

**Town of Pomfret  
5218 Pomfret Road  
North Pomfret, VT 05053**

Draft Minutes of the April 19, 2017 Regular Selectboard Meeting

Present: Sheila Hopkins (Selectboard Member), Frank Perron (Selectboard Member), Scott Woodward, (Selectboard Member), Emily Grube (Selectboard Member), Michael Reese (Selectboard Member), Ellen DesMeules (Treasurer), Art Lewin, Sr. (Road Foreman), Jonathan Williams (Assistant to the Selectboard), Karen Hewitt (Collector of Delinquent Taxes), Andrew Mann, Curt Peterson (Vermont Standard), Fire Chief Kevin Rice, and Neil Lamson

1. Call to Order: Sheila Hopkins called the meeting to order at 7:02pm.
2. Public Comment: (audio 1:23) There was no public comment.
3. Review of Agenda: (audio 1:29) There were no changes to the agenda.
4. Kenyon Hill Tree Discussion: (audio 1:52) Sheila Hopkins and Frank Perron briefed the Board on this item and there was discussion. An email concerning the Kenyon Hill Tree item shall be entered into the minutes as an attachment to the 4/19/17 Regular Selectboard meeting minutes. There was discussion by the Selectboard and the Road Foreman. A written maintenance policy was discussed.
5. Review, Discussion, and Approval of Minutes (4/05, 4/11): (audio 8:30) Scott Woodward moved, and Frank Perron seconded, to approve the 4/05 Regular meeting and 4/11 Special meeting minutes as written and prepared. There was discussion. The Board unanimously approved the motion.
6. Treasurer's Report: (audio 19:42)
  - (a) Warrants for Payment (1) Accounts Payable (2) Payroll: There was discussion concerning the warrants; there was discussion concerning vehicle (truck) repair costs and maintenance concerns. Sheila Hopkins moved, and Michael Reese seconded, to approve warrants #16074, #16073, #16072. There was discussion. The Board unanimously approved the motion. The Treasurer discussed the financial comments provided.
  - (b) Funding of Reserve Accounts: (audio 32:00) Scott Woodward briefed the Board on this item and there was discussion by the Selectboard, the Treasurer, and members of the public. Frank Perron moved, and Michael Reese seconded, to direct Ellen DesMeules the town treasurer, to fund the two rainy day reserve accounts as discussed and approved at town meeting and that the funds be maintained in the checking accounts as discussed and agreed upon. The Board unanimously approved the motion.

Emily Grube moved, and Frank Perron seconded, to fund the Bridge Reserve and the Paving Reserve as laid out in the town meeting article - to spend the

rest of the Highway Fund balance from prior fiscal years. There was discussion. The Board unanimously approved the motion.

7. Delinquent Tax Collector's Report: (audio 59:30): The Delinquent Tax Collector Karen Hewitt provided an update on ongoing delinquent tax collection efforts – another \$6,500 dollars has been collected; there was discussion by the Selectboard. Frank Perron has been contacted by parties interested in purchasing the two acres of land the town purchased at the last tax sale.
8. Road Foreman's Report: (audio 1:03:00)
  - (a) General Update: The Highway Department has been scraping, raking, and grading, and mudholes have been fixed. Allen Hill and Webster Hill have recently required the most attention. Truck 2 was sent in for service, with truck 3 to follow. Dana Road was washed out and requires fixing – there was discussion concerning this issue by the Selectboard and the Road Foreman. The Road Foreman shall develop a plan and present it to the Selectboard; a site visit may be required. Paving was discussed by the Selectboard and the Road Foreman. Paving Howe Hill Road was discussed; the Board discussed holding off on paving Howe Hill until the underlying issues are addressed. Other paving opportunities were considered. The planted Chippers' pine trees were considered – they are blocking the driveway access. Driveway access permits were discussed by the Selectboard and the Road Foreman.

