

MAY 20, 2020
SELECTBOARD MEETING DRAFT MINUTES

Present: Emily Grube, Steve Chamberlin, Scott Woodward, John Peters, Chuck Gundersen

Public: Jim Potter (Road Commissioner), John Moore (Planning Commission), Ben Brickner (Zoning and Auditor), Cathy Peters, Ellen DesMeules (Treasurer), Neil Allen (VT Standard), John Ricketson, Richard Martin, Cynthia Hewitt (SB Assistant)

1. Emily called the meeting to Order at 7:03
2. Public Comment: None
3. Agenda Review: Bartlett Brook Road wandering dog issues
4. Recurring Items:
 - a. Approval of Minutes. Emily moved and John seconded that the minutes be accepted as per suggested changes offered by Scott during discussion. Unanimous roll-call vote
 - b. Emily moved and Steve seconded approval of the following warrants for payment:

#19109	\$	261.21	Tax refund
#19110		922,510.43	Accts payable
#19114		5,604.60	

Unanimous roll-call vote
5. Items for Discussion or Vote
 - a. Road Commissioner Report: The crew has been ditching Howe Hill. All culverts are in and the project is moving along nicely. They are also ditching and grading the north end of town. The pick-up was in for repairs and needed tie rods – total repair bill was \$2714.36. Crack sealing has finished up. Cy Benoit will continue to seek Timber Tenders taking out trees in South Pomfret. The #2 truck will need inspection at the end of June, which is necessary in order for trade-in. The grader needs an integral part for repairs, Steve moved and Emily seconded authority to purchase the part for \$2700; unanimous roll-call vote. Jim will order the part.
 - b. Howe Hill Adjustments
 1. Trenching – the town crew is taking care of this.
 2. Culvert choice – the higher cost of the polypropylene culvert was offset by using fewer linear feet and due to the town removing 3 headwalls. Jon Harrington will be invited to the next meeting for his input.
 3. Windrowing – Sharon is in agreement that Pike do the windrowing, Jim agrees and has discussed with Pike.
 - c. Teago Store – Road closure. The construction foreman for the Teago renovations would like permission to close part or all of the Pomfret Road to allow safe use of staging, ladders, etc. while performing outside renovations. John moved and Scott seconded that this be allowed from 06/01-10/15/2020. However, Fire Chief Kevin Rice and Shawn Pickett will be consulted re: the impact closure will have on their needs. Unanimous roll-call vote.

- d. Sand bids were received from D&D and Twin State. Steve moved and Emily seconded that the contract go to D&D at their stated price of \$9.45/ton delivered. Emily will contact them. Unanimous roll-call vote. Bids are attached to these minute,
- e. Truck RFP – Steve and John have met and determined the RFP can be a duplicate of last year’s submitted bid for the 10-wheeler. The board agreed. The RFP will be submitted.
- f. Dan Maxham driveway permit – Chuck and Jim performed a site visit with Dan and found necessary site lines and access were adequate. Ledge does not pose a problem. A culvert needs to be replaced. Emily moved and Steve seconded that the Permit be issued with the addition of Mr. Maxham replacing the 18’ culvert. Unanimous roll-call vote.
- g. Ratification of Zoning Regulations. John moved and Steve seconded that the Board Vote to Ratify and Confirm the Selectboard' Action of May 6, 2020 Adopting Zoning Regulations. The motion passed with a roll-call vote of 4 to 1. Scott submitted a letter he would like to add to the minutes (attached).
- h. What improvements would the Board like to see in the amended regulations: Scott recommended adoption of a quantitative sound standard and encouraging economic enterprises aside from industrial uses. For example, Scott mentioned that the zoning regulations prohibit primary retail establishments in the Rural District which would preclude a hardware store or another Teago General Store in North Pomfret. Scott asked why we wouldn’t expand to even more mixed uses in the Rural District and allow the Zoning Board of Adjustment to conditionally review these kinds of uses in the same way as light industrial uses. Scott also mentioned that the Town could do more to create affordable housing, i.e., allowing 1-acre building lots. John Moore stated that the Planning Commission met on Monday (05/18/2020) and began working on a town-wide survey. He also reported that an analysis of the towns in Two Rivers (TRORC) showed that some towns don't have any zoning at all, while the others that do have zoning have different kinds of sound standards, including a nuisance-based sound standard. The results of the survey will be useful.
- i. Tax Payment Delay – premature to discuss since no information has come from the State at this time. Scott stated that we may not have as much time as we think we do and that we probably have the June meetings to make a decision since the tax bills have to go out in July. The board will likely need to make decisions soon with the new fiscal year starting in July as well.
- j. Compensation Package. Scott has looked at base wages of road foremen in towns within a 20-mile radius of Pomfret (as the board had previously discussed this as the “market area”). He determined, based on the data available in the VLCT compensation survey, that if the Board wishes to adjust Jim’s base wage, that it could comfortably do so in the range of \$26-27/hour as this range is above the average for state-wide and for the towns in a 20-mile radius from Pomfret. The Board also briefly discussed the annual review for Jim, which is tentatively scheduled during an Executive Session at the 06/17/2020 meeting. Cynthia also needs an annual review.
- k. Wandering Dog Issues – John reports two incidences of a menacing dog on the Bartlett Brook Road. These were in direct violation of the leash laws. Emily and John will prepare letters to be sent to the dog owners and circulate with the other Board members prior to sending. Scott suggested the Sheriff could be can be enlisted

in lieu of a Constable in dog issues, as the Town's Dog Ordinance calls out that the Windsor County Sheriff's Department could be used as a contractor to handle enforcement matters.

1. Atty. Joe McLean requested advice in how to respond to a letter from Purple Crayon/Artistree counsel re: sound regulations. Emily moved and Chuck seconded that he be advised to state that the Zoning Regulations had been adopted and ratified and were now in effect. Unanimous roll-call vote
6. Meeting Wrap-Up
 - a. Correspondence has been shared
 - b. Review of Assignments: Emily to contact D&D; send letters to dog owners; Steve and John truck RFP. Chuck to contact Shawn Pickett re: road closure; Steve to contact Fire Chief re: road closure; Dan Maxham driveway permit
 - c. Agenda items for next meeting: Truck RFP, Jon Harrington re: Pike, culverts, etc., Selectboard policy updates
 - d. John moved and Steve seconded Adjournment at 9:30 pm. Unanimous.

May 20, 2020

Subject: Adoption of Pomfret Zoning Regulations

I do not expect the Selectboard to make a different decision tonight than it did at the May 6th meeting. However, I would like to again state for the record the two main issues with the adopted zoning regulations. While I understand that there are several people who are upset with me for being vocal about my criticism of the zoning regulations, I feel it's my duty as a Selectboard member to ensure that the public is aware of what I believe are flaws in the regulations. