

Town of Middlebury  
Creek Road Task Force  
Town Offices Large Conference Room  
July 22, 2019  
Minutes of Meeting

Members Present: Heather Seeley, Peter DeGraff, Dean George, Dean Rheume and Luther Tenny

Call to Order

Heather Seeley called the meeting to order at 2:03 p.m.

Approval of Agenda

George moved to approve the agenda, and Tenny seconded the motion. The agenda was unanimously approved with no changes.

Citizen Comments – None

Overview, Charge and Timeline

Seeley said their Charge is to review the options, evaluate the outstanding questions and to create a matrix with all the alternatives in hopes the answer to the problem will be clear. She is aiming to have this completed by December. DeGraff said she hopes the timing will be such that any financing could be approved at the March Town Meeting. Seeley said she hopes for 4 to 6 two-hour meetings before December to accomplish this.

DeGraff said he wanted to go over his analysis and be sure that all of them were on the same page as far as what the fundamental options are. He said his analysis had been at present worth, and not just at how much it would cost to open the road, but also the long-term costs involved. He said he narrowed down the options provided in the earlier Pathway Report to try and simplify the decision process by having just four fundamental approaches:

1. Fix what needs to be fixed and get it opened up; knowing additional repairs will be needed throughout the years going forward;
2. Be pro-active and repair anything within 25 feet of the river anticipating it will fail at some point in the future;
3. Close the road south of Perrin's and only repair the section between the end of the pavement and Perrin's; and
4. Repair from the end of the pavement to Bingham's and close the road from there south, and build Perrin's a new access.

43 DeGraff said his analysis period covered ten-years, and figured anything within 25' feet of the river  
44 would fail in that time period. Tenny said it only took one rain event to change that assumption, but  
45 thinks 10 years is reasonable.

46  
47 Rheaume disagreed. He said Otter Creek is a lot different than the East Middlebury River. He said it's  
48 not a meandering river and its channel has not migrated, and the Pathway's Report reflected that, so  
49 he's concerned about saying 25', because he's never seen the creek move 25'. DeGraff said the  
50 Pathway's Report was looking at bank stabilization of anything within 25' between the stream bank and  
51 the road. DeGraff said he'd been hired by the Town to do an analysis of the report to help find a  
52 decision and solution to this, and specifically has not engineered beyond the Pathway's Report and is  
53 relying on their information. Rheaume said the Pathway's Report talked about a 25' buffer, and he feels  
54 it has now been spun that 25' is going to disappear. DeGraff said one of the questions might be what  
55 the right number is, but pointed out the State Regulators who met with the Town didn't feel 25' was  
56 enough. Tenny said from a permitting standpoint you need some kind of separation between the edge  
57 of the river to an impervious surface, so he thinks this 25' is the area defined for planting and not  
58 necessarily that it will fail. Seeley said for future planning you're saying that any area where the road is  
59 25' or less to the edge of the river would need some type of repair. Seeley said that may be one of the  
60 questions that need to be identified, and she'd like to identify what the questions are today rather than  
61 debate the answers. She said they need to know what questions need to be answered in order to do  
62 the analysis.

63  
64 DeGraff asked Rheaume what he felt the appropriate distance was, and Rheaume said he didn't know  
65 for sure. Rheaume said he's been asking about how this ties into the Town's annual Municipal Roads  
66 General Permit and the State Road Standards the Town adopted as part of that program for all  
67 hydrologically-connected roads. DeGraff said he'd look into it further, but his understanding these  
68 standards were about managing stormwater runoff in waterways, but doesn't think it would impact  
69 keeping the road open or not. George said the Town could reclassify the road as a Class IV road, but  
70 Rheaume said they'd still have to follow the Standards for a Class IV road.

71  
72 DeGraff said he wanted to walk out of the meeting today with a list of tasks, and questions the Task  
73 Force has that he can help get answers for before the next meeting. Seeley suggested going over  
74 DeGraff's four options to see what questions they had.