There was discussion concerning the oil/water separator tank cleaning. Scott Woodward moved, and Sheila Hopkins seconded to authorize Emily Grube to sign any requisite permits concerning the underground oil/water separator tanks. There was discussion. The Board unanimously approved the motion.
  - (b) Transportation Alternatives Grant Agreement: (audio 1:23:19) The Assistant to the Selectboard briefed the Board on this item and there was discussion. Scott Woodward moved, and Michael Reese seconded, to approve and have the Selectboard Chair sign the Transportation Alternatives Grant Agreement document. There was further discussion. The Board unanimously approved the discussion. The Selectboard Assistant shall scan and submit signed grant agreement.
9. Draft Fire Alarm Ordinance and Registration Policy Review: (audio 1:27:00) Frank Perron briefed the Board on this item and there was discussion. Fire Chief Kevin Rice provided input on the draft ordinance and there was further discussion by the Board and the public. The Selectboard Assistant shall work with Frank Perron on researching this issue further.
10. Fire Protection Agreement Review: Scott Woodward briefed the Board on this item and there was discussion by the Selectboard. Additional edits were discussed. A special Selectboard meeting was considered to complete revisions to the document. A special Selectboard meeting is tentatively scheduled for April

25<sup>th</sup> at 6:30pm.

11. Local Emergency Operations Plan (LEOP) Review: Sheila Hopkins and Chief Kevin Rice briefed the Board on this item and there was discussion. Frank Perron shall work with Fire Chief Kevin Rice to finalize the document for submission. Other agenda items were discussed. 'Hazard Mitigation and Enhanced Coverage for Joe Ranger Road and Surrounding Areas' shall be added to the May 3<sup>rd</sup> Regular Selectboard agenda at 7:20PM.
12. Joe Ranger 911 Letter: (audio 2:06:21) The Selectboard and Fire Chief Kevin Rice discussed the draft letter and there was further discussion by the Board. Michael Reese moved, and Sheila Hopkins seconded to have the Selectboard approve and sign the letter attached to the 04/19/17 'agenda with attachments' document concerning Joe Ranger Road and an E-911 request. The Board unanimously approved the motion.
13. Purple Crayon Request to Bore under Stage Road: (audio 2:07:30) Michael Reese and the Road Foreman briefed the Board on this issue and there was discussion by the Board and the Road Foreman. Michael Reese moved, and Frank Perron seconded to approve Purple Crayon's Request to bore under stage road at a depth of 7 to 8 feet for an 8-inch sleeve through which a water pipe will run, and ensure that the shoulders are properly compacted so as to prevent damage to the hard pavement. The Board unanimously approved the motion.
14. Zoning Administrator Appointment: (audio 2:12:40) Michael Reese and Scott Woodward briefed the Board on this item and there was discussion. Bill Emmons' email was discussed. The option of an interim zoning administrator was discussed. Sheila Hopkins shall reach out to the town Planning Commission in the hopes that they will take up this issue at their next meeting.
15. Chippers Enforcement Issues (possible executive session): Michael Reese briefed the Board on this item and there was discussion.
16. Town Hall Maintenance Decision: This item was discussed. It shall be added to next Tuesday's Special Meeting Agenda.
17. Selectboard Correspondence: (audio 2:29:00) phone call regarding a clay pigeons shooting event at Suicide Six was discussed. Sheila Hopkins will reach out to the interested parties and invite them to discuss the event further.
18. Grounds Maintenance RFP: The Assistant to the Selectboard briefed the Board on this item and there was discussion. Michael Reese moved, and Emily Grube seconded to approve the Grounds Maintenance RFP. The Board unanimously approved the motion. The Selectboard Assistant shall publicize, post, and distribute the RFP.

19. Next Meeting's Agenda: 'Fire Protection Agreement', 'Town Hall Maintenance', and the 'LEOP Approval' are scheduled for the April 25 Special Selectboard meeting. 'Dana Road Drainage' is scheduled for the May 3<sup>rd</sup> Regular Selectboard meeting.

