

1 Town of Middlebury  
2 Creek Road Task Force  
3 Town Offices Large Conference Room  
4 September 26, 2019  
5 Minutes of Meeting  
6

7 Members Present: Heather Seeley, Peter DeGraff, Dean Rheame and Luther Tenny

8 Absent: Dean George

9 Also Present: Lindsay Fuentes-George , Moe Rheame and Peter and Kathy Hubbard.

10  
11 Call to Order  
12

13 Heather Seeley called the meeting to order 8:37 a.m.  
14

15 Approval of Agenda  
16

17 Rheame asked to be sure there was enough time to discuss the guardrail and gate at the south end.  
18 Tenny moved to approve the agenda, and Rheame seconded the motion. The agenda was  
19 unanimously approved with no changes.  
20

21 Approval o f Minutes from July 22, 2019 meeting. Tenny moved to approve the minutes and Rheame  
22 seconded the minutes. The minutes were approved as presented.  
23

24 Citizen Comments  
25

26 Peter Hubbard wanted to let the Town know that the snowmobile bridge on Three Mile Bridge Road  
27 needs attention. He said a tree came down and is lodged in there causing erosion. Seeley said she  
28 wasn't sure if that was the Town's responsibility of the Vermont Association of Snow Travelers (VAST).  
29 Rheame said he'd alerted Town Manager Ramsay about this and she was going to reach out to VAST  
30 and let them know.  
31

32 Review of Peter DeGraff's Notes and Findings from the July 22, 2019 Meeting  
33

34 DeGraff said since the last meeting he'd spent time going through State Statute and the two legal  
35 opinions provided to him by Ramsay. Some of the bullet items from his research are:

- 36 ■ The Town has a legal obligation to maintain Class II and Class III town roads.
- 37 ■ The degree of liability regarding signs and barriers is a question for the Town Attorney.
- 38 ■ The Town does have a right to take land and compensate the landowner should they choose to  
39 do so.
- 40 ■ The Selectboard has the authority to downgrade a Class III road to a Class IV road, a trail or  
41 discontinue it all together. He was unable to find a definition for the difference between a Class  
42 IV road and a trail. He said if the Town decides to go that route, then they will need to seek

43 legal counsel on the difference. He said in both instances the Town maintains ownership of the  
44 right-of-way (ROW), but if they choose to discontinue the road, the property owners on either  
45 side get ownership. Seeley said she thought the landowners own the land under the road and  
46 the Town only has the ROW, DeGraff said that's right in the case of older roads, but newer roads  
47 are actually deeded to the Town by developers.  
48

49 Peter Hubbard asked how the historic nature of the road played into this, since that was the first road in  
50 town. DeGraff said that's a good question that he doesn't have an answer for. He said State Statute  
51 doesn't specifically address this. Seeley said that is something we could follow-up on it. DeGraff asked  
52 if Hubbard thought that meant the Town had heightened the obligation to maintain the road or changes  
53 the obligation of what to do with it, and Hubbard thought probably a little of both.  
54

55 Rheaume said in respect to Class IV roads vs. trails, the Statutes say the Town shall not be responsible  
56 for any maintenance of a trail including culverts and bridges. He said some of the Public Works  
57 administration has pushed to make the road a trail, yet the Town has adopted the State Road Standards  
58 as part of their maintenance program to get funding, and if it's downgraded to a trail does the Town still  
59 have an obligation for maintenance. He said according to State Statute they don't, but according to the  
60 General Roads Permit they do. DeGraff asked if the General Roads Permit specified trails, and Rheaume  
61 believed it did and he's seen it on the old town road out by Battell and Means Woods, it would make the  
62 property owners responsible for maintaining it to get to their land. He said the Town has determined  
63 the property owner would have to get a Work in the ROW permit from the Town to do any work on that  
64 road they need to maintain to get to their land. If the Town turns this into a trail it's putting quite a  
65 burden on the property owners.  
66