75  
76 Option 1. DeGraff said under this option the Town does repairs on what needs to be fixed now that are  
77 safety hazards where the road is starting to erode and then in subsequent years the Town would make  
78 repairs on an as-needed basis. He said to translate that into present-worth he had to make an  
79 assumption of how many years they'd make repairs and percentage you use to calculate that  
80 backwards. He said the rest of the items are mostly consistent with Pathway's options. He said the  
81 things he had added after meeting with Dan Werner and Bill Kernan was the box culvert south of  
82 Perrin's that needs to be replaced, so that's been added over and above Pathway's report. Rheaume  
83 said the Town had grant money in 2015 to replace that culvert and Werner chose to use it somewhere  
84 else, so it's hard for him to swallow when they keep using that as an excuse to keep that end of the road

85 closed. He said he's watched hundreds of load of feed and fertilizer go over that culvert, and that  
86 culvert is still there and is functioning just fine. He said he's tired of hearing it and called it fear  
87 mongering in his opinion. DeGraff said if you're looking for a long-term future of the road, you have to  
88 consider replacing that culvert and the Local Roads Grant Program is still available and one thing this  
89 analysis doesn't do is look at these funding alternatives. Seeley suggested trying to look at the big  
90 picture and identify the questions, and we aren't all going to agree on the details, but we need a process  
91 on how to identify all the questions before making a recommendation. DeGraff said he just wanted to  
92 point out that the culvert and the addition of guardrails were not included in the initial Pathway's  
93 report. Seeley said in this alternative, we have to include the replacement of the culvert. DeGraff said  
94 this alternative includes making improvements over 10 years, so maybe the culvert gets replaced  
95 somewhere down the line.

96  
97 Option 2 – DeGraff said this option is the same as Option 1, except it only includes upfront costs to  
98 simply get the road open. He said it does include replacing the culvert, so that will need to be backed  
99 out if they want to replace that later. He said the assumption is the balance of anything within 25' of  
100 the stream bank will need to be repaired over the 10-year period, or whatever period they agree it will  
101 take to make them.

102  
103 Option 3 – DeGraff said in this option the road is open to the Perrin's driveway and the same type of  
104 repairs would need to be made north of Perrin's to the edge of the pavement. He said this one is only  
105 repairing what needs to be done to keep the road safe and annual repairs as needed within 25' of the  
106 roadway. DeGraff said nothing would be done to the remainder of the road south of Perrin's. Seeley  
107 said she'd like to identify what could be done to that southern section and what are the costs associated  
108 with those options, such as landowners access issues. She said maybe we find out there is a sub-option  
109 for Option 3 with several different options of what to do south of Perrin's, although she didn't want to  
110 have too many options. She doesn't think as presented now gives them enough information to make a  
111 decision.

112  
113 DeGraff said there are a lot of options for what could be done with that area, such as is it could be a  
114 pedestrian path like in Wright Park, or a pedestrian/bike path like in Stowe, but each has significant  
115 costs associated with that. Seeley said that southern section is furthest away from the Creek for the  
116 most part, and while there is one small section that needs repair, she thinks it would be cheaper to  
117 access Perrin's driveway from the south than repair the road to the north of their driveway. DeGraff  
118 was unsure if that was the case or not, and would have to do the cost analysis. Seeley said maybe it was  
119 something they should consider. DeGraff wondered if it would be politically palatable to the Town to  
120 make a resident with a business on their property drive that much further around when it's  
121 questionable now if it's politically palatable to make the farmers only access from the south. Seeley said  
122 she's just trying to raise the question.

123  
124 The Task Force discussed the right-of-way through private land the Perrin's have to access their property  
125 when Creek Road is flooded. DeGraff said property owner Charlie Kireker is receptive to a driveway  
126 access to Perrin's, but wasn't sure how much of a roadway he'd be in favor of. He said Kireker is not

127 interested in Perrin's accessing from the end of Meadow Glenn Drive which extends to the Town pump  
128 station, since he already has complaints about the traffic going to the pump station. He said the current  
129 proposal is to upgrade the road by the Residence at Otter Creek that goes to the solar farm to get to  
130 Perrin's. Seeley said based on the e-mail from Town Attorney Benj Putnam on whether or not the Town  
131 could construct a private driveway with Town funds, she got the impression he would not recommend  
132 going in that direction. DeGraff wasn't sure that was what Putnam was saying, but would have to look  
133 at it again, but he also wants to discuss with Putnam what form that driveway could take, and then the  
134 maintenance issues with Kireker and the Perrin's needs to be determined as well. Rheaume thought this  
135 would also bring up other landowner access issues as well.

