

JOHNSON SELECTBOARD MEETING MINUTES
JOHNSON MUNICIPAL BUILDING
MONDAY, AUGUST 15, 2022

Present: Selectboard members: Beth Foy, Duncan Hastings, Eric Osgood, Eben Patch, Mark Woodward

Others present in person: Brian Story, Jason Whitehill, Jeff Bickford, Spencer Leggett, Sue Lovering, Margo Warden, Lois Frey, Kirsten Owen, Denise Ashman, Dean Locke, Noel Dodge, David Ellerbee

Others present via Zoom: Tina Bidwell, Kyley Hill, Shayne Spence, Nadeau

Note: All votes taken are unanimous unless otherwise noted.

1. *Call to Order*

Beth called the meeting to order at 6:33.

2. *Additions, Changes to Agenda*

Duncan added discussion of sharrows and signs on Railroad Street. Brian said item #4 could be removed from the agenda. Eben suggested moving item #11 to be item #3 and that was agreed upon.

3. *Review Invoices and Orders*

The board reviewed and discussed invoices and orders. Eric asked, with the individuals being paid directly, have we been sharing with them our preferred method of purchasing? Brian said we have. Eric said there were payments to individuals from several committees. Beth said we do have receipts for the purchases. She noted that some of the individuals listed to receive payments are kids who are being paid to help with recreation. Eric said we had previously indicated we wanted individuals to use town accounts rather than get reimbursed.

Eben moved to approve the orders, Mark seconded and the motion was passed.

4. *Review and Approve Minutes of Meetings Past*

Eric moved to approve the minutes of August 1, 2022, Duncan seconded and the motion was passed with Eben abstaining.

5. *Sharrows and Signs on Railroad Street*

Duncan said he was approached by a citizen with two requests. One was that we paint the sharrows (the bike symbols indicating drivers should share the road) on Railroad Street. Jim at Lamoille Valley Bike Tours said he has been getting a lot of people who are not customers parking in his space. He says Greg Tatro is having the same problem. Jim suggests putting a directional sign pointing to Old Mill Park and rail trail parking ahead. Eben asked if he has tried putting up signs saying "Customer parking only" or if he just wants the town to pay for everything. Duncan said he knows that one person parked in a way that blocked the entire road to his business. He thinks it is reasonable to put up a directional sign for Old Mill Park and rail trail parking. He would advocate for doing that. Mark said it sounds like a good idea. Eric said he has no problem with it.

Duncan moved and Eric seconded to approve painting sharrows on Railroad Street and installing directional signs at the intersection of the rail trail and Railroad Street with arrows indicating that Old Mill Park and rail trail parking are ahead.

Mark said he thinks we should replace the sign on the Power House Bridge. He put that up there himself years ago and it is decaying. People stole the enamel one that used to be up there and the selectboard did not choose to replace it. **Mark proposed a friendly amendment to add to the motion approving replacement of the Power House Bridge sign on the 100C side of the Power House Bridge with another identically sized sign with a border. Duncan and Eric agreed to that.**

Eben suggested a friendly amendment that the Railroad Street sign be placed only after 60 days of the property owner putting up his own “no parking” signs so that taxpayers are not paying all the cost. Duncan said he still thinks it is reasonable to have a directional sign where the rail trail meets Railroad Street. He would not be amenable to that amendment. Eric said he would question whether the property owner could place signs where they are needed because it is probably in the town's right of way. Duncan said it could also be in the rail trail right of way.

The motion was passed with Eben opposed.

- 6. Treasurer's Report / Review and Approve Bills, Warrants, , Licenses / Any Action Items***
Brian said Rosemary is out so the full end of year report will have to be at the next meeting. End of year cash on hand is currently about \$200,000 but there is a question about whether that includes what was set aside for paving last year, so the amount may go down to closer to \$100,000. Duncan said he would like to see recommendations at the next meeting for whatever balance is left. Brian said he and Rosemary will have those. (*Spencer Leggett arrived at 6:55.*)

- 7. Public Works Supervisor/Highway Foreman Report***

Jason said the paving company is trying to get us in before the weather turns. If they are not able to, we will be first on their schedule in the spring. (*Sue Lovering arrived at 6:56.*) The public works crew completed the ditching and culvert upsizing on Railroad Street and they are now working on Collins Hill Road. The segment from the pavement on Lower Main Street to near the hilltop has been completed and the crew will be starting at the other end and going to meet in the middle. They have been hauling sand and they will mow the roadsides one more time this year.

Eben asked if rail trail mowing is completed. Jason said yes. Eben asked how much time was spent on that. Jason said 32 hours. **Eben moved to send a bill to the state for work on the rail trail at a rate of \$150 per hour, seconded by Duncan.** Mark asked Eben to explain his thinking on this. Eben said he is thinking that the selectboard has been picking favorites in terms of outdoor recreation and maintaining rights of way that are not ours. We need to be impartial and treat other outdoor recreation such as the Long Trail the same. The state put in the rail trail and the state should maintain it. Mark asked if other towns are also billing the state for their work on the rail trail. Eben said we don't need to copy other towns. He doesn't know of any other town that is billing the state. Brian said starting this year the state is committed to mowing the rail trail. They have not yet said what their schedule will look like. We may not be mowing again in the future. Eric said he thinks if we send a bill that sends a statement but he would not expect to receive a check. Mark said he thinks it is not wise to bite the hand that feeds us.

