

JOHNSON SELECTBOARD MEETING MINUTES
JOHNSON MUNICIPAL BUILDING
MONDAY, JUNE 5, 2023

Present: Selectboard members: Beth Foy, Duncan Hastings, Eben Patch, Shayne Spence, Mark Woodward

Others: Carl Rogers, Rosemary Audibert, Charles Gallanter, Sal Morales, Rob Moore, Joie Lehouiller, Carri Ferrari, Dean Locke, David Williams, Casey Romero, GiGi Beach,

Note: All votes taken are unanimous unless otherwise noted.

1. Call to Order

Beth called the meeting to order at 6:30.

2. Additions or Adjustments to the Agenda

Carl added approval of a grant application by the Community Oven Committee and acceptance of a resignation from the Community Oven Committee. He said item #13 can be removed from the agenda because it has already been addressed by the selectboard.

3. Review Invoices and Orders

There were no questions about the invoices and orders.

4. Review and Approve Minutes

Duncan moved to approve the minutes of May 10, May 15, May 24 and June 1, 2023, Shayne seconded and the motion was passed with Eben abstaining because he was not at the last two meetings.

5. Selectboard Issues/Concerns

Beth read an email to the board from Charlie Gallanter. He is asking that the highway crew be directed to cut some dead elms near the town right of way on his property. The claim that the crew only remove vegetation in the town right of way is specious. When they did ditch mowing they cut well outside the right of way, damaging or destroying some of his fruit trees and deciduous saplings. That was described as preventive. The dead elms are more of a threat than the fruit trees outside the right of way that the flail mower cut on his property so removing them would also be preventive.

Duncan said we should stay in the right of way when mowing and trimming. (*Mark Woodward and David Williams arrived at 6:34.*) We have no authority outside the right of way. He would suggest that the tree warden, the highway foreman and Charlie get together to look at the trees and determine if they are in the right of way. If they are, the tree warden is authorized to say if they represent a danger. Charlie said he is not disputing that they are outside the right of way but he sees the crew working outside the right of way right now while they are ditching. Beth said she can follow up with Jason on the ditching. She asked Charlie if he thinks it is worth asking tree warden Noel Dodge to help with determining if the trees are a danger. Charlie said, if it will get the trees removed. Beth said she will connect with Noel. Eben said there was a storm last spring when a dead elm tree just down the road from the ones Charlie is talking about came down in the roadway.

Mark brought up a situation with the garage Dorigen Keeney is building, which is 8 inches too close to the road. Eben said he looked at that as well. His understanding is that Jason met with her and was comfortable with the garage location because the house is already in the right of way. Carl said he spoke with Dorigen today. Her main concern is that the road crew wants to move the road over 4 feet. That would put the edge of the road close enough to her garden fence that she would be

concerned about it getting pushed over when the crew plows snow in winter. The new garage is 8 inches further into the right of way than the house is now. (*Joie Lehouillier arrived at 6:41.*) Carl and Dorigen talked about an easement for her to occupy the right of way.

Beth asked why we are talking about moving the road. Mark said because the garage is a little in the right of way. Eben said in the past board members said they would respect Jason's judgment. Jason said he was comfortable with the agreement that was made. Beth said she doesn't care about Jason giving the green light to put a garage in the right of way, but she doesn't want to talk about moving a road. That is money we don't have to spend.

Duncan said he doesn't know that Dorigen was given good information when she talked to Jason and Howard Romero. If there is something going on in the right of way a permit is needed. In his opinion a permit should have been issued granting her permission to place a structure in the right of way. (*Rob Moore arrived at 6:45.*) He is okay with a permit allowing construction of a garage in the right of way. That gives Dorigen a legal right and is recorded in the records. Moving the road is a whole different question.

Shayne asked if allowing building of the garage necessitates moving the road. Mark and Duncan said they feel it does not. Eben said the road is narrow there already. Shayne said probably we will need Jason's opinion. Mark said the garage changes nothing about visibility.