67 Seeley said she didn't want to get into this too deep. She wants to identify what our options are and the  
68 questions remaining on those options, and once those questions are answered we can put some costs  
69 on the options, then we can start building the matrix of what direction to go.  
70

71 DeGraff said these are only his interpretation of the Statutes, and once we get into this a little deeper  
72 the Town needs to consult an attorney. He said from what he's read, however, the Town has an  
73 obligation to maintain the road if it remains a Class III, or they need to classify it a Class IV, a trail or  
74 discontinue it. He said he doesn't know the level of maintenance if it's a Class IV, and if it's a trail the  
75 property owners maintain it, but if it's discontinued the Town washes its hands of it.  
76

77 DeGraff said one other classification is a pent road, but he couldn't find a good definition of it and he  
78 isn't sure if it means just closing the road and putting a gate up. He said it did say a landowner on a  
79 pent road can put up a gate. Rheaume said the gate can't be locked, however.  
80

81 Rheaume wanted to go over the "duties of the Selectboard" on the DeGraff's research notes and  
82 wanted it noted that some citizens notified the Board that their duties as a Selectboard have not been  
83 followed when that road was closed in 2016 and he said we have not seen any effort to open that  
84 section since.

85  
86 DeGraff returned to the points in his memo. He said to respond to Rheume's earlier question, he'd  
87 reviewed the regulations of the Vermont Municipal Roads General Permit and his interpretation is that  
88 it is specific to reduce erosion potential of roads and he didn't see anything in there that would preclude  
89 a town's right to discontinue a roadway, so in his opinion it's pretty clear that's not their intent. He said  
90 it may require the Town stabilize the road before it's discontinued, but he doesn't believe there is a  
91 requirement to keep that road open. He said that's not something in his cost analysis and it wasn't in  
92 Pathway's either. Rheume said if that's the route we go, he wants to know exactly what those  
93 regulations are. Seeley said if we decided as a group to discontinue the road, but we're still required to  
94 do something to prevent erosion, there are some costs associated with that. DeGraff said he didn't  
95 think the regulation would require stream bank stabilization, but he thinks they may require a dirt road  
96 not be left raw and may require it be seeded and mulched so it's not eroding. Rheume said he finds  
97 that hard to believe when we're talking water quality.

98  
99 Tenny said he wanted to back way up in the discussion, and said all we're talking about is only circling  
100 the bigger problem. He said he understands this is an emotional topic, and an expensive topic, but at  
101 the end of the day the Selectboard needs to make a determination which direction they want to head.  
102 He said he thinks there's sufficient evidence that we've come through in these studies to know a full  
103 movement of the road is very expensive, or you can kick-the-can down the road and spend \$30,000,  
104 \$40,000 or \$50,000 every few years, but ultimately it's going to take negotiations with the Selectboard  
105 and the landowners to determine what to do and when that conversation has happened and a decision  
106 is made, then we can move in that direction, but until then we just keep circling the same problems. He  
107 said he gets frustrated with the million scenarios and a million cost estimates, when at the end of the  
108 day you have to put the landowners and the Selectboard around a table to talk through what are the  
109 options and make a decision, and then we can work towards that decision.

110  
111 Rheume said in all due respect, he gets frustrated hearing about the landowners when that road  
112 belongs to everyone in this room and everyone in the United States. He said of course we have to take  
113 care of Mark and Donna Perrin, but it's my road too. Tenny said that's a very good point and he agrees,  
114 but the difficulty is to have what should be a \$50,000 problem with a million dollar solution, and that's  
115 very difficult to deal with when trying to prioritize all the infrastructure needs we have. He said there's  
116 not enough money and the value and cost benefit makes it very difficult to say this makes sense. He  
117 said his concern is the current mode we're traveling is simply kicking-the-can down the road with  
118 nothing occurring and we need to change our mode of operation. He said you look at the timeline and  
119 its study after study and meantime everyone is getting more frustrated.