136  
137 Tenny asked what legal obligation the Town has in regards to the individual property owners on a Class  
138 III road. Rheaume said under State Statute the Town is responsible for plowing, maintaining and  
139 keeping the road passable for an average pleasure car. Tenny said they needed to know if there is a  
140 desire to permanently close Creek Road as a through road, yes or no, because this is a major  
141 fundamental question that we need an answer to before we get too far into this. He said if we can  
142 agree the road can be closed, then that can be broken down as to whether it is a north access or a south  
143 access. He said there needs to be a "decision tree" that needs to be worked through, starting with the  
144 big decision and then go from there.

145  
146 DeGraff said it's also about cost, and we've talked about Perrins and Kireker, but discussions need to be  
147 held with the other landowners, the Nop's and Goodrich's, as well. Seeley said if we could figure out a  
148 way to pay for it, the desire is to maintain through-access, and that's why this Task Force was formed  
149 because when we want to maintain through-access, but how do we do that and how much do we spend,  
150 and then the answer may be that none of those options work and they're all too expensive, so then  
151 we're back to we can't maintain through-access.

152  
153 George said there had to be a cost benefit associated with that, and Tenny said that \$5 million is not  
154 that number, but \$500,000 is more like it. He said you need to determine the threshold to help to  
155 determine the decision, because he can't believe \$5 million dollars for a Class III road serving a couple of  
156 houses is it for what should be a cheaper problem to resolve. Seeley said she disagrees with the  
157 numbers that Tenny is looking at and she feels the numbers used are considerably higher than they  
158 need to be. DeGraff said that's a fundamental question that will have to be answered. He said  
159 Pathway's used \$150/lineal foot to calculate costs, and he wasn't sure where they got that number  
160 from, so he started with that number, but subsequently the bids for similar stream bank repairs on  
161 Shard Villa Road came in averaging \$480/lineal foot. He said he isn't sure where Pathway's number  
162 came from, but he does have these bids as a concrete number. Seeley said we still have to figure out  
163 how much we want to spend, so the question is what can we do with what we have. Seeley said  
164 Pathway's report outlined a very specific process for fixing the stream bank that she'd never seen before  
165 and we've never bid out to know how much it cost. She said it wasn't riprap, it was mostly vegetation  
166 and fabric, and they had done it other places with success, so not only do we need to decide if we repair  
167 the road, but how do we repair the road. She asked if there was a way to get realistic costs for  
168 alternative repairs. She feels the Shard Villa Project is on a Class II road, and it's a different river and the

169 repairs to Creek Road could be done without engineering, whereas Shard Villa Rd couldn't have been  
170 done without engineering. DeGraff said it's a critical component. He said if you look at Option 1, the  
171 bank stabilization number alone in that option is \$3.3 million, and if you change it to \$150/lineal foot  
172 and subtract the difference from the total, you go from \$4.9 million to \$2.6 million, so asked if that was  
173 within the pain threshold of the Town, because he doesn't think it could be done cheaper.

174  
175 Rheaume said one of the first questions he wants answered is the one about the Municipal Roads  
176 Permit and wonders if we're going to be sending a message that we can't maintain our roads so we're  
177 going to throw them up? He said the State is discouraging towns from doing this and at the end of the  
178 Pathway's Report it says the Town has two choices, they can do it now or do it later, so one way or the  
179 other the State will make us do it. Tenny said the State program is intended to discourage development  
180 along rivers, and he feels abandoning a road that is on the precipice of falling into the river would be  
181 applauded by them. He said the Town needs to be good stewards of the funds and we can't be sinking  
182 all of our eggs into a basket on a road that serves only a few landowners as opposed to keeping up with  
183 all the other deferred maintenance. He feels they need to find a solution in the \$500,000-to-a million  
184 range that can reasonably be constructed in the next few years that can get access to these property  
185 owners. Rheaume said the people he's talked to in the neighborhood say if the Town is spending  
186 \$750,000 to build the Perrin's a driveway, then spend that money on Creek Road so everyone can use it.  
187 Tenny said the fear of his is if you don't correct it properly, you'll have to spend another \$750,000 in a  
188 few years.

