the town's position would be revealed, Nat seconded and the motion was passed at 8:55. The board came out of executive session at 9:47 and no action was taken.

18. Executive Session for Discussion of Legal Proceedings to Which the Town May Be a Party

Mike moved that premature public knowledge about legal proceedings that the town may be involved in would cause the town to suffer substantial disadvantage because confidential discussion of the town's position would be revealed and the motion was seconded and passed.

Mike moved to enter executive session as allowed by 1 V.S.A. § 313(a)(1), the motion was seconded and passed and the board entered executive session at 9:52. The board came out of executive session at 10:05.

19. Adjourn

The meeting was adjourned at 10:05.

Minutes submitted by Donna Griffiths