120  
121 Seeley said one of the problems with going to the landowners at this point is we don't know what we  
122 want to do, so we can't sit down with them until we know how some of this information DeGraff has  
123 come up with, such as declaring it a Class IV roads, trails and discontinuing the road, would impact them.  
124 She said if we go to them and say we're discontinuing the road and they have questions, she wants to  
125 have answers to those questions, so that's what she's envisioned this information gathering. She agrees

126 we need to meet with them, but we don't have the information yet. Seeley said do you go to them and  
127 ask them what they want us to do, or do we go to them and say "this is what we're going to do".

128  
129 Tenny said he thinks if the Board meets with the landowners it would be more of a listening session to  
130 hear more from them on what they're willing or not willing to do. He said not to go in there telling them  
131 this is what we're doing, but more of a brainstorming, information gathering session to help aid a  
132 decision of the Selectboard. Seeley said if we have a listening session we'd get another whole set of  
133 ideas. Rheume said as taxpayers and part owners of that road, they should have a seat at the table  
134 too. Tenny said ultimately it would need to go to a town vote.

135  
136 Hubbard said that road has been there 200 years and in his lifetime that road hasn't changed much at  
137 all. He said it doesn't get a lot of use, and it's already used as a walking and biking path. He said the  
138 road floods every year and it always will, but one problem that hasn't been addressed is the damage to  
139 the road and that's because we didn't maintain it when the trees are ripping the banks out causing the  
140 erosion, we're just letting them rip it out, and if we'd just cut those trees and leave the roots and plant  
141 more trees, you wouldn't have the problems you have now. He said you're talking about spending a lot  
142 of money on a road that hasn't changed and is essential for the farms, homeowners and the public, so  
143 he thinks it's a no brainer and we shouldn't have to spend a lot of money to cure this problem.

144  
145 Seeley said their task is to bring a recommendation to the Board, and she asked Tenny if he feels they  
146 need to speak to the landowners before making a recommendation. Tenny replied that he feels there's  
147 sufficient information from a construction option standpoint, and wanted to caution about not  
148 nitpicking about such things as what type of gravel to use in a certain location, that's for the final design  
149 phase. DeGraff said in his mind and based on his review of Pathway's analysis, he respectfully  
150 disagreed with Hubbard. He said this is a multi-million dollar project, and whether it's multi-million up  
151 front or spread out over several years, we're going to have to spend at least a million dollars on that  
152 road. He said the Town needs to make a decision if it's worth a million dollars to maintain thru access  
153 on that road, and if the Town as a whole decides it's not worth that, then the Town has to make a hard  
154 decision whether to close the road or not. He said they have to make it right with the property owners  
155 and take care of them if that road is no longer available to them, then you talk to them about what  
156 access they need to their land or sell their property to the Town.

157  
158 Seeley said the Board had already decided to maintain access for the road and the Infrastructure  
159 Committee recommended keeping the road open. She said the original decision was to go with  
160 Pathway's recommendation to move the road over and looked to the State for funds, they said no, and  
161 then it came back to square one wondering what do we do now. She said the Board has already decided  
162 to keep the road open and now we decide how do we do that. She said if this Committee wants to go  
163 back to the Board and ask them if they've changed their mind about keeping this road open. DeGraff  
164 said that is not his interpretation of what he was originally tasked with, which was to review all options  
165 of keeping it open or closing sections and the cost of those. He said it was his impression that the  
166 Board's decision to keep it open was up for reconsideration, and Seeley agreed, but no decision has  
167 been made since then that the Board is going a different route. Rheume said the Board decided to

168 keep the road open to the north for the Perrin's when they decided on installing the guardrails. DeGraff  
169 said if this committee is looking for a way to open the road back up, then that is completely different  
170 than making a recommendation to the Board on what to do with it. Seeley said we could go back to the  
171 Board and ask for clarification on what they intend to do. DeGraff said we need to have clear direction  
172 from the Board if they're standing by their previous decision that we're going to open the road, and if  
173 the Board is standing by that decision that it's going to remain a thru road, then you put out an RFP for  
174 engineering to repair the sections sloughing now and go forward, and if the decision's already made he's  
175 not clear why we're even here.

