

MINUTES

GREEN SPACE COMMITTEE
WEDNESDAY, FEBRUARY 22, 2023
WILLIAM L. PULLEN MUNICIPAL BUILDING MEETING ROOM
ONLINE NON-INTERACTIVE AT TOWN HALL STREAMS
6:30 p.m.

Committee members present: Josh White, Wendy Reinemann, Kathleen Thornton (Chair), Clairlynn Rountree, Heather Jackson, and Don Kleiner

Others present: Jay Feyler (Town Manager)

1. Meeting called to order: 6:31 p.m. by Kathleen Thornton.

2. Reading and approval of minutes for previous meetings:

Motion to take approval of minutes and put it after compiling a list of questions for the town lawyer (move item #2 to after item #5) by: Wendy Reinemann

2nd by: Josh White

6-0

3. Public Comment: None.

4. Discussion of ways to obtain public input; Jay Feyler will be attending the meeting to assist with the discussion:

Jay posed the question: are you going to have a warrant article for the June town meeting? If so, we are required to have a public hearing on it, etc.

There is a public informational meeting in two weeks. In answer to Wendy, Jay said it will be publicized via Facebook (1,500 followers), *Village Soup*, *The Free Press*, etc. but no mailings due to cost increases. In answer to Kathleen, Jay said he didn't see a big discussion and thought a deed restriction for example would pass due to not being controversial and with very little cost to it. Kathleen clarified they'd like to know what people want re: the property, as the select board would decide the warrant question wording.

Heather suggested a heads up that we're seeking input so keep an eye out, since the informational meeting is coming up in two weeks. Clairlynn added we probably won't have the attorney's response by then.

Don wondered about timing, noting no sense of panic as he watched the select board presentation.

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Jay said he's not sure the committee will be ready for the June town meeting. He added there will be a ballot in November, in which case they'd have until September, and there would still be a public hearing.

Josh favored a small basic statement in two weeks, then in June "this is coming up, we're getting serious," then a third interaction before the November ballot.

Kathleen mentioned directing people to our website. Wendy said to her it's almost two separate things: 1) what do people want? and 2) how do we do it? Perhaps they could start to separate that feedback. Kathleen added we don't have a good sense of #1. Heather said she goes back to informal access and expects, if asked, people will want a road to the top and some way to get there rather than options like a trail. Wendy brought up people thinking there would be a park and having people's expectations understood.

Josh thought options need to be limited; for example, there is not going to be a playground up there. We need to be careful about the questions.

Kathleen recapped we can do a short presentation at the informational meeting, and direct people to our drive with our documents.

Jay said her version of "presentation" may be different than his. He clarified it's informal, really for the public to talk to the board and ask them questions. There can be committee chairs there – no reason you can't stand up and say you want input from the public, this is how to do it, even hand out a little flyer. He said they try to avoid formal presentations over five minutes.

Heather suggested that during Jay's info meeting opening, he could also refer people to Kathleen's presentation to the select board on Town Hall Streams and mention the date.

Don asked Jay if the committee needs to get a request in for the budget or is there enough room in his administrative line to cover some of this. Jay said he will have to put it in the budget; it would come out of Parks & Rec. Don said in the next couple weeks the committee needs to discuss if some kind of budget request, probably \$2,000 to \$3,000 – money to print brochures, ask lawyer questions, etc. Jay said most of the legal stuff he can do out of his legal budget.

Jay said March 13 is the informational meeting date. He might have that wrong, very fine print. His drop-dead deadline for the budget request: no later than the end of March.

In answer to Kathleen, Jay said the select board will only give one choice to the voters, adding you can't give two choices on a referendum and do it correctly. He said the warrant is pretty much the same for a town meeting and referendum voting, but in town meetings you could make amendments on the floor, etc. whereas referendum is just voting and everything is through a machine.

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He noted this is why we form committees: to do research and come up with a consensus. The board goes along 99% of the time. He reiterated he does not see this as a controversial issue.

Kathleen reviewed the committee's task to research options, and the two options: a third-party or conservation easement and a deed restriction. Jay said the committee should decide on a choice unless it's a split vote; then it does come back to the board. He tells all the committees to make a decision and present it to the board, otherwise you'll be going for months. When a committee comes in with a recommendation, the board seems to be pretty much in agreement.