Jason said in the future he would like to figure out whether we are mowing and get permits early enough so that if the crew has downtime they can fit the work into their schedule more easily. (*Noel Dodge arrived at 7:01.*) Beth said she thinks in the spring after we have a better expectation of what the state will do we can get our permit request in if it will be needed.

Duncan said he supports the concept of sending a bill, knowing full well that the state will not pay us. But he understands and appreciates what Mark is saying. Is it worth making an issue when there are many other things we get from VTrans that we don't pay for? He thinks we should not make a big deal and should graciously move on if they don't pay us. Mark said if the other towns in this area were doing it he would be more amenable. Maybe we should not bill the state for something that benefits our town.

The motion was passed with Mark opposed.

Jason said the crew took 87 tandem loads of ditching material off Railroad Street and has taken off 32 loads so far on Collins Hill. The new grader is supposed to finish being built on September 20. We should see it November 1 or possibly a week or two earlier.

Brian said we got final approval for the Lendway Lane work and we are still waiting on approval for the Fox Lot work but he thinks we will get it soon. Jason said the plan was to finish Collins Hill and Maple Hill by September 1. If that project is not finished the crew will stop working on it at that point and switch to doing the grant work. Gould Hill is also on the schedule.

Eric asked if we ever got clarification on the classification of Lendway Lane. Brian said the section that will be worked on does not go beyond what is commonly recognized as Class 3. We have to do measurements and see if our mileage matches what is in the report.

Eric mentioned that a Class 4 highway off of Mine Road is blocked. Donna Griffiths said that is Town Highway 23. It has multiple sap lines going across it and signs near the entrance saying "Private property, no trespassing." Eric said the old Loveland Cemetery is at the end of that road. It has to be accessible for people who want to visit it. Donna said there is also a sign on the Class 4 part of Mine Road that says "Authorized personnel only" and is placed in a way that seems to indicate people are not allowed to go down the public highway.

Jason said the village crew will help take down some problematic trees that are near power lines on Collins Hill Road. The landowner is okay with that as long as the logs are left for them.

Duncan asked if the entire perimeter of the Grow Cemetery has been blocked out for new fence. Brian said the three sides that don't already have fence. Duncan asked if all adjoining property owners have been made aware and acknowledged where the fence will go. Brian said he still needs to hear back from a couple.

Duncan asked, given Jason's report about the grader, do we want to consider putting together an RFP to sell the old grader for this year based on the high bidder not getting the grader until we take delivery of the new grader? Beth suggested that Brian draft an RFP for selling the old grader and bring it back to the board for discussion before we publish it. Jason said there is another town that is interested in the grader. Duncan said we should make sure they have a copy of the RFP.

Jason said the mower is not due for replacement yet but a lot of things are wearing out on it and they are no longer making parts for it. Employees will do some work on it in-house and also get quotes on some other repairs. Beth said in a month or two we will start looking at the budget and asking questions about whether the timeline for equipment replacements looks right. That would be the perfect time to bring this up again.

8. Review Planned Purchases

Eben asked about what the stone in the planned purchases will be used for. Jason said it is for ditches and the top road surface. Brian said it is for work needed to meet Municipal Roads General Permit standards. **Eben moved and Eric seconded to approve purchase of stone and gravel for \$7,500.** Duncan asked, this isn't an additional amount outside of what was budgeted? Brian said no, this is within the budget. **The motion was passed.**

9. Green Mountain ATV Road Improvements

Brian said last time the board asked Jason and the Conservation Commission to take a closer look at the area where the Green Mountain ATV Club is proposing road improvements. They did that. The board also did not like the phrasing in the VASA Trails Program Resolution of Commitment. He prepared a draft with alternative wording. It includes language that is intended to automatically renew the agreement each year after town meeting day unless the town warns VASA that we are not renewing the agreement. VASA expressed general support of the idea but the specific language is coming to the board first before they have seen it. Jason said he spoke to someone from VASA and they are willing to do a yearly agreement.

Eben said this agreement has an ending date, which he likes. It doesn't hold a future selectboard accountable except to give notice if we are not renewing the agreement. Brian said after 2027 the agreement just ends.

Duncan said he would prefer that the agreement state that it will be renewed on an annual basis rather than defaulting to renewal if we don't take action. If we keep the current wording, how much notice would we have to give that we are not renewing it? 30 days? 60 days? If they are willing to renew it every year, why not do that?

Beth said she suggests having an annual contract that would auto renew until we give notice and the notice would require 30 or 60 days. That is the way it is done in the business world all the time. Duncan said his only concern is that we constitute a new board every March. Beth said if a new board came in and hated this agreement and wanted to throw it out they would be able to give notice to the club that the town wanted to renegotiate and after 60 days the agreement would no longer be in effect because we gave notice. She thinks we need to say that the agreement auto renews annually and if either party wants to make changes or nullify the agreement they must give 60 days' notice.

Mark said he thinks we should take some of the Conservation Commission's recommendations such as having any work signed off on by the state stormwater people. There is quite a bit of erosion going on there. He doesn't know if that needs to be in the agreement. Brian said he would not think so. We have a separate proposal to approve for the work itself. He thinks it is best to cover any requests about the work in our permit for the work.

Beth suggested 60 days for the notice and the board agreed.