176  
177 Rheume asked how the guardrail decision tied into this, and Seeley said that was made when we  
178 thought we could move the road over. Tenny said the guardrail decision was proposed by Public Works  
179 because of a concern for safety around certain areas while the road is still being used, and it was also  
180 supported by Chief Hanley, so knowing that it was recommended on a short term basis for safety while a  
181 decision was made. DeGraff asked if the guardrails were only on the open section of the road or the  
182 entire road, and Rheume said that was discussed and he wants to bring it up again. DeGraff said if the  
183 Board decides to move forward with making any repairs on the road they won't happen until next year.  
184 Rheume said there's also the south end issue and the road is illegally closed as of right now.

185  
186 Rheume said he recommends the Town spend the additional \$12,000 for the south section, get rid of  
187 the gate, open the road back up, and resolve all the legal issues the Town is facing at this time. Seeley  
188 asked if that was a motion, Rheume indicated it was, and Seeley seconded the motion and opened it  
189 for discussion.

190  
191 DeGraff asked if the \$12,000 was for guardrail on the south side, and Rheume said it was for about 80'  
192 on the south end. Seeley said the north end guardrail is around \$22,000 and believed it was around  
193 \$12,000 to do the south section. DeGraff asked if this would be widening the road the road, and Seeley  
194 said no.

195  
196 Hubbard asked DeGraff if you're putting posts into that bank aren't you making it weaker? DeGraff said  
197 a lot of it has to do with where the posts are located in relation to where the road is sloughing. Hubbard  
198 didn't think there was much room between the bank and the river.

199  
200 Seeley showed the proposal for the guardrails for the north section, but said it didn't include the  
201 southern section. Rheume said \$12,000 is a bargain to get that road open and clear up the legal issues.

202  
203 Tenny said he understands that the location of the guardrails limits this section of the road to single-  
204 lane, and Rheume said according to Bill Kernan the signage in that area makes it legal under the  
205 Municipal Traffic Code. Tenny said if we're continuing the discussion on the motion, he is not willing  
206 without an opinion from Chief Hanley on that configuration and would we want to take it up at the  
207 Infrastructure Committee. Rheume said Hanley had already approved it, and Tenny replied he  
208 believed Chief Hanley had approved it on the context the road was still closed, but actively used, not  
209 necessarily opening it up for full public use.

210  
211 DeGraff recommended they have Public Works see if there are other repairs that need to happen, and  
212 Rheume said it needs to be graded.  
213  
214 Seeley asked if there was other discussion on the motion, and hearing none she called for a vote. The  
215 vote carried with 2 in favor (Seeley and Rheume) and 1 opposed (Tenny) 1 absent (George).  
216  
217 Hubbard asked if they needed a quorum, and Seeley said they had a quorum since it was only a 4  
218 member task force.  
219  
220 Seeley searched online for the Charge that the Task Force was given, but couldn't find it. She asked if  
221 they needed more clarification from the Board on what they're looking from this group, since there  
222 seems to be some confusion. DeGraff said he thought the charge was to look at all options, whereas  
223 Seeley seems to think it's about what are the options to keep it open. Seeley said if in the discussion  
224 about keeping the road open we determine the best option is to close the road, then that's what we  
225 come up with; or we need to say we can keep the road open and this is the only option and this is what  
226 it's going to cost, then Board says we can't afford that option. She said that road has been closed since  
227 2015 and in 4 years the Board has not had a vote to declassify or close that road and every attempt the  
228 Board made has been about keeping that road open. Tenny said he agreed with that, but the stone wall  
229 has been that none of the options provided so far have been affordable and nothing is happening as a  
230 result. Seeley said the options all still had a lot of questions.  
231  
232 DeGraff said his analysis options to open the road would cost between \$2 to 5 million, and that's what it  
233 will cost if the Board is going to make a decision on keeping it open or not. He said if they're willing to  
234 spend between that on keeping the road open, then this group's charge should be to recommend if it's  
235 going to be a phased project or an all-in-one project and what form the repairs are going to take, and  
236 then solicit an engineer. Seeley said the result of that has been we don't have the money to do that, so  
237 what are our other options. DeGraff said that's what he thought the Charge was.  
238  
239 Seeley said we've talked about a private drive for Perrin's, we've talked about discontinuing sections,  
240 we don't have the money to fix it in one go-around and it probably wouldn't get taxpayers support, so  
241 what are our options and what are we recommending the Board do with the road. Rheume said  
242 there's just so much push back. He said he's talked about the lack of maintenance, and so has Hubbard  
243 and the farmers, and it seems like everything is pushing towards a road repair that brings it up to a Class  
244 I or II status and he doesn't think that's necessary and thinks there are other options. Seeley said we'll  
245 never agree on what the best option should be. She said let's just say we recommend to discontinue the  
246 road; we have different levels of discontinuation, how does it impact the homeowners and the Town.  
247 She said is that what we take to the landowners? She said she thinks we would get town support for  
248 that, but doesn't think the landowners and people wanting to use the road will support it, so that brings  
249 us back somewhere in the middle. She went over all the options discussed so far and said there are  
250 questions about all of them, and she thought they'd come up with scenarios, but even if we decide to  
251 throw up the road, there are costs associated with it. She said if the bank continues to fall in, is the