In answer to Heather re: ways to get public input, Jay said Survey Monkey is @ \$3.95 per user. He said we're a little over halfway through our budget and really tight on those lines – supplies, IT, etc.

Kathleen brought up press releases in *The Courier Gazette*, *The Free Press*, etc. with next meeting dates.

In answer to Heather, Jay will further check Survey Monkey costs. If you come up with the questions (which takes some time to try to do questions that aren't slanted which is always difficult to do on a committee) they could be printable. We could say the survey's on the website and have people print it off and send or email it to your email account. It would have to be mailed to the town. In answer to Wendy, Jay said it could be on his Union Facebook page. Heather said she would tally.

In answer to Kathleen, Jay said the town has email addresses on listserv but is not allowed to share them. A printable survey could be attached to listserv. In answer to Don, Jay said people opt in to listserv and added there are qualifications to get the actual list, which is a voter list, which has to go through the state; they just denied the mining people that list. In answer to Wendy, he said Union has @ 2,385 residents.

Josh asked about deadlines for the informational meeting, for June, then for November. Jay will check with Sonya on what the ballot company printing deadlines are. We must have absentee ballots 30 days before an election, and it's probably 20 to 30 days before that to get them to the printer.

Don asked about legal review for survey-type questions. Jay said we run them through the town attorney, who turns them around pretty quickly.

Kathleen and Josh clarified 60 days before the election.

Wendy suggested setting targets on the number of responses to feel confident in the information we're getting back. In marketing for example a 4% return is doing really well. Kathleen said first we'll hear from people who get the invitation, who aren't too busy, who have a stake; they are probably the people who are going to vote, too.

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Jay reminded keep the questions simple and short. He reiterated he doesn't see any conflict with this. Kathleen thanked him for coming.

5. Compile list of questions for town lawyer:

The committee reviewed material via projector. Don wondered about lifting out the presentation and making it youtube. There was discussion about Heather's lawyer questions and tech issues.

Motion to discuss the proposed legal questions gleaned from the select board meeting (question one), and approve the language that we come up with in discussion, by: Don Kleiner
2nd by: Heather Jackson

Discussion: Re: information the committee already has, how to compare and contrast as Wendy suggested: is this correct, or did we miss anything? Kathleen will pull everything together, the committee will look at it, then send to the lawyer. Heather would add the word "either" – "what would the legal process be to alter either?"

Wendy said you could put together a table for almost all these questions, with info the committee has, then the lawyer could comment on it. Don added the only real difference will be with the conservation easement there's a third party involved. Kathleen said true but if you want to change it substantially there's a court involved. Don reiterated it's a negotiation amongst the townspeople themselves or the townspeople and a third party. Kathleen added the state statute says you can do that if it doesn't substantially change the nature of the easement; if you want to substantially change the nature of the easement, it goes to court.

Phrasing was discussed, assumed implemented by a vote of the citizens said Don. Wendy offered to help do a working session addressing items such as: what differences have we missed, is this correct, if not clarify would-be questions for the lawyer.

Amended motion to handle all four in exactly the same way – spell out what we know, then just say at the end what have we missed and do we understand this correctly by: Don Kleiner

Kathleen said with the select board presentation, there was confusion about enforcement. Wendy suggested providing a definition of "enforcement." Kathleen would prefer, though it might take longer, just voting on the first motion.

First motion (above) passed.
6-0

Same motion for question two by: Don Kleiner
2nd by: Wendy Reinemann

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Kathleen urged clarification on the word “enforcement.” Heather urged clarity around who has the ability to make sure the property owner abides by whatever restrictions are on it, wherever they come from. Wendy concurred, saying we’ve been caught up in legal vs. use enforcement, so we should tease both things out as both have factual substance to this process and both will have to be looked at but not the same thing. Don said it’s management plan vs. structure, almost statute and rule – they almost have the same effect at the end of the day. Wendy suggested doing the same things with the deed restrictions and conservation easement: “here’s how you would enforce...” Don said that’s management plan stuff, still the town’s responsibility in either scenario.