20. Closing Public Comments, Review of Assignments: A public comment was made regarding town budget/finances.

21. Adjournment: Scott Woodward moved, and Frank Perron seconded, to adjourn the meeting at 9:37pm. The Board unanimously approved the motion.

Date: 04/21/2017

Respectfully Submitted,

Jonathan Williams, Assistant

Approved by the Board at \_\_\_\_\_ Meeting

# Re: Agenda for 4/19

J <slewnior@gmail.com>

Sat 4/15/2017 12:58 PM

To: Jonathan Williams <jonathan.williams@pomfretvt.us>;

Cc: Sheila Hopkins <sheila.hopkins@pomfretvt.us>; Michael Reese <Michael.Reese@pomfretvt.us>; Emily Grube <Emily.Grube@pomfretvt.us>; Frank Perron <Frank.Perron@pomfretvt.us>; Scott Woodward <Scott.Woodward@pomfretvt.us>;

Dear Pomfret Selectboard:

Thank you for affording me the opportunity to be heard on the question of the Town's responsibility to clean up the Ash tree that fell this winter, the top of which remains on the easterly side of Kenyon Hill Road on the property of Russell and Karen Payne. And, Sheila, thank you for referring me again to the audio recording of the Selectboard's 4/5/17 meeting. I had trouble accessing it on several attempts, but have managed to listen to it before sending this email.

Unfortunately, I will not be able to attend the 4/19/17 meeting. Please accept this email submission as you consider the question on the agenda this coming Wednesday. I would appreciate it if this email could be made part of the record for that meeting.

Having now listened to the recording of the 4/5 meeting, here are my thoughts and positions concerning the Town's obligation to clean up the remains of the Ash on the easterly side of Kenyon Hill Road. [I have chosen to quote various comments made by persons in attendance on 4/5, as transcribed by me from the audio record, as a way to illustrate how I view \(and think the Town should view\) the situation:](#)

Woodward: "When it comes to dead and diseased trees - which is a trickier subject because sometimes it's hard to tell - it essentially is the Town's responsibility to remove the entire tree." (starting at 59:00 of the recording contrasting downed trees resulting solely from "storm damage")

Mr. Woodward correctly, to my understanding, notes the limits of the Town's responsibility when a storm takes down a healthy tree -- only what falls within the road or right of way.

When it comes to diseased or dead trees, I believe his is also a correct statement of the Town's responsibilities, particularly with the restrictive, mandatory language of the applicable Town "Highway Ordinance" which reads, in pertinent part:

"Dead and diseased trees shall be removed."

The provision falls within the Standards 5.3 section pertaining to "Right of Way" in subpart c. It is an absolute, unqualified responsibility. Any diseased or dead tree located within the right-of-way of a public highway in the town of Pomfret that falls must be removed by the Town regardless of what caused it to fall. The reason is that the Town, by adopting the ordinance, accepted responsibility and any resulting liability for diseased or dead trees. The purpose of the ordinance is to protect the road from damage, and also to protect the traveling public from the risk of and actual injury from trees that are more vulnerable to winds, storms, culvert/drainage impact on roots, etc. The Town's responsibility for the tree does not shift to others because it fell in a "storm" or was "uprooted," which really was the sole focus of the discussion on 4/5/17:

Discussing why the Ash tree fell:

Moore or Hopkins(?): "It obviously came down in a storm." (1:02:44)

Woodward: "I don't know why it came down." (1:02:00)

Lewin: "Fell over. It's not dead or dying. It's just a tree...fell over." (1:00:47)

Again, if the tree was dead or diseased, the mandatory language of the ordinance imposes a non-discretionary obligation on the Town to remove the tree -- and failing to remove it carries with it absolutely responsibility in the Town to clean it up if it falls before it is removed. I'm not sure why the Town drafted an ordinance in this manner. It appears to me it is in excess of the obligation created in the Town by Vermont statutes and case law.