Beth said this came up because selectboard members know the person involved. That means there is room for bias. The board will follow up at future meeting on whether there is a road permit for the garage. If Jason wants to issue one, we should.

Mark said The Tech Group spent hours helping him after he lost his town email. The person who helped him was very patient and understanding.

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

Eben moved to approve the tobacco license for Get Yours, Shayne seconded and the motion was passed.

Rosemary said one request for property tax abatement has been received.

7. *Review Planned Purchases*

Carl said Jason would like to use the \$15K budgeted for mud abatement to purchase gravel, which he would stockpile to use for a project later this summer. There was \$40K budgeted for gravel and stone. Jason has spent about half of that and is asking for approval to spend up to \$20K more for gravel and stone from either Percy or Manosh, depending on availability and price at the time he is ready to start hauling. Eben said he approves of these purchases.

Duncan asked if the gravel purchased with the \$15K budgeted for mud abatement will be used for a mud abatement project. Eben said from what he heard it will be a mud abatement project. Carl said that was his understanding. The crew is going to be reconstructing a road.

Duncan moved and Mark seconded to approve both requested planned purchases.

Beth asked if Jason has any other large expenses planned for the remainder of this fiscal year. Eben said none that he knows of.

Beth asked if the numbers remaining in the highway budget for these line items track with what Rosemary thinks the balance is. Rosemary said yes.

Duncan and Mark agreed on an amendment to the motion authorizing expenditure of amounts not to exceed the amounts budgeted for the current fiscal year.

The motion was passed.

8. *Potential Library Trustee Appointment*

Beth said the library trustees will meet with candidates and have a recommendation for the next selectboard meeting.

9. *Discuss and Consider Approval of Summer Kick-Off Festival & Duck Race*

Carl said Johnson Works in partnership with the Community Oven Committee have requested use of Legion Field for an event on June 11 from 11:00 am to 4:00 pm. There will be a craft vendor fair at Legion Field and a rubber duck race in the river, with ducks released just upstream of the Studio Center and a finish line at a location with some rocks. They would like to close part of Pearl Street for about 45 minutes to safely hold the duck race. (*Casey Romero arrived at 7:00.*) To do that they would need to post “road closed” and detour signs. Jason said the town has the necessary signs and cones. This is a fundraiser for the oven committee and Johnson Works.

Beth said there was uncertainty about who typically approves requests like this. Requests for use of town properties always come to the selectboard for approval.

Eben asked if the main reason the selectboard is being asked to approve this has to do with insurance. There are town committees that plan events like an Arbor Day celebration or a Historical Society presentation at Whiting Cemetery and don't ask the selectboard for permission. He doesn't feel they need to. They are covered by our insurance. He is not sure if Johnson Works partnering with a town committee means everything is fully covered under town insurance. He is supportive of the event. Carri Ferrari said it was brought to Johnson Works' attention that by partnering with a town committee they would get insurance, so they considered which committee it made sense to partner with. (*GiGi Beach arrived at 7:04.*) The Oven Committee will be baking pizzas all day that will be available by donation.

Duncan said his preference would be to keep at least one lane of traffic open on Pearl Street. He thinks logistically it would be a nightmare to detour traffic and sign it well enough that people would know where to go. Carri said the sheriff's department will have someone there to help with traffic unless they have a major incident. Duncan said the fire department may also be willing to help. They are all trained in traffic control, which is a legal requirement for anyone controlling traffic.

Shayne moved and Eben seconded to allow use of Legion Field by Johnson Works and the Community Oven Committee for the Summer Kick-Off Festival.

Mark asked if board members have any concern about him voting because he is on the Oven Committee. Others said they do not.

Eben asked if Carl can check on the insurance question. Duncan said if an entity can't provide insurance we ask them to waive liability but as a practical matter that waiver is really not worth the paper it is written on.

The motion was passed.

