

1 TOWN OF MIDDLEBURY
2 Infrastructure Committee
3 Town Offices Large Conference Room
4 Thursday, January 9, 2020
5 Meeting Minutes
6

7 Committee Members Present: Heather Seeley, Lindsey Fuentes-George, Candy McLaughlin, Judy Wiger-
8 Grohs and Gary Baker. Luther Tenny and Chris Robbins were absent.
9

10 Town Staff: Town Manager Kathleen Ramsay, Director of Public Works Planning Dan Werner, Director of
11 Accounting Services Manager Jackie Sullivan, and Director of Public Work Operations Bill Kernan.
12 Director of Planning and Zoning Jen Murray arrived later to the meeting.
13

14 Also Present: Peter DeGraff and Dean Rheume were present for the Creek Road discussion.
15

16 The meeting was called to order by Seeley at 8:16 a.m.
17

18 Approval of Agenda
19

20 Fuentes-George moved, and Wiger-Grohs seconded, to approve the agenda. The agenda was approved
21 as presented with 5 in favor, 2 absent.
22

23 Approval of Minutes
24

25 Fuentes-George moved, and McLaughlin seconded, to approve the minutes of December 12, 2019. The
26 minutes were approved as presented with 4 in favor, 1 abstention (Seeley), 2 absent.

27 Citizen Comments - None
28

29 Project Updates
30

31 Police Department Re-Use Project – Werner said the bids would go out on January 23rd, with a bid
32 opening on February 28th. He said the Infrastructure Committee would review the bids on March 12th
33 and send a recommendation to the Selectboard for approval on March 24th. He said the demolition
34 portion of the project would begin somewhere around May 4th, and the building improvements will go
35 out to bid right after Town Meeting. He said Ashar Nelson of Vermont Integrated Architects (VIA) would
36 be doing a walkthrough with the estimators this coming week to see where we are with cost estimates.

37 Route 116 Water Main – He said contract documents are almost done so this project will go to bid in the
38 next few weeks.
39

40 Rail Platform and Parking Project – there is a public meeting on this project on January 29th at 6:30 p.m.

41

42 Colonial Drive – Green Mountain Engineering Amendment

43

44 Werner said this is an amendment for Green Mountain Engineering for the final design phase of the
45 engineering services for the Colonial Drive Project. He said this project is for the Colonial Drive loop
46 behind the Cooperative Insurance building and involves sanitary sewer, storm sewer and a small section
47 of water main and street rebuilding. He said this amendment is for the final design; construction cost
48 estimates and timeframe, development of contract documents, preparation of permits and bid services.
49 He said once this project is designed, it will be put on hold until we see how we do with bids for the
50 Route 116 project and get the Court Street water project done, but we need to go through this phase to
51 get the cost estimate. He said the amount is a not-to-exceed cost of \$19,200.

52

53 Seeley asked if this figure was close to what they had stated previously, and Werner said he couldn't
54 recall the exact figure, but it was pretty close. Seeley asked if we anticipate additional costs if we put
55 this off a few years, and Werner said we would have all the work complete up to the bidding process
56 and this doesn't include the construction review.

57

58 Wiger-Grohs made the motion to send this amendment to the Selectboard for approval, and Baker
59 seconded it. The motion was approved 5 in favor, 2 absent.

60

61 Flood Resiliency Project Update

62

63 Werner said Ramsay had prepared an update and a draft Article for the Warning. He said Project
64 Manager Amy Sheldon is working to get the final commitment from FEMA, who had questions about the
65 Cost Benefit Analysis from the replacement of the Lower Plains Road Bridge back in 2008. Seeley asked
66 if the \$2 million bond was just for Phase I, and Ramsay said no, it was for all 3 phases. Ramsay said we
67 would need to bond for the entire project while we wait for the FEMA money. She said if the bond vote
68 passes and the FEMA money doesn't come forth, we don't have to go forward with the bond.

69

70 Wiger-Grohs said given that the river is going to do what it wants to do, it might be cheaper to move
71 people across to the other side of the river. She said you can install a berm, but that river is going to
72 keep on doing its own thing.

73

74 Water Improvement Financing

75

76 Werner reviewed the spreadsheet he had prepared on water project financing. He said the cost
77 estimate for the Route 116 water line replacement is estimated at \$325,000 and VTrans won't be
78 contributing to the cost of this work. The available funds shown on the spreadsheet in Capital Funds is
79 assuming the Water Capital Budget is increased a little over \$109,000 per year for the next 5 years.
80 Seeley said we'd still be short funds for these projects, so we'd talked about using the Cross Street
81 Bridge surplus to meet what's needed. She said the other question is where do we get that extra

82 \$109,000 each year, either through increasing the water user base rate, the usage rate, or both?
83 Werner said if you put the increase all on the base rate, all 2,150 users pay the same, but it impacts the
84 lower income folks. He said if you put it on the usage rate, it impacts the large users more. He said it's
85 really unknown until we know how much water we'll be selling next year, and that is based on how
86 many gallons we sell this year.