189  
190 Seeley asked how do we get all these questions answered and into some form of matrix so we can make  
191 a decision. DeGraff said some fundamental questions are the General Roads Permit or any other State  
192 requirements that require us to keep it open. They further discussed the access to the properties should  
193 the road be closed to only bikes and pedestrians. Seeley said we can spend \$4 million for a pathway on  
194 Exchange Street, but we can't spend \$2 million to keep this road open to vehicular traffic, and wants to  
195 know why people think its okay to spend that money there and not here. George said the answer is if  
196 people were asked to spend \$4 million on Exchange Street, they wouldn't do it.

197  
198 Rheaume said if the road goes to Class IV you lose any kind of funding, and he understands you can't  
199 downgrade a road that's a prime access to a piece of property. DeGraff said he doesn't know if the  
200 Town has talked to the Nop's or Goodrich's, and maybe they'd be willing to sell their land to the Town,  
201 because the value of the land is a lot cheaper than repairing the road. Rheaume said that wouldn't help  
202 the commuters in that area that use the road and they all pay taxes for it.

203  
204 Seeley said she would like the Task Force to be able to move forward and create this matrix that  
205 identifies items to help for a decision, but she isn't sure how to do it. George said he doesn't feel there  
206 are enough options at this time, or if the costs are accurate or if there are obligations to keep the road  
207 open. He said if the property owners are willing to sell, then that problem goes away.

208  
209 DeGraff said the main question to be answered is can the Town close the road and what is the process  
210 to do that. He said the bank stabilization costs are going to keep coming up, so he'll come up with a way

211 to calculate a price that hopefully everyone will be comfortable with, then they need to have a  
212 discussion with the Perrin's, Nop's, Goodrich's and Kireker.

213  
214 Rheume asked DeGraff if the entire road was moved over 25', would the bank still need to be  
215 stabilized, and DeGraff said some areas would need to be stabilized. DeGraff said one thing he didn't  
216 agree with the Pathway's Report was when they suggested shifting over the road, they didn't take into  
217 consideration the flood plain or the fact there are some pretty significant wetlands, so there are  
218 permitting and construction issues associated with shifting the road over. Rheume said there are some  
219 statutes that make it easier for towns to do this, and DeGraff didn't agree. DeGraff asked Rheume to  
220 provide him with that statute.

221  
222 Seeley said after hurricane Irene there were some different types of bank stabilization used, and she  
223 asked DeGraff if he'd seen any of these, did they work, and what did they cost. DeGraff said Irene was  
224 an emergency situation and you would not get a permit to do the same type of repair now. DeGraff said  
225 he's been talking with the Army Corp of Engineers and Rivers and Streams engineer for the State, and  
226 none have had projects comparable to this one recently.

227  
228 Seeley asked DeGraff what others on the Task Force could do before the next meeting. Seeley was  
229 going to ask for a folder to be created on the Town website where all the information could be stored  
230 for easier access and Rheume will provide all the State Statute information he'd found to DeGraff.

231  
232 They discussed when the next meeting might be and the Open Meeting Law as it pertains to e-mails.

233  
234 DeGraff said one thing to think about, and whether it falls under the Infrastructure Committee or  
235 Selectboard, but as long as that road is open you have to consider the safety of that road. Seeley said  
236 there is a proposal from Chief Hanley and Public Works for guardrails and signage that will make some  
237 areas of the road one-way and it will be before the Board at their July 23<sup>rd</sup> meeting. She said she voted  
238 no on the proposal at the Infrastructure Committee because she is against spending any more money on  
239 that road until we know what we're doing with it, and that road has been a safety hazard for years  
240 without guardrails.

241  
242 There is no date for the next meeting at this time.

243  
244 The Task Force adjourned at 3:57 p.m. upon motion by Seeley, seconded by Rheume.

245  
246 Respectfully submitted,  
247 Beth Dow