252 State going to care about that and come back later and say we have to repair it, then let's do it now.  
253 She said even if it's a trail and it continues to fall into the river so people can't bike and walk on the road,  
254 are we going to spend money just so people can bike and walk on it when we could have spent money  
255 so everyone could use the road. She said she wants a scenario that we can all agree to recommend to  
256 the Board that costs somewhere in the middle and provide access to everyone.

257  
258 Rheaume said he wants an opinion from someone from the State to tell us exactly what we can and  
259 can't do there. He's not sure if it would be someone from the Agency of Natural Resources (ANR) or  
260 what, but he'd like to have someone here that could answer those questions. Seeley said we did meet  
261 with someone from ANR when we were looking for a grant to set the road over 25' and the State said  
262 that wasn't far enough. Rheaume said he wants to know what can we do and what can't we do, and  
263 once we get that out of the way we'll have a good start. He said that earlier meeting with ANR wasn't  
264 Warned and the public wasn't invited, so he wants some answers to the basic questions. DeGraff said it  
265 isn't just ANR, it's the Army Corp of Engineers, the Stream Alteration Program, the Wetlands Program,  
266 the State and Town fluvial erosion requirements, which if this were private property they'd not allow  
267 people to repair the embankment. He said in his experience he would be surprised if you got a straight  
268 answer from ANR and you aren't going to hear them say we need to repair the road, since they'd just  
269 like to see it stay natural and they're going to say they want the river to do what it wants to do, that's  
270 the intent of the regulations. DeGraff said Statutes make it clear what the Town needs to do to maintain  
271 it, but they also say the Town can decide to discontinue it or change it to Class IV, but they need to  
272 decide. Seeley said this Task Force is supposed to try and help the Board make that decision.

273  
274 Moe Rheaume said he agreed they needed to hear from the State, and the Town had only heard from  
275 one grant option, and wondered if there are other grant options out there or are we just saying there  
276 aren't other options.

277  
278 Seeley said what if we meet with the property owners and say we're going to close the road, and they  
279 choose to maintain the access to their property and in a few years the State says the property owners  
280 need to stop this from happening and does the Town have some liability in that process, or if we've  
281 thrown up the road do we not have any further obligations. She said she'd like to know that and it puts  
282 a huge burden on the property owners. Tenny said if it was to go in that direction, there would be  
283 negotiations between the Town and the landowners and the Town would need to invest an amount of  
284 money acceptable to the landowners to deem it acceptable for them to assume control.