87

88 Traffic Signals – Charles and Monroe Intersection

89

90 Kernan said this is really just an FYI for the Committee. He said he's called a couple of companies and
91 one can put in some new loops for \$2,200, so it will be scheduled when the weather permits. He said
92 they're hoping these two new loops solve the problem. He said he is hoping these loops will work for at
93 least a couple of years when it will be upgraded to radar, at a cost of \$25,000.

94

95 Equipment Fund – Financing Equipment Purchasing

96

97 Werner said the purchases scheduled for this coming year are a street sweeper, a mid-range snow plow
98 truck, a stake body truck for the Highway Department and a small concrete saw, for a cost of \$442,000.
99 He said with the addition of \$47,000 per year over the next 5 years, that cash will offset what we
100 otherwise would need to borrow. He said this year we will be able to pay cash for all but the street
101 sweeper, so the Article at Town Meeting will be to borrow money for the street sweeper, which is
102 estimated to cost \$270,000. He said he did some crunching of numbers, and if we continue to put this
103 money aside each year, right around Fiscal Year 2028 we'll have the funds available to purchase
104 equipment without borrowing.

105

106 Seeley said she missed the meeting last time and asked about the replacing of the Trackless sidewalk
107 plow with another Bobcat. Kernan said we had already replaced one Trackless with a Bobcat and
108 currently still have one Trackless on our Equipment Schedule. Seeley said the minutes of the 12/12/19
109 meeting state that the Trackless would be replaced with a Bobcat, and Kernan said that wasn't his
110 intent, he was trying to show the savings already made last year.

111

112 Creek Road Task Force Recommendation

113

114 Seeley said the Committee had before them the recommendation the Creek Road Task Force had
115 adopted unanimously at their meeting on 1/3/20. She said after the vote it was realized there were
116 some typos, and during the cleanup work of the document, there were some changes that not everyone
117 had agreed on, so the group will get back together to review and approve the version with the changes,
118 but for now they'll work with the original version with the typos.

119

120 DeGraff said originally the Task Force had worked with a long list of alternatives, but this list had not
121 been included in the Infrastructure Committee packet, so they didn't have the list in front of them.

122 DeGraff said the Task Force had looked at the pros and cons of this list of alternatives, and they ranged
123 from fully armoring the river bank in areas to the other end of the spectrum of not doing anything to the

124 road, but ultimately they came to agreement on the Alternative before them. He said State Statute
125 requires Class 3 highways to be negotiable for all seasons of the year for a standard manufactured
126 pleasure car, and at this time the Town is not compliant with the Statute. He said there has been talk of
127 downgrading Creek Road to a Class 4 road, but Statute doesn't allow for Class 4 roads to have a locked
128 gate, and Creek Road currently has a locked gate.

129
130 He said there was a lot of disagreement on the Task Force on what should be done with the road, but
131 they did agree on some things. He said first they agreed that the Town has an obligation to provide
132 access to the property owners. He said historically there has been public access, so they also agreed the
133 road needed to have public access, regardless of what happens with the road. He said under State
134 Statute the Town has an obligation to keep the entire length of the road open, otherwise the road is
135 reclassified as a Class 4 or trail, or throw it up altogether and the right-of-way would revert back to the
136 abutting property owner. He said with all that in mind, the Town also has limits as to what is a
137 justifiable expense for a relatively low-volume road, and how much the Town can afford to invest given
138 all the other infrastructure projects the Town has. He said the bottom line is, the river is going to keep
139 doing what it's been doing, and when you fix one section, the problem just moves to another.

140
141 DeGraff said the re-wording he'd attempted to do was to clarify the Alternative, but apparently there
142 was some disagreement over his interpretation. Seeley said the top portion of the document before the
143 Committee is where the Task Force spent the most time, but thinks the disagreement really lies in the
144 "Next Steps" portion.

145
146 Wiger-Grohs said there was some reason why downgrading the road to a Class 4 road wasn't viable, but
147 she doesn't remember what that was. Seeley said by downgrading to a Class 4 road, Town policy says
148 we don't maintain the Class 4 roads and don't plow them, so we don't have a plan for how property
149 owners access their property if we downgraded it. DeGraff said there is a locked gate on the southern
150 section so the farmers have access, but drivers can't drive on the road, but State Statute says you can't
151 have a locked gate on a Class 4 road, because it is still a public right-of-way whether it's gated or not.
152 DeGraff said they also found in their research that the Town needs to have justifiable reasons for
153 downgrading a road or it's challengeable in court. He said court precedent is that the cost of
154 maintaining the road is not justification for downgrading from a Class 3 to Class 4, so if the Town
155 chooses to downgrade in the future, there needs to be a clear reason why they're doing it.