Joie Lehouillier said Johnson Works has been trying to partner with Johnson Recreation on events but they have not been successful. (*Dean Locke arrived at 7:10.*)

Duncan said he feels there will be adequate traffic control on Pearl Street without closing it. Eben said School Street, which would be the alternative route, can't accommodate heavy vehicles. Duncan said School Street goes by Legion Field, where the event will be set up. The board agreed it would be better not to close Pearl Street. This year's event can be a trial to see how well it works with the road open. Shayne said he does think reaching out to the fire department would be a good idea.

Carl asked, if the public works department has signs with some message like "event on roadway" is the selectboard okay with loaning them out? Beth said yes, but it would be good to know who will pick them up and return them. Duncan said if nothing else we will want cones.

Carri asked what the protocol is for future event requests. Beth said a formal request is not necessarily required if Johnson Works is partnering with a committee. It would be good to notify the board. If not partnering with a committee, Johnson Works should submit a request to the selectboard. Duncan said one good reason for that is to avoid potential conflicts.

Carri asked if there is a way to be covered under the town's insurance if Johnson Works does not partner with a town committee. Beth said she doesn't know. Her recommendation is to let the town know well in advance of the event and then the town administrator can help with figuring out insurance coverage.

10. Discuss and Consider Approval of Grant Application by Community Oven Committee

Eben said the Community Oven Committee is seeking \$1000 to purchase ingredients so they can keep offering pizzas for free and a cooler. **Eben moved to approve the grant application by the Community Oven Committee for \$1000 from Vermont Electric Coop, Duncan seconded and the motion was passed.**

11. Resignation from Community Oven Committee

Beth said Ray Kania has resigned from the Community Oven Committee. Jasmine Yuris has posted the vacancy. **Eben moved to accept Ray Kania's resignation from the Community Oven Committee and to send him a thank you card for his service, Shayne seconded and the motion was passed.**

12. Review and Approve Engineering Services Contract for Scribner Bridge Scoping Study

Rob Moore of the Lamoille County Planning Commission said the town got a grant from VTrans for a scoping study for Scribner Bridge, which will include repairs as well as flood mitigation activities. In the past there was a study to identify preferred flood mitigation alternatives. The preferred alternative was a low water crossing allowing water to spill over the roadway and around the bridge, causing only superficial damage to the road. We issued an RFP for the study and received one proposal, which was a little more expensive than anticipated. As directed by Brian Story, Rob reached out to VTrans and asked there was if any way they could increase the award amount. The answer was a firm no. Then as requested by Brian Story he reached out to the consultant and initiated an informal negotiation on price and scope of work. The grant award was \$26,400. The local match was \$6600, for a total of \$33,000. The award includes management overseeing the consultant. The town has an agreement with LCPC for \$3K for that service. The

consultant agreed to look at a minimum number of alternatives to reduce the price. We are not going to build a brand new modern bridge, for example. There are not a lot of alternatives that need to be considered. The flood control aspect is more important to spend time on. They are also planning to send a smaller number of people to meetings. Those changes bring their price down to \$36,926.29. That would make the town's share of the total project cost \$10,526.29, about \$4K more than the town was originally expecting to pay. (*GiGi, Joie and Carri left at 7:30.*)

The board discussed where the town's share will come from and whether it should come out of this year's budget or next year's. Eben said if it is coming out of the bridge and culvert reserve fund he would rather spend it next year than allocate it this year. Shayne asked, will we spend out of the same place whether we spend the money this year or next year? Others said yes. Duncan said he doesn't think it really matters which year we spend it in.

Duncan moved and Shayne seconded to accept the proposal from VHB for reduced scope of work and cost of \$39,926.29 as presented by Rob Moore and to authorize the board chair to sign any and all documents related to the VTrans scoping study grant. The motion was passed with Eben opposed.