Margo Warden asked if this is near the Gomo property. Board members said yes. Margo asked if anyone from the selectboard has been up there. Beth said they have seen pictures.

Brian said he will make the requested changes and bring the agreement back for the board to sign and then we will submit it to Green Mountain ATV club. Beth asked Spencer Leggett if he had any concerns. He said no.

Brian said contrary to what he stated last time the proposed work on Coddington Hollow Road near the Gomo lot does come out of the roadway for a section. The Conservation Commission and Ethan from the ATV club went up with Jason to take a look at the site. The Conservation Commission prepared a report. Lois Frey handed out copies of the report.

Lois said the project is on the Gomo Town Forest. The road in the area is rough and needs improvement. Part of the work that was done is not in the town right of way. The work was done very well but it was disheartening to the Conservation Commission that they had no knowledge of it. It was done a year ago. In the past people from the ATV group have contacted the Conservation Commission to talk about what was going on. The Class 4 road needs a lot of work. The board has to decide what to do about that. The Conservation Commission thinks it is important to keep the ATV trail on the road and in the right of way and not deviate into the forest.

Duncan said as a practical matter that section of the road is totally washed out and would require tens of thousands of dollars to repair and because it goes through a ravine it would be highly susceptible to being washed out again. Does it make sense to think about having the road go through the ravine? Lois said she thinks the options need to be considered. Some people who viewed the site came up with what sounded like good options.

Beth asked how much of the road is outside the right of way. Noel Dodge said about 700 ft. Jason said the section in question is after you go over the river crossing and to the landing. Where the road used to go up on bedrock it now uses the driveway to the old Gomo property for about 700 ft., then it goes back to Coddington Hollow. It would be unhealthy for the environment for ATVs to use the old section of road. There is water on it and the ATVs would stir up sediment. The new crossing is cleaner. The ATV club sought out permission for what they did and they got it signed off by the previous foreman. What was done was no fault of theirs. The work that they did was good. He would like to see the trail moved back onto the road, hopefully before erosion is noticed on the new trail. But right now he feels it is healthier for them to run on the current trail than on the road. He said the way permission for

the work was handled last time was not good. In the future he and the Conservation Commission should be involved.

Jason said the ATV club wants to fix a couple of water bars. They do not need to work on the section that is not in the right of way. The section that needs to be fixed is in the right of way. When problems develop on the current trail he would like to see it moved back onto the road right of way. Duncan asked if the Conservation Commission agrees. Lois said Ethan had mentioned he was going to get some cost figures. Jason asked Spencer Leggett if he got cost figures for moving the trail back to the right of way. Spencer said he hasn't heard a dollar amount.

Noel said the Conservation Commission's concern is expansion of the trail farther away from the road. Once the current trail goes bad we can fix the road and solve both problems. Mark asked, then will the trail off the right of way go back to its original state? Jason said he feels once erosion is getting bad on the trail out of the right of way and silt is getting in the river then we can fix the right of way and hydroseed or put down topsoil to stabilize the other part.

Mark asked if it should be our cost to fix the damage on our land caused by the ATV trail. Eben said that is a different conversation but 100% of erosion is not caused by ATVs and the ATV club is not currently asking for money to fix that. The question is if a future board should spend money on a right of way that has degraded over time due to neglect.

Eric said his recollection is that a prior board had authorized the ATV club to go out of the right of way onto the Gomo lot because a section was washed out and looked like a river bottom with huge boulders. That erosion happened well before ATVers used the area. Is that right? Does the area still look like a river bottom? Jason said yes, and the river took over some of it. Noel said it could still be driven with an ATV.

Margo said she walks on Coddling Hollow Road. It is very walkable but she sees that there has been erosion. If ATVs were not part of this conversation would we be talking about this section of Class 4 road? Beth said probably not. Lois said we might be. It is difficult for the Conservation Commission to access the Gomo property for doing some of the management practices they want to do. Even going from Waterville it is difficult to access.

Duncan asked, at present we don't have an agreement for a trail on the Gomo property? Beth said it sounds like the club did have an agreement with a former board. Eric said we authorized them to go around the bad section that was washed out.

Denise Ashman said there is discussion about existing work that has already been done and whether that should be maintained and separate from that but connected to it is the proposed new project. Whatever is done, aspects of it will need maintenance. When the group goes back to maintain the trail, the Conservation Commission wants to make sure there are guidelines so the trail doesn't keep moving further and further from the right of way.

Margo said there has been very little ATV traffic on Coddling Hollow this summer. Is that because of the erosion or is it unrelated? Jason said he is pretty sure it is because the town

has not opened it. Margo said she heard that Bakersfield trails are closed so there is nowhere for people to go. Jason said there is a loop that people can do.

Eben moved and Mark seconded that Conservation Commission representatives, Jason Whitehill and VASA representatives should meet to further define the need and the plan for the proposed project on Codding Hollow Road.

Duncan asked if it is assumed that the plan will identify the section of trail which is not within the town highway right of way and is on the Gomo property. Eben said the Conservation Commission and the road foreman know which portion that is. Beth said she thinks the plan needs to be specific about the coordinates. Noel said it would be great to define on a map where the road bed is. It hasn't been surveyed. Eric said most roads are not surveyed. Duncan said they were surveyed in 1790 with a rod and chain. Current statute basically says that the road is where it is. Jason said where the ATV club wants to do work is in the road right of way, not on the Gomo lot. They already did the work on the Gomo lot.