156
157 DeGraff said since Creek Rd is a Class 3 road and the Town is obligated to maintain it, the short-term
158 goal is to open the road in some form so it's passable for thru traffic, such as the guardrails that were
159 added in the areas that were eroding, and the goal is to have a stakeholders meeting to determine what
160 the minimum standard is to provide access to the road for the general public. He said that may mean
161 installing more guardrails or widening the road in some areas within the Town right-of-way to shift
162 traffic over, but relatively modest investments to open the road up.

163

164 DeGraff said the next step, realizing the river is going to keep doing what it does, is to work with
165 property owners on other alternative access to their property, which may mean easements from other
166 properties for driveways or land purchases, and purchase of rights-of-way.

167
168 DeGraff said the steps moving forward are to have a meeting with stakeholders to determine what work
169 needs to be done, then the next thing is to start having discussions in a collaborative way with property
170 owners on access options with the goal to implement those changes prior to the next event when the
171 road is damaged.

172
173 Fuentes-George asked if they'd come to the conclusion that we aren't going to abandon the road in the
174 long-term, and Seeley said that is not something they concluded. Seeley said ultimately this was
175 supposed to be a short-term working group and what they found is there needs to be more time and
176 more effort to determine a long-term solution. Seeley said we could make interim improvements and
177 these could be washed away in 6-months, and we don't know how much it would cost to open it until a
178 long-term goal is made. DeGraff said in order to take this next step, the Selectboard needs to authorize
179 someone to begin negotiations with the landowners.

180
181 DeGraff said the Task Force did agree that the right-of-way had value to the public, whether it was a
182 road or trail, so he's confident that the Task Force didn't feel the road should be thrown-up. Seeley said
183 from a cost perspective, there is no "no-cost" option, so even if there was support to throw the road up,
184 there would still be costs, but we don't know what those costs would be. She said the group did
185 recognize that at some point there may be a situation where the road goes away by some event and it
186 won't come back, but hopefully that won't happen until we have a good plan in place, but also
187 recognizing it could happen before we get that plan.

188
189 McLaughlin asked where these new accesses would come from. DeGraff said Perrins could come from
190 the development north of them, although it hasn't been engineered, but the more difficult accesses
191 would be to the farm fields since there are wetlands involved.

192
193 Baker asked if the Task Force had been aware that they could throw up portions of the road and keep
194 other sections open. DeGraff said they had looked at different alternatives for closing the road in
195 different locations. Baker said if you changed the road south of Perrin's to Class 4, it would allow access
196 for the farmers. DeGraff said the most expensive section of the road to fix is between Perrins and
197 Bingham's. Dean Rheume said the other thing about closing the road is we'd lose any funding we get if
198 we reclassify it to Class 4, and under the State Municipal Roads General Permit we may still be required
199 to maintain it. Seeley said they have to see if there is expense if they downgrade a road and it continues
200 to erode into the river. Bill Kernan said there are provisions in the Municipal Roads General Permit that
201 pertains to stormwater runoff, but if the road is causing the erosion it shouldn't be a problem. Seeley
202 said if we decide to make it a trail and it continues to fall in the river, are we setting ourselves up for a
203 big expense to maintain that trail. She said there are still a lot of questions that the Task Force didn't
204 feel they could adequately answer.

205

206 She said if we downgraded the southern end to Class 4 without negotiating with the landowner, there is
207 evidence that in litigation the ruling would be in favor of the land owner and not the Town, so if we try
208 to get ahead of that decision by having conversations with the property owners, then we might not see
209 litigation costs if we close it. McLaughlin asked who would do the negotiating with landowners, and
210 Seeley said they didn't have that answer.

211
212 There was discussion on whether to take the Alternative back to the Task Force to discuss and agree on
213 the changes that were made after it was voted on at their last meeting, or to continue on and take it to
214 the Board with some minor editing. Ramsay suggested if the Committee was comfortable with this
215 Alternative, maybe it could move on to the Selectboard.

216
217 Baker said he wanted to see a final version and the other 9 alternatives and he thinks a Class 4 road is
218 the simplest and most economical way to go. He thinks they're minimizing the Class 4 solution and
219 maximizing the costs involved in reclassifying it. Seeley said litigation history for declassified a road did
220 not go in favor of the town when the reason for the declassification was cost. She said in every case
221 they saw the court favored the property owner, and given the situation it was felt if we work with the
222 property owners before making that decision, it would be received better and would be less costly to
223 the Town. She said that could be the decision that would be made eventually. There was further
224 discussion on the possibility of reclassifying the road south of Perrin's to a Class 4 and the problems
225 involved with that as far as maintenance, cost and access.