Kathleen liked what Heather said because instead of saying “enforce” she spelled it out: “who is going to make sure that the owner abides by the restrictions, wherever they come from, however they’re put on.” Kathleen preferred, instead of saying “enforce,” saying “who has the legal authority to make sure that the owner of the property abides by...”

Don said voters will have the ultimate say. Heather said as a citizen she wants to know that from the attorney: if she sees the town does something not part of the restrictions, can she sue the town? Don said no but she can initiate a referendum question. Heather asked why he said no.

Kathleen said because the lawyers have said we have no standing; it’s complicated though because that’s a deed restriction. If the select board votes to put a deed restriction on the property, they can take it off whenever they want. Deed restrictions require very specific parameters. We have asked both attorneys if a citizen can enforce it. The other issue though: even though a citizen can’t enforce the deed restriction and/or sue the town, because they have no legal standing, if the town votes the restrictions in, the select board according to the town lawyer cannot directly act against them. There is legal standing to say the select board can’t deliberately go against the will of the voters.

Heather asked what happens if they do (go against the will of the voters). Don said superior court. Procedural questions were discussed. A general question for the attorney: how does a citizen go about dealing with that situation?

Kathleen would like to add the question: if the select board took action directly contrary to a citizen vote – or not upholding what the town agreed to do – what legal recourse do citizens have? Don said there is case law around abandoned roads that would be germane.

Kathleen said the other question is: how would you define the term “legal enforcement”? Who would have the ability to enforce these?

Discussion ensued. Wendy said we have a lot of that information and need to ask is it correct or not. Don said “no legal standing” is a term that got bandied about a lot in our meetings and came up almost immediately in the select board meeting. He’d like verbiage around what “legal standing” means.

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Kathleen said that was the question we asked both lawyers: if the town had a deed restriction, and the select board violated it, would the citizens have legal standing to enforce it? Both said no. We can ask again.

Josh said if we/citizens don't have legal standing, then we need to find out who does. This was echoed by Don.

Kathleen said nobody does. Wendy said, googling this, it's basically who has the right to make a claim against or seek judicial enforcement. That's where it will get tricky: who has the right to create a legal claim?

Heather said re: the enforcement piece, that Adam was asking: can an individual citizen bring a lawsuit against a third-party easement holder if they do not abide by the third-party easement agreement? This would not be a town vote. To Wendy it's the same: who could make claims if violations? Kathleen said the deed thing is very specific, and that is a great question: if we are in a third-party easement and they're not enforcing the easement, is there any legal recourse? Heather quoted Adam: under the third-party easement individual citizens of Union also wouldn't have legal standing, because that would be solely in the third party's hands. They could impress that the third party would enforce it, but they wouldn't have standing as an individual either. The language is on the google drive.

Kathleen had another question: if the town puts a deed restriction on the property and sells it, who has the legal right to enforce it? Or a third-party easement...

Motion to table above motion on question two, not wanting to vote on it without seeing it written down by: Don Kleiner
2nd by: Wendy Reinemann

Discussion followed about procedure and whether to table the motion or not.

Again, motion to table the above motion by: Don Kleiner
2nd by: Wendy Reinemann
5-1 opposed (Thornton)

Kathleen recapped all said after that tabling would just have to be rehashed. Don said no, you've taken some notes, you know kind of where you want to go with this, I just don't want to vote until I've seen what we put together there, not saying going to strike all that conversation. Kathleen said she totally gets that; it will have to be continued. She thought with the report it worked really well section by section; but she gets they didn't come to that here. In answer to Josh, she'd like as much discussion as they need so they can come to a consensus.

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Motion re: questions three and four, as the committee is doing the other pieces of putting the side by side together, that we just do another side by side on all of them by: Heather Jackson

Don urged caution.

Table minutes approval of January 11 and February 2 by: Kathleen Thornton
2nd by: Josh White
6-0

6. **Discussion of future agenda items/next steps:** Above.
7. **Set date for next meeting:** Wednesday, March 8, 6:30 p.m.
8. **Adjourn:**

Motion by: Wendy Reinemann
2nd by: Don Kleiner
6-0

Meeting adjourned at 8:04 p.m.

Respectfully submitted,

Sherry Abaldo
Secretary