The board thanked Sal Morales for his work on the Northern Borders grant application. (*Sal and Rob left at 7:42.*)

13. *Appoint a Form Based Code Administrative Officer*

Beth said Brian Story was our administrative officer so we should appoint someone else. Duncan said it should be a very small time commitment. David Williams said any application for a variance goes directly to the development review board. A variance application means the applicant wants to do something contrary to specifications for that district. It is not an application for a permit, but for something that is normally not allowed. Carl offered to serve as administrative officer on an interim basis. Beth said she was thinking of asking people who were formerly on the form based code committee. Her thought is to appoint Carl for now and then quickly nominate another interim until we have a permanent town administrator. Eben said he thinks we should send a request to the Planning Commission for them to nominate someone. He asked Rosemary if anyone in the office could serve as administrative officer for a few weeks. Rosemary said no. **Shayne moved to appoint Carl Rogers as interim form based code administrative officer and to ask the Planning Commission to nominate an interim administrative officer who can serve until the board appoints a permanent administrative officer, Duncan seconded and the motion was passed with Mark not voting as he had temporarily left the room.**

Shayne asked, what is our approach if there has already been a violation of form based code? Beth said she does not know what the process is. David said there is a section on enforcement that makes reference to state statute. The board might want to look at it.

David said it is 14 days until the date when the remains of the burned building are supposed to be removed from Stearns St. and nothing seems to have changed. Dean said he has reached out to the owners and has not heard back. He has seen no change. This may be the first person we have to fine.

14. *Reappoint Forest Fire Warden*

Eben moved to reappoint Corey Davis as forest fire warden with a term expiring in 2028, Duncan seconded and the motion was passed.

15. Discuss Seeking Bids for Oil

Carl suggested the board could look into Competitive Energy Services to see if they handle contracts like Johnson's. Some school districts and towns in Vermont use Competitive Energy Services. The town he worked for used CES for propane, gas and diesel. CES would give advice about how much to budget for the upcoming year and about whether to lock in a price. They would accept suggestions for local vendors. They check out the market and you pay them based on how many gallons you purchase. Mark said they are like a broker.

Eben said he would like to get information on CES. In the past we have had one fuel delivery company that both the town and village used. Last year the trustees voted for the town to select a fuel oil vendor and the town voted for the trustees to select a propane vendor. Beth said she would like to see this added as a topic for the joint meeting with the trustees.

Carl said he is not sure if CES gets formal bids or just calls companies. Mark asked if they consolidate orders from multiple municipalities for better pricing. Carl said he hasn't heard of them doing that kind of joint purchasing.

Mark asked if Carl can talk to Erik Bailey to let him know the selectboard is interested in CES and see if he knows anything about them. Carl said he will do that.

Eben said he is supportive of looking into the concept. He thinks it could save the town more than we pay them. Mark agreed.

16. Discuss Plans for First Meeting of July and for Setting Tax Rate

The board agreed to meet on July 3 and to try to keep the agenda light. The tax rate can be set at that meeting. *(Dean Locke left at 8:11.)*

17. Review and Approve Sheriff's Department Contracts

Eben moved to authorize the chair to sign the dispatch contract with the Lamoille County Sheriff's Department in the amount of \$72,887.00, Shayne seconded and the motion was passed.

Shayne moved to approve the Lamoille County Sheriff's department patrol and investigations contract in the amount of \$536,655.00. Duncan asked, that is the number we put in our budget? Carl said yes. **Duncan seconded.**

Mark asked what the percent increase is from last year. Eben and Beth said 5%.

Duncan asked if we have heard anything from Roger Marcoux about the sheriff's department retirement option. Beth said as far as she knows nothing has happened. She hasn't heard anything recently. She explained that the sheriff's department is in a retirement option they chose around 20 years ago. The contributions by the department and the officers were less than the other options. But since then they have realized that the terms of that plan aren't beneficial in recruiting and retaining officers because there are better plans where employees pay in more but can retire earlier. Switching retirement accounts has been a hot topic for a few years. They have petitioned the treasurer's office on numerous occasions to be able to switch to another plan. Another department that originally opted not to be in any plan has been allowed to join the plan LCSD would like to join. If they were able to switch they thought it would result in lower cost to the contract towns. In the winter Roger was feeling it was likely they could switch. Since then he told Beth that things

were stalled and he was not feeling so good about it anymore. She doesn't know if the door is closed

Duncan said there has been some preliminary thought that it might be possible to form a municipal union district for police services that would allow employees to participate in the other plan. Beth said the sheriff's department would still have a function and their retirement option would not change but members of the regional police force would have the option to go into whatever plan they chose. Duncan said he thinks that concept should be on the table for ongoing discussion.