Spencer said the ATV club doesn't mind revisiting the agreement to allow access to the area every year. The ATV club wants to keep the trail maintained and not affecting the water source.

Dean Locke said there should be landowner permission for the ATV club to use the section of trail that is not in the right of way.

The motion was passed.

Eben moved to request that the Green Mountain ATV Club provide a landowner permission card for the section of trail that is on the Gomo lot and that the Conservation Commission and Jason approve it before it comes for board signature, Duncan seconded and the motion was passed.

Duncan said he was up there the other day. There is a sign which is a little deceiving that says "VASA trail, members only." It makes it sound like it is only a VASA trail and no one else can use it. He doesn't know if there is another kind of sign that could be put up. Spencer said the ATV club is trying to keep jeeps out of there. Duncan said it is a Class 4 road and we can't restrict vehicles from using it. The language on that sign makes it sound like it is only for VASA. Eben said that was brought up about Hoag Road too. Eric said we can put that sign where the trail goes onto the Gomo lot. For that section, we can say it is for VASA ATVs only.

Jason asked, are we going to hold the ATV club liable if the trail gets torn up by a jeep? Duncan said that is part of the risk VASA takes by using Class 4 highways. If they put trails on private land they could say they are only for VASA ATVs. Jason asked, then if a rut is caused, it is our responsibility as a town to fix it? Margo asked, would the town fix it in that area? That wouldn't happen on her Class 4 road. It would be the landowner's responsibility. Brian said there is a certain degree of erosion where the town does have to be involved. Class 4 roads don't rank high on our priority list but as part of the Municipal Roads General Permit

we are committed to address gully erosion greater than one foot. Margo said she will send pictures from her road.

10. *Tractor Parade Permit Request*

Brian said the town received a request to use River Road East, Railroad Street and Route 15 for a trailer parade on September 17 from the Manchester property to Legion Field. He believes it will be in early afternoon. We will also apply to the state for permission to use Route 15. **Eric moved and Mark seconded to approve use of River Road East, Railroad Street and Route 15 for a tractor parade on September 17, Mark seconded and the motion was passed.**

11. *Knotweed Removal Grant*

Brian said there is an opportunity for a grant for removing invasive species in favor of native species. The Tree Board would like to apply for grant funds for knotweed removal in the arboretum. There is no town match. **Eben moved and Eric seconded to approve the Tree Board's application for a grant for knotweed removal at the arboretum.** Sue Lovering said the grantor may ask us for trash removal. There is a lot of trash there already – a lot of old fencing. Beth asked about the cost to move the fencing. Sue said it just involves picking it up and taking it to the dump. She said this will be a 3-year project. Redstart Natural Resource Management will take care of the knotweed in the first 2 years and then the Fish and Wildlife Service will restore the riverbank. They will send labor and all the plants, with no match required. **The motion was passed.**

12. *Voting Delegate for Town Fair*

No board members indicated they wanted to attend the Town Fair on October 6 and 7. Brian said he would be willing to go and be the town's voting delegate. **Eben moved to appoint Brian Story as the town's voting delegate for the VLCT annual meeting at Town Fair, Eric seconded and the motion was passed.**

13. *Signing Management Contract for Flood Resilient Communities Fund Grant*

Brian said we have progressed to a point with the Holmes Meadow project where a more formal relationship with the Lamoille County Planning Commission to grant them permission to manage the project is needed. The Flood Resilient Communities Grant is paying the cost. Beth said the management contract says the town will pay. Eben asked if it is money in, money out because we are getting the grant. Brian said yes. **Mark moved to accept the Holmes Meadow Buyout and Floodplain Restoration Agreement for Administrative Services by and between Lamoille County Planning Commission and Town of Johnson with the reference to Town of Wolcott changed to Town of Johnson and with the selectboard chair authorized to sign the agreement, Eric seconded and the motion was passed.**

14. *Updates for Draft Agreement for Vermont Electric Coop and Town of Johnson Storm Water Improvements*

Brian said Vermont Electric Coop is in conceptual agreement about granting us an easement to support a future connection to grant-funded storm water improvements being made on their property. They are drawing up the documents.

15. *Public Display Policy Update*

Brian included two versions of a possible policy on public displays of flags, etc. in the board packet. The first one could be used if we wanted to allow some displays. It would set criteria that any display would have to meet. The board would consider whether the group requesting the flag or display is a recognized municipal volunteer committee and the flag or display

reflects the recognized mission of that group; whether the flag or display represents an organization dedicated to the public good for the citizens of Johnson; whether the flag or display represents a national, state, or city interest; whether the flag or display is an historic American flag that has or continues to have a primary positive message of American history and unity; whether the flag or display promotes unity and community with another city, state, country, or other jurisdiction; whether the flag or display is free of association with recognized hate groups; and whether the flag or display represents a positive interest or value worthy of public recognition. There is also a second option that is much more restrictive and basically says no displays will be placed on town owned buildings, properties or rights of way with the exception of sponsorships for recreation activities. The version included in the packet should be amended to also include Tuesday Night Live as well as recreation activities because Tuesday Night Live also has sponsored displays.

