

Town of Middlebury
Policy Review Committee

Meeting Minutes – September 30, 2020

In attendance: Gary Baker, Donna Donahue, Beth Dow (Staff) and Chris English (Staff)

Chris called the meeting to order at 8:04 a.m.

As background, Chris explained that Town Manager Kathleen Ramsay had drafted the “Selectboard Policy Prohibiting Writings & Markings on Public Property” based on guidance from both VLCT and Town Counsel in response to an incident over the summer in which hate symbols had been spray-painted on Town property in the downtown area. The draft policy stated:

Writings and markings on public property by members of the public are prohibited.
Town staff will promptly remove or cover-up any markings that do appear.

Chris said the Selectboard reviewed the policy at its August 25th meeting and, while in agreement with the overall intent, felt the language was too restrictive and that allowances should be made for children’s chalk drawings on sidewalks, for example. The Board ultimately agreed to revise the language to prohibit “permanent” writings and markings, he said, and referred the policy to the Committee for further discussion.

Chris explained that Kathleen’s draft policy was based on advice from Counsel that the Town should adopt a formal, “content-neutral” policy, rather than addressing incidents of graffiti on a case-by-case basis, thus “opening the Town up to charges of viewpoint discrimination.” He said the challenge before the Committee was to consider whether the policy language can be further revised to articulate more clearly the Board’s interest in allowing exceptions for markings that the community would not consider to be hate speech, racist or in other ways offensive.

Beth said she felt that children should feel free to express themselves with chalk on their parents’ property but that chalking on public property is vandalism. Citing a legal analysis from www.HG.org that she had provided for the Committee’s reference, Beth said that cities often allow graffiti – as a form of free speech – on property when the owner of the property has provided permission to do so, but that public property is treated differently. Chris noted that the Selectboard had briefly discussed whether permission should be required to make chalk drawings on Town sidewalks but didn’t pursue it.

Donna said from her perspective, permanent vs. temporary markings isn't the issue, but rather the potential liability the Town creates for itself by putting itself in a position where staff have to make judgment calls about content, regardless of the medium. Chris mentioned that a Board member had pointed out at the August 25th meeting that it is entirely possible to use chalk to draw a hate symbol or write a racist message. Donna said she was inclined to recommend changing "permanent" in the policy language to "all writings and markings on public property..." or perhaps "unapproved writings and markings on public property..."

Chris offered that introducing the idea of "approved" markings into the policy language implies the existence of a formal approval process where there is none today. He said if the Committee's focus is on supporting content-neutrality and controlling potential liability with the tools currently available to the Town, he would support a recommendation to change the language to "all writings and markings."

Gary said that the question of legal liability is an important one and he felt that the current policy leaves the Town vulnerable to potential lawsuits. He said that as a citizen and taxpayer, he wouldn't want to see taxpayer money having to go toward defending the Town against a lawsuit brought on by its own policy.

It was the consensus of the Committee to recommend that the first sentence of the policy be revised to read "All writings and markings on public property by members of the public are prohibited." The Committee acknowledged that the community may at some point want to support the creation of a formal process for evaluating and approving requests to create art on public property but agreed that such a process was outside of the Board's charge to examine the policy that it adopted on August 25th.

The meeting adjourned at 8:25 a.m.

Respectfully submitted by:

Chris English