Mark asked who will make the final call on whether we do that. Beth said a regional or county entity would need to take this on or some sort of group would need to be formed. We could still contract with the sheriff's department and they would contract with the new entity or we could contract directly with the new entity. There would be different options. Roger Marcoux has been open to the idea of LCSD contracting through a different agency.

Beth said the contract doesn't have anything about ATV enforcement. We have talked about that numerous times. Duncan said it does mention enforcement of town ordinances. Beth said that is part of what they are obligated by statute to do regardless. Duncan said the question is whether we can get them to make ATV ordinance enforcement more of a priority. He understands that they don't want to get involved in high speed chases, but they could park at an intersection and check people's VASA registrations. Eben said Fish and Game did that this weekend. And the Green Mountain ATV Club has offered to work with VASA to fund game wardens for patrol. Shayne said he thinks the time to get something more specific about ATVs in the contract was before now. He is confident that the language that is in there covers ATV enforcement. We just need to get them to uphold it. Mark said he will support this but will want more input next year.

The motion was passed.

18. Update on Northern Border Regional Commission Grant Application

Duncan said we all worked hard to get the grant application in. It was submitted and we got verification back that it was received. Beth thanked Tori Hellwig and Sal Morales from LCPC as well as Duncan for all their work.

19. Consider Extending Industrial Park Stormwater Engineering Proposal Deadline

Eben moved to extend the deadline for proposals for any engineering firm interested in submitting a bid for the Vermont Electric Coop stormwater design to June 19, 2023, Shayne seconded and the motion was passed with Mark abstaining.

Duncan said he will let Tyler know the date has been extended. He said we probably should put the RFP in the VLCT classifieds.

20. Economic Development Roundtable Update

Beth said the roundtable discussion was really good. Pretty much everyone who was invited showed up. There were representatives from the state who were very engaged. VLCT representatives were also very engaged. There was representation from Sen. Welch's and Sen. Sanders' offices. Probably the people we engaged with the most were Tim Tierney and Brett Long from the Agency of Commerce and Community Development. Her takeaway was that we have a lot more resources out there than we have used to date and we need to make sure when we get a permanent economic development person that they are in constant contact with those resources, especially the Department of Economic Development. Duncan said one of the grant possibilities

was the Land and Water Conservation Fund. Shayne said there were many different funding sources identified for everything we have thought about doing.

Beth said she thinks we need to distribute the minutes of the roundtable discussion to our committees and make sure they understand the breadth of funding out there. Maybe we could create a resource directory. Eben said the Chittenden County Planning Commission website has an incredible directory of resources. Beth suggested that all board members read the minutes of the roundtable discussion if they have not already. Shayne said he shared a couple of the ideas related to the rail trail at the rail trail committee meeting. Beth said Carl can use his judgment about which committees to send the minutes to. He can just send them to the chairs.

Beth said she would like to have a roundtable session like that once a year.

21. Discuss Erik Bailey's Email about Town Highway Ordinance

Beth asked what board members' thoughts are on the email Erik Bailey sent out about the ordinance dealing with culverts and headwalls. Duncan said it is not an ordinance; it is a policy. And the section Erik refers to is related to installation of driveway culverts. It doesn't specifically say that but read in context it is clearly aimed at private property owners installing driveway culverts. It has nothing to do with stormwater and catch basins. He thinks Erik is not really understanding the policy correctly. The problem is that he submitted that theory to the trustees and Duncan is concerned that they took his opinion at face value. He thinks they are trying to apply it to the Manchester situation incorrectly. Shayne said he assumes there is no similar policy more related to catch basins. Duncan said there is not. The structure in question more closely resembles a stormwater collection system than a culvert. We can argue about whether the Manchesters have some responsibility. They probably do, but he thinks it is wrong for the village to try to get out of any responsibility. Even if what Erik had brought up was an applicable ordinance, he thinks we would have a tough time applying it retroactively to the 1960s or 1950s. We don't know whether one of the Manchesters got permission from the town administrator or highway supervisor to put the structures in. The town started issuing permits in the 1980s and anything permanent from before then is grandfathered. Shayne said he would love for us to get some of these things more fleshed out on paper. Gentlemen's agreements made before any of us were on the board are an issue.

Duncan said there is an inconsistency we should probably take care of. The policy in our book is somewhat in contradiction to the longstanding policy (which used to be part of our written policy) that the property owner would install the first driveway culvert at their own cost and thereafter the town would assume responsibility for it. The policy adopted in 2020 says the property owner maintains continuing responsibility for repairs or replacement. He asked Eric Osgood if that was what the board intended and Eric said he thought the board just signed it without really looking at it because Brian Story said it represented the latest guidance from the state.

Beth said there are multiple policies with references to road access or responsibilities with regard to roads. She feels like we need to do a better job of consolidating our policies. Duncan agreed. Mark said some other boards he is on cycle through policies and review/update some each year. Beth suggested maybe we could hire an intern to read through our policies and find conflicting statements. That could be really beneficial to us. Shayne said he has been informally going through some policies. He is compiling a list of issues but it would help us to have someone with a more official background.

Duncan asked if Carl had any thoughts. Carl said he had the same conclusion as Duncan about the language being taken out of context. The policy was adopted in 2020 and those structures look like they were done in the 50s or 60s, well before this policy existed.

Duncan said at the last joint meeting he suggested that Jason and Nate should go to the site on a rainy day and check out whether or not all 3 remaining old catch basins are really necessary. Eben said he did tell Jason the board wanted him to meet with Nate to look at them but he didn't remember the suggestion about doing it on a rainy day so he did not mention that. Duncan said the trustees talked about the possibility of eliminating one or more of the structures.

Shayne asked, can we tell the landowner that either we will fill them in or the landowner will need to get involved? Duncan said yes. If the village really doesn't want to be involved we can put in a culvert or dig a ditch or tell the Manchesters they need to open the drainage swale back up. Beth said CJ Manchester will be at the next joint meeting. Erik reached out to him.

Beth said she told Erik she believed the language he quoted was a reference to driveways but that the selectboard should talk about it at a meeting. She feels responding to the email won't change anything. She thinks the joint meeting is the place to bring it back up but she or Carl could respond to the email. Carl said the value of doing it before the joint meeting is that then the trustees will know that the selectboard doesn't agree with Erik's interpretation. The board agreed that Carl should respond to Erik's email.

Eben said he will talk to Jason about getting together with Nate on a rainy day.

22. FEMA Reports Due by June 30

Carl said he asked Brian Story about the FEMA report item in the spreadsheet and Brian said he thought it was left over from a year or two ago when the town had ongoing FEMA projects. The town doesn't currently have any open FEMA grants or projects. Beth asked Carl to check with Seth Jensen about whether there is anything active for the Holmes Meadow project or if he knows about any other outstanding FEMA items.

23. Executive Session to Discuss Legal Opinion

Eben moved to find that premature disclosure of attorney-client privilege would place the town at a substantial disadvantage, Duncan seconded and the motion was passed.

Eben moved to enter executive session as allowed by 1 V.S.A. § 313(a)(1) to discuss a legal opinion, inviting Carl to remain, Duncan seconded and the motion was passed at 9:08.

The board came out of executive session at 9:42 with no action taken.

24. Adjourn

The meeting was adjourned at 9:43.