285  
286 There was discussion about moving the road over and the property owners having agreed a few years  
287 ago to allow it to be moved onto their land. Seeley said we could also take their land for a road, with  
288 compensation of course. DeGraff said that Statute doesn't allow the Town to ignore wetlands and  
289 Pathways report on moving the road did not include the fact there are Class II wetlands on both sides of  
290 that road and you aren't going to get a permit to move the road into a Class II wetlands just because it's  
291 cheaper than repairing the stream bank. Rheaume questioned that, and DeGraff said he has 30 years of  
292 experience of dealing with ANR and the State Wetlands Office and he knows the requirements and there

293 are sections of that road he would be amazed if ANR or the Army Corp of Engineers would give a permit  
294 for. Rheume said in those areas the only option would be repairing the bank, and DeGraff said yes.

295  
296 Seeley said back to the topic of what this Task Force's job is and what got us here, and asked if they  
297 wanted to recommend the Board keep the road open no matter what it costs, or do we recommend  
298 that they close it, or is it something in between. She said if we're somewhere in between we have to  
299 know the details and what it's going to cost. She said she's over-simplifying, but is trying to get them  
300 headed in some kind of direction. Rheume said we need to keep that road open, but didn't want to  
301 put a price tag on it.

302  
303 Tenny said if you're going to spend \$2-5 million, you're making a commitment it's a Town road and you  
304 will need to maintain it in perpetuity, and is the Town willing to continue to invest in the road or not,  
305 and if the answer is yes, we need to take the necessary measures to either incrementally repair those  
306 bad sections and then when there are problems in a few years with flooding, we spend the money to fix  
307 that area. He said there needs to be a commitment to repairing the road and is it going to be in one  
308 swoop or incrementally. Seeley asked if he was recommending we go to the Board with that.

309  
310 Tenny said there seems to be some misinterpretation of what our actual task is and he wants clarity on  
311 that. Seeley said she thought they'd cleared that up. DeGraff said it sounded like Seeley came around  
312 to his perspective, and Tenny agreed. Tenny said if we are agreeing with DeGraff's original perspective,  
313 then before we make a good decision we need to re-engage the implications of closing that road are.  
314 He said he's not saying that's his preference, and the earlier vote was not based on not wanting to open  
315 the road, it was more procedural, but he believes that's what needs to happen. Tenny said there is  
316 enough information and estimates about repairing the road, but on the flip side, if you're talking about  
317 closing the road we need to understand that on that level there hasn't really been a discussion with  
318 landowners to get their perspective for an overall decision.

319  
320 DeGraff said in his earlier options to the Board, the option of keeping the road closed on the south end  
321 with some repairs to the north, did not include compensation to the landowners and if that happens  
322 then there needs to be some type of compensation to them, whether it is an agreement to maintain to a  
323 minimum level, or the property is bought out, or a discount in taxes. He said that goes back to Luther's  
324 suggestion to have a discussion with them.

325  
326 Seeley said she's trying to figure out what to bring back to the Board to help them with the Task Force's  
327 mission, and it sounds like Tenny is looking for a commitment to keep the road open. Tenny said yes,  
328 considering that over the years we're talking about a lot of money. Seeley said if the Board responds no,  
329 they aren't committed to keeping it open, then is that then the task of the Task Force. Tenny said if  
330 their response is no and they want to explore closing the road, that's when you begin negotiating with  
331 the landowners. DeGraff said he'd like to take today's discussion and come up with a clear list of tasks  
332 they should go through to make a recommendation or a decision tree for the Board so they know if they  
333 make this decision, then these are the things that need to happen. He said he didn't think they should

334 go to the Board now and asking if they want to keep it open or not. Seeley asked him how long this  
335 would take him, and DeGraff said the middle of October.

336

337 Rheaume said he wanted to make two points; first, the State of Vermont is the new property owner on  
338 the south end of Creek Road; and secondly he has researched the Town Plan and it talks specifically  
339 about Creek Road and having access and connectivity to different neighborhoods and ease traffic on  
340 Route 7, so it's important to keep in mind. Seeley said it may say that, but the Town Plan is simply a  
341 guidance document.

342

343 The meeting adjourned at 10:00 upon motion by Rheaume, seconded by Tenny.

344

345 Respectfully submitted,

346 Beth Dow

347