Mark asked if we have authority over the college banners that go across the street for graduation, to welcome back students, etc. Brian said they do go over our right of way. We have an existing agreement with the village about banners over the right of way. Duncan asked what the agreement says. Brian said it basically grants the village permission to fly banners over Pearl Street. Eben said he doesn't know if such an agreement exists. The village never could have held the town to it anyway. Brian said if he recalls correctly it is an MOU we signed at some point when the village wanted to put up a banner and he and Meredith discussed the fact that it was in the town right of way. He recalls that the board signed an agreement that the village can continue to put banners where they have historically put them. Duncan asked, essentially the authority to decide what banners went up was delegated to the trustees? Brian said as he recalls it, yes. Margo said there has been an agreement between the college and the village about college banners and two or three years ago there was a Racial Equity Alliance of Lamoille banner that was put up. Eric said it came to the selectboard as well for permission to put that one up, but he doesn't remember anyone coming every year to ask about the annual college banners. Beth said there is an unsigned document on the website called Town of Johnson Highway Access & Work In The Right Of Way Policy and it has an application in it. Eben said the college needed to move their banners to Pearl Street because the State of Vermont said they could not go over the state highway, but now the state has changed their stance and the banners could go over Route 15. He feels that is better. He doesn't know of any agreement the village has regarding the town right of way. Beth read from the Town of Johnson Guidelines on Placement of Signs in Highway Right of Way.

Brian said he thinks discussion about the banners that are mostly used for the college is beside the point. This policy is about the type of flag that is a statement of values. We can also have an improved process for banners relating to things like the college and Tuesday Night Live.

Eric asked how we carve out something for the college and not for any other educational institution or business in town such as Laraway, the elementary school or the Studio Center. Brian said he thinks it will be a little difficult. He doesn't have the language for how we would do that.

Duncan asked if the state is allowing only VTrans or state government to put banners across state highways. Brian said you have to apply to VTrans for permission to fly a banner over a state road. The state used to not allow it but now there is a process to allow it. Eric said banners have been put up in Stowe but Main Street in Stowe is a town highway. Duncan said the same is true in Morrisville.

Beth asked if Brian talked to our lawyer about this. Brian said no, but he talked to Garrett Baxter at VLCT. His advice is to run it by the town attorney.

Duncan said he spoke with Carl Andeer from VLCT. One of Duncan's concerns is whether it is a proper function of municipal government to fly flags other than the US flag and the state flag. He asked Carl if he could point to a section of statute that authorizes towns to have a policy regarding flags and banners. Carl said there is no specific authority in statute but the town has general supervision over town buildings and grounds and in his opinion that is enough for us to have town policies about flags. We would need to talk with our attorney to see if they think that is enough authority. The statutory authority for boards to undertake a policy like this is general authority over buildings and grounds, not any specific statutory authority. For him, the ground is a little thin.

Beth read from state statute: "The Department of Buildings and General Services shall adopt and update as necessary a protocol for the flying of any flag on a State-owned flagpole and on municipally owned flagpoles if statutorily directed. The protocol shall incorporate any existing flag-flying policies or protocols that the Department has previously adopted." To her that is very general. It sounds like we can create any policy we like. She thinks the department referred to is whatever governmental entity is responsible. Brian said a number of municipalities have policies about how to determine what can fly. He borrowed pretty liberally from Montpelier's policy.

Jeff said he was at the selectboard meeting two weeks ago and his understanding was that the request was to check in with the town's lawyer on the general authority to have a policy and that then the selectboard would have a general conversation about building a policy. This is moving faster than what he thought was discussed at that meeting. Beth said there was a specific point where we talked about drafting a policy and identified that action and then we talked about legal advice. While she is still interested in the legal aspect she thinks it is appropriate for us to talk about policy. Duncan said we did not specifically authorize anyone to draft a policy and bring it back to us. He noted that Jeff had offered to be part of policy drafting and he thinks a comment was made that Jeff could be involved. We do have some drafts. Beth said we are here to work through them. If Jeff has feedback he can speak now. Duncan asked if the intent is to try to adopt a policy tonight. Beth said typically we give feedback to Brian and he makes changes and brings the policy back. She would imagine we would do that, but it is up to the board. Eric said if there is something the board is comfortable with he would suggest sending it for legal review before it is adopted. Brian said he would strongly recommend that this policy be sent for legal review.

Eric said personally he feels like he could live with wording similar to the no banner or flag display policy. Eben said he thinks the third paragraph on that policy should be adjusted. It

reads strangely to him. He suggests something like “Also excepted are displays, signs, banners, etc. related to Recreation Department and Tuesday Night Live activities for purposes of identifying sponsors of such activity. Such displays shall not serve as a forum for free expression of the public.”

Beth said he is hearing that Duncan is saying we should display US and Vermont flags only. Duncan said largely. He thinks we need to make accommodations for Tuesday Night Live and rec programs but he doesn't think we should limit it to those two groups. He suggests saying “town-sponsored events.” Eben said what we are talking about is not a flag or banner but a paid advertisement.

Eric said he thinks probably we should just fly the US and state flags. He can see where we should allow promoting Tuesday Night Live, etc.

Eben said he is supportive of displaying the US and Vermont flags. He feels that the sponsor displays are paid advertisements for Tuesday Night Live and the rec department and are not even really an exception. Duncan said there might be an organization or entity that would sponsor a program; for example hunter safety could be sponsored by the recreation department but run or operated by the NRA. Should they be able to display a sign that said “Hunter safety provided compliments of NRA?” In the past things like that have happened but without money changing hands so it was not a paid advertisement.

Mark said he is more in favor of the policy with criteria for allowing displays. He thinks maybe we also want to talk about what “temporary” means. It seems like we allow temporary things in our right of way. How long is temporary. A week? The whole summer? Duncan said regardless of which way we go that probably needs to be addressed.

Beth said she is with Mark. She thinks it doesn't hurt to show support for certain communities. We don't have as much support as we should for using our flagpoles to do so but she thinks there are other display methods. She was in London for Pride weekend and the number of Pride flags they had flying was impressive. It was nice to be in a major city that was so supportive of a major community. But she wants to make sure that the policy we have is backed legally. Mark said it seems to him that other towns are ahead of us on this. Plenty are flying all kinds of banners and flags.

Jeff said he wanted to remind the board of the unanimously adopted inclusivity statement that says “we will build bridges to understanding, ensuring that all who live, work and visit our town feel welcome and safe. We reject racism, bigotry, discrimination, violence and hatred in all its forms.” One of the ways we can do that is by visible public displays for communities that have historically experienced bigotry and other forms of hatred. That is one main reason the Racial Justice and Social Equity Committee made this request. He urges the board to keep an open mind.

Duncan said he is not opposed to flying a Pride flag. That just happened to be the one that prompted the question. His issue is, should we be flying a flag regardless of what it is? He might not want to see a Nazi or KKK flag. He doesn't feel comfortable making decisions in

support of any cause, no matter how much he might believe in it. His other concern is the specific language of the Supreme Court decision, which makes it clear that if you have a policy that authorizes flags to be flown you are saying that those flags are representation of government speech vs. private speech. If you are allowing it as government speech you are in essence saying you condone it. If you pick and choose what you allow to be flown he is uncomfortable with that.

Margo Warden said she loves the idea that the selectboard is even considering this. Whatever is drafted would go to legal review and they would be able to look at state and federal court decisions. In terms of Nazi flags, etc., the draft policy says that flags flown should be free of associations with recognized hate groups, should promote unity and community, etc. Duncan said that is a value judgment. Margo said she would hope it would be a value of our elected officials to move toward unity and away from hate. She does get the legal piece. That is big

Margo asked, if the town is doing this, does the village need to do it as well? Eben said it depends on what policy we go by. The village owns the flagpoles. One of the policies says it will apply on jointly-owned buildings and properties unless there is a jointly adopted policy. That language could go on any of the policies.

Eric said he did support the Black Lives Matter banner over our highway but he is starting to think maybe that was a mistake. If we support a banner like that and deny someone else, that gets us into trouble, like the situation in Boston. He is almost getting to an extreme where he does not want to support any banners or flags across the highway right of way.

Mark said he made harder decisions as a legislator. He is not shy about going forward with a policy allowing displays. He would like to know the legality but clearly other cities in the country and state are doing it.

Beth said there is an approach that the majority of the board would like to proceed with. Shall we proceed along those lines? Eben suggested that Brian bring a new draft policy to the next meeting. He has already recommended changes to one of the policies. Eric asked if we can have the policy reviewed by our attorney before it is brought back.

Eben described the change he would like to see. He would like to specify exceptions related to Town of Johnson recreation events or Tuesday Night Live events for the purposes of identifying sponsors of such event or activity and say that such displays shall not serve as a forum for free public expression. Mark asked if we want to carve something out for the college. Eric said he would like to see the college seek permission from the state to put their banners over the state highway. Eben agreed. Margo said she hopes there will be increased in improved town-college relationships. Beth said she agrees about improved relationships. Why are we putting red tape on things? We are not playing favorites. We are supporting people who reach out. She has not seen us say no to someone else asking for something similar to what we have already approved.

Eben said the Studio Center hasn't asked, but they could ask to put up a banner about a program. The town would want to support that. We can't say we support one educational

thing but we don't agree with what someone else is doing. What if someone starts a controversial school and wants to fly a banner for it? Duncan said, for example a religious school. Eben said we cannot support one entity without supporting another one, especially in the same genre. Mark said he doesn't have trouble playing favorites. Eric said that is where we get in trouble. If Teen Challenge asked to put up a banner, would we grant it? Margo asked, are they public? Maybe banners can be allowed for public organizations. Duncan asked, how about the Red Cross blood drive? Beth said we do make judgment calls about the good of the community when we come up with a budget and make decisions about how to allocate money.

Brian said he doesn't have specific language to propose that solves the concerns he has heard. He thinks it would be a good idea to work on another draft and we might want to review it again before we send it to our attorney. Eric asked if it would be worth sending the paragraph about exceptions to the attorney. He wants to find out if we can add the college as an exception.

Margo asked, what the board is looking at now is saying that only the American flag, the state flag and nothing else is allowed, with exceptions for the rec department, etc.? Beth said the exceptions are essentially for town-sponsored activities. Margo said the Racial Justice and Social Equity Committee is a town committee selected by the board. Wouldn't anything they do be approved? Beth said she thinks if they did an event it would be appropriate to approve a display for it. Eben said his recommendation for exceptions is not for town-sponsored events.