Discussing whether the tree was dead or diseased:

Woodward: "It's an Ash tree. So, there's no active diseases killing Ash trees, as far as I know." (1:01:00, then noting correctly that the Emerald Ash Borer has not yet been confirmed in Vermont)

It is not clear to me why the Tree Warden is not familiar with "Ash Yellows," Candidatus Phytoplasma fraxini: [www.vtinvasives.org/invasive/ash-yellows](http://www.vtinvasives.org/invasive/ash-yellows). Unfortunately for me, it is becoming all too common, and it has killed or is close to killing over a dozen mature White Ash on my property, all roughly in a straight easterly line from the Ash that fell over the winter on the road.

The Ash that fell was, I firmly believe, stricken with Ash Yellows several years ago. It was dead, and if not dead severely diseased. If one looks at the remains of the canopy of that tree as it now sits on Payne's property, it was long since dead. Upon impact, the canopy branches shattered all the way back to branch diameters of between 3-6 inches. A live or healthy tree that fell in a storm would not show the same shattering of branches of the canopy. As well, one hallmark of an Ash stricken with Ash Yellows is a stump that produces "water-shoots." Several such shoots are on the stump that is lying on the westerly side of Kenyon Hill Road. Most are dead, one or more show some minimal signs of life upon being snapped.

I urge the Town to look again at the tree, educate itself about Ash Yellows, and then kindly send the Road Crew up to clear the top of the tree from Payne's property to meet its obligation assumed by ordinance.

A couple of additional thoughts I'd offer after listening to the recording of your 4/5/17 meeting.

Lewin: "The Town doesn't own any land on Kenyon Hill." (1:04:15)

The tax map suggests this conclusion is correct. However, it may be worth looking at a deed I've read quickly, a conveyance made by Richard O. and Judith M. Palmer to the Town of Pomfret. My apologies for not having a good record to offer from my notes, but it may be a deed issued 11/23/88, recorded in Volume 37, Page 328 of the Pomfret Land Records. This was a conveyance (apparently in fee simple absolute, and not just an easement) made in connection with the relocation of the first section of Kenyon Hill Road back in the late 80's(?). I have not completed my look at these deeds, so it may be that the subsequent history of the conveyance will support Mr. Lewin's conclusion. If not, it may well be that the Town owns the Ash that fell. The same responsibility of the Town would attach, so I thought I'd mention it based on what I see from a limited review of the land records.

Moore: As a proposed policy (paraphrased by me), "unless a landowner notifies the Town within a period of time that they want the wood, the Town should take it and dispose of it."

I believe such a policy, if adopted and carried out, would be contrary to Vermont law, and would unlawfully involve the Town in taking private property from landowners in Pomfret in a manner that may result in liability.

I'm also a bit troubled by our Road Foreman/Tree Warden's reaction at the meeting to the suggestion that landowners be asked if they want wood from fallen or downed trees in the right of way. I'm also troubled by what seem to be inconsistent loyalties and responsibilities created by having the Road Foreman also hold the position of Tree Warden.

Perhaps those are things the Selectboard may want to consider as it attempts to develop a Tree Policy -- although, as might be clear from this email, I think the entire effort is likely frustrated by an extraordinarily broad ordinance concerning dead and diseased trees, one that affords the Town absolutely no discretion in choosing what trees to remove, when to remove them, and its responsibility when those trees come down when not previously removed from the right of way. And with the number of Ash trees in the right of way below my house, let alone in the entire Town, I don't envy the road crew if Ash Yellows takes hold of them as it did the tree that fell and the dozens elsewhere on my property.

Thank you for taking the time to read this email and for the opportunity to be heard on this question. I wish the Selectboard every success as it seeks to develop a policy, and I look forward to the removal of the remains of the Ash tree on Kenyon Hill Road. My sincere apologies for not being able to join you on 4/19/17.

Please feel free to contact me if you have questions or would like to take a tour of my Ash groves that are afflicted with Ash Yellows.

Sincerely,

Jeff White  
802.356.6710