226
227 DeGraff reiterated the specific items the Task Force agreed on were: the Town has some obligation to
228 address the access for the property owners; short-term we need to make modest improvements to get
229 the road open to meet Statutory requirements, acknowledging that the Town has limited funds to do
230 the work; and the fact the river is ultimately going to do what it wants. He said the ultimate goal is to
231 get out of the river's way, and that means negotiating with all the landowners.

232
233 Fuentes-George said in general, she was happy with what the Task Force presented and knows they
234 weren't all coming from the same point of view, and ultimately whatever decision we make she sees as
235 being several years down the road.

236
237 Wiger-Grohs asked about other interested individuals participating in the process. She said in the South
238 Street Extension solar project the landowners were involved, but other people who saw the value in the
239 area were allowed to give their opinion, so wondered if that would be possible in the Creek Road
240 discussion. Seeley said any negotiations with property owners would be private, but any time there is
241 reclassification of a road there is a public process involved. Ramsay said she was thinking that this
242 Alternative could be presented to the Selectboard and then prior to their acting on it there could be a
243 public meeting where people could ask questions. Wiger-Grohs said she agrees with Fuentes-George
244 that this seems to be a viable alternative and gets things going before a final determination is made
245 about the long-term future of the road, and she wonders if it is possible to become a part of the Task
246 Force who makes that decision. Seeley said she doesn't believe they know what it looks like going
247 forward at this point, and if there is to be another Task Force, she has no idea who'd be on it.

248

249 McLaughlin said she's comfortable with the general recommendation, but the steps going forward are
250 not concrete enough for her. Ramsay said her initial take on this is that the Selectboard could appoint a
251 Task Force or Committee to work with staff, and maybe a Project Manager, to do the work going
252 forward.

253

254 Fuentes-George said she is hearing three distinct things that need to happen: we work on opening the
255 road in the interim; and simultaneously we will start talking with landowners about how they see the
256 way forward; and the third thing is either changing the Charge of this Task Force or setting up another
257 group that will take information from the landowners, stakeholders and the public and come to a
258 decision.

259

260 Fuentes-George moved to send the recommendation (with edits) to the Selectboard for their
261 consideration. McLaughlin seconded the motion.

262

263 There was discussion on what the next-steps forward would be and the possibility of another committee
264 being appointed.

265

266 Jennifer Murray said she was confused about what they were voting on and asked if there is still an
267 option of not opening it to through traffic or is it a foregone conclusion that you're going to be opening
268 it in the interim until you decide. Seeley said the recommendation is to open the road to thru traffic
269 while working on a final plan for the road, and the Board can accept it or make their own decision.
270 Murray said she hoped in the future if there is another Task Force that there is someone who represents
271 conservation interests due to the recreational and conservation value of that corridor and maybe
272 someone from East Middlebury who uses that trail all the time, who maybe doesn't want to see that
273 road open again. Seeley said this recommendation does not give any guidance to the Selectboard on
274 what type of group it should be going forward or who should be on it, or even if there is to be a future
275 group.

276

277 Baker said reading the Alternative he thinks it's a commitment the Town is taking to maintain the road
278 for 5 years, even if it takes longer for negotiations. DeGraff said he could see where Baker would think
279 that, but the intent of the 5-years is to set some kind of goal. Seeley said the Selectboard can make a
280 decision on that road at any time. Seeley said this is creating a plan so that if something happens to the
281 road this is what happens, and we get the landowners to buy into this, and we do it as quickly as we can
282 and try to have it done within 5 years, but if something happens in the meantime the Board will have to
283 make a decision. She said we need to communicate with the property owners to work together to
284 create a plan going forward.

285

286 Seeley called the motion. McLaughlin asked to hear the motion again. Fuentes-George moved to
287 perform interim repairs to the road in order to open to thru traffic in a safe condition; to obtain
288 easements and/or land acquisitions such that within 5 years there is alternative access available to
289 property owners. Seeley asked if she was recommending sending it to the Selectboard for review, and

290 Fuentes-George said yes. McLaughlin seconded. The vote was 4 in favor, 1 opposed (Baker) and 2
291 absent. Baker said he would approve the obtaining of easements and/or land acquisitions.

292

293 Committee Concerns

294

295 Wiger-Grohs said she wanted to respond to Baker's comment at the last meeting suggesting raising
296 money for improvements for bicycles by charging fees and licensing of bikes, and she'd support that.

297

298 Adjournment

299

300 The meeting adjourned at 10:02 a.m.

301

302 The next meeting will be February 13, 2020.

303

304 Respectfully submitted,

305 Beth Dow