Margo asked, if the Conservation Commission wanted to fly an Earth Day flag for Earth Day would that be all right? Or what if the Historical Society wanted to fly something? Beth said it seems ridiculous to her that we pick out specific town-sponsored committees we are willing to exempt and not others. Eben said we are just exempting advertisement space. Beth asked, why would we not allow a banner for a town committee's event? That seems ridiculous to her. Eric asked if Tuesday Night Live has ever put a banner up. Duncan said they have signs by the bandstand. Eben said those are showing sponsors. Eric brought up the possibility of the KKK sponsoring Tuesday Night Live. Eben said we could not deny it. Eric said that is where we get in trouble. Eben said he is fine with striking the whole paragraph about exceptions. Beth said it is ridiculous that we cannot post a sign about a Conservation Committee or Recreation Department event. Why have these committees if we are not going to help them get the word out about their events? Why would we not let any town group put up a sign advertising an event, including the Racial Justice and Social Equity Committee, for instance if they wanted to have a block party to celebrate Indigenous People's Day? Duncan said he understands where Beth is coming from. If the Rec Committee wanted to sponsor a gay pride day and hold it at Old Mill Park, wouldn't that be okay? Could they put up a banner? Eben said he doesn't think any board member is against any of these organizations but the town cannot play favorites and say yes to some and no to others. Beth said she hopes for our country's sake that there are ways to draft a policy that talks about growth and improving our communities and discarding hate. There are legal definitions of hate. Why can't we reference federal guidelines and laws about hate to help draft our policies about what we will and will not allow? She is concerned about the legal aspect, but when we start

talking about picking out town committees we will support and others we aren't going to support, the line has moved pretty far from protecting ourselves legally. Eben said what he had in mind for any committee was support for advertisements only.

Jeff said he understands why it is important to explore the legality but, as Beth was saying, there are a lot of examples of federal, state and municipal government entities flying flags in support of Pride, BLM, etc. so he thinks there is a possibility of being able to set guidelines that would allow some displays. For instance maybe a group can't be on the FBI's list of hate groups or on the terrorism watch list. The town could put things like that in place that aren't about whether we like the group and we can have requests come through town entities. He is asking the board to make policy decisions that would allow support for some displays.

Brian said the first policy draft he included lays out a set of criteria that something has to meet in order to be approved. He thinks this would allow us to do all the things everyone says they want to do. Those who are not comfortable with displays related to a message or cause would have grounds to deny such a display if they felt it was divisive, since the policy says a display should promote unity and community. He thinks having the criteria laid out for when the board approves something is the best way for us to be protected, rather than crafting very specific exemptions like Tuesday Night Live or the college. Some of the criteria are value judgments but he thinks if board members don't believe any cause flag is promoting unity, that is a reasonable position.

Duncan said he doesn't want to spend 45 minutes at a board meeting every time something like this comes up evaluating a proposal against these criteria, so he cannot support this draft in its current format. Mark asked if we could delegate the decision to Brian. Duncan said we could, but he doesn't want to. Brian said he doesn't want that responsibility as he is not an elected official. Duncan said he wants to try to craft a policy that allows as much of the community building Beth is talking about as possible, in the context of a policy where he doesn't have to spend 45 minutes debating if a flag is in the best interest of the community every time a request comes before the board. Beth suggested we could ask groups to address each one of the items in the list of criteria before coming to the board. They could have a form to fill out to prove that they are not a hate group, that their display promotes community and unity, etc. Duncan said he doubts having anyone fill out an application form would significantly change the time we spend reviewing the application. As far as flags, he would say we should have only the American flag and the State of Vermont flag. As far as banners, signs, etc., he is more willing to have a discussion about how that might work.

Beth said she doesn't feel there is a concrete next step. Other board members agreed it is not clear what the board wants Brian to do.

Eric said he did not feel it was appropriate to have any flag or banner on this town-owned building other than the US flag and the Vermont flag. But what is making it murkier for him is, if we make a policy for the town, how does it affect Tuesday Night Live or college banners? Eben said the majority of our town committees aren't going to come through the board and make a request under this policy.

Beth suggested taking the municipal building off the list altogether so there is no option of putting things on the municipal building. Mark asked if the inclusivity statement sign in the hallway can stay there. Other board members agreed that it can. Mark said it can be difficult to define what is a flag or a banner. Is a piece of plywood a banner?

Beth asked if board members want to move forward with a policy. Others said they did. Duncan suggested that each board member mark up one of the policy drafts and then the board could have a work session to talk about this policy and try to finalize wording. Eben suggested that everyone start with the draft Brian emailed out that was not included in the packet. Beth said people should send suggestions to her and she will compile them all.

16. *Holcomb House Apartment Planning*

Brian said the Holcomb House apartment has been cleaned to a degree and smoke detectors are in there. He thinks it is ready for us to tell the Historical Society we want feedback on their planning. **Duncan moved and Mark seconded to authorize up to 8 hours of additional cleaning at the Holcomb House apartment at a maximum of \$25 per hour.**

Eric said we had discussed getting a plan from the Historical Society first that would determine what we do as far as cleaning and repairs. Eben said he understood there was going to be more comprehensive cost analysis. Eric said if the space will just be used for storage we can do one level of cleaning and repairs and if it is going to be open to the public we need another level. Eben said he doesn't think we decided that the Historical Society can use the apartment. Beth said no, we are just asking what their intentions would be. Brian said they are saying they can't do the assessment yet because it is not clean enough for them to visit it. Mark said he was there for the initial site visit and he thinks the amount authorized to spend for cleaning is low. Duncan said he thinks a good 8 hours could make a big difference. He would not have the cleaner spend a lot of time on the carpets because they will need to be discarded. **The motion was passed.** Duncan suggested vacuuming the carpets to get the dirt off but not spending a lot of time on them.

17. *Village Work in the Right of Way*

Brian said we had an issue with miscommunication between town employees, village employees and the contractor for the village about properly filling out the work in the right way permit application before the contractor crossed under River Road West. We spoke to the village about it and they are understanding of our position. There was a good meeting with Jason and Nate about what we expect. Anything that could affect the road or the flow of water needs a permit, but they made a mistake and went under our road before getting a permit.

Duncan asked if they dug up the road. Brian said yes. Duncan said under our policy the work is supposed to be inspected and there is supposed to be a security deposit. Has that been done? Jason said Nate was on vacation. Jeff asked what was needed and Jason gave him the form but the contractor did the work before the form was returned. They wanted Jason to sign off on the work after it was done. He has not signed off on it. The board agreed that Jason should not sign the permit. Eben asked if the work disturbed the asphalt. Jason said yes. Brian said we have the option of requesting a deposit for work we have reason to believe could have a failure point so we can make repairs if we need to in the spring.

Eric asked, did they patch it? Jason said they put in pavement. Nate said what they put in was thicker than what they took out. He doesn't know what they put in. Eric suggested we could require they do a boring or dig a hole so Jason can see what is down there before he signs the permit. Jason said he would like to see that. Brian said he thinks that sounds like a good idea. The board agreed.

Duncan asked if Jason asked for a \$1000 deposit. Jason said yes. Eric asked if the village gave the deposit to the town. Brian said he believes they did. Rosemary and Steve know that was part of our request. He doesn't know if it has been withheld or not.

Jason said he doesn't know how the work was done. We hold taxpayers to a standard but there was no communication on that project. It would be nice in the future if we could all know what was going on. Duncan said it is a town highway and we have a permit process that they need to follow. Brian said we can do anything up to making them dig it up and do the whole thing over again. Jason said in the future they should let him know when they are digging so he can see what they are doing. Beth said when Jason does a follow up to ask for a boring he should ask them next time to let him know when they are working so he can view the work. Jason and Brian explained that the village is supposed to get a notice to proceed before they start, then after the work is inspected they get the permit.

Beth asked if the trustees know the whole situation. Brian said he doesn't know how well informed they are. He knows Steve Hatfield is at least broadly informed. Beth said she thinks we should make sure the trustees understand our expectation for the future.

Eric asked Jason if he feels comfortable signing off on the work if a test bore is done. Jason said he doesn't want to sign off on it.

Eben said he is tempted to say that the village has to dig that back up and have it properly inspected if they want the permit signed. If it was an independent homeowner and we were putting taxpayer money on the line we would say the same thing. Jason said if it was an independent homeowner we wouldn't give them a permit. Then they would not have a permit and it would keep them from being able to sell their house. Eben said he would like to have the area dug up and properly installed and inspected. Eric said at minimum he would like to see a single hole bored. Mark said he thinks a core is sufficient. Eben asked if we would or would not give them a final permit with that. Jason said he does not intend to give them a final permit.

Duncan asked what the depth of reclamation will be when that road is paved. Jason said he thinks 12 in. This spot would probably be okay but he doesn't want to sign off on something he never saw. Duncan said under normal circumstances we would require that the work be redone but since we are going to be paving that road and adding material he thinks it is probably not an issue. Eben said he would not approve signing the permit unless they dug it up. Duncan suggested that if the core sample looks bad we should ask them to dig it up.

The board agreed that Jason should not sign the permit but should request a core sample and if it does not meet compaction standards Jason can require the village to dig it up. The village

should pay for the core sample. Jason should be there when the sample is done and should pick the spot. Duncan suggested that if they dig it back up and recompact it then Jason could sign the permit.

18. Update on Town Revolving Loan Fund

Brian said we have a large fund balance in our revolving loan fund: \$193K. We need to make more loans. Beth suggested doing an ad campaign on Facebook and Front Porch Forum: “Did you know the town has a revolving loan program? Here is what it could mean to you.” **Eben moved and Duncan seconded that Beth and Brian manage a communication campaign about the town revolving loan fund.** Eric said it needs to be pointed toward businesses too. **The motion was passed.**

Duncan suggested contacting the Agency of Commerce and Community Development and asking them if we can get an extension because we are up against a timeline for lending out funds. Brian said they granted everyone an extension during COVID. We probably need to get a further extension. Eric said if necessary there may be businesses we can approach and ask to use our money so we are not in jeopardy of losing it.

19. Update on Town Revolving Loan Fund

Eben moved to find that premature disclosure of an update on a topic that could result in litigation to which the town may be a party may substantially disadvantage the town and, that being the case, to enter into executive session to discuss the update as allowed by 1 V.S.A. § 313(a)(1), inviting Brian and Jason to remain, Mark seconded and the motion was passed at 9:54. The board consented out of executive session at 10:19.

20. Adjourn

The meeting was adjourned at 10:19.

Minutes submitted by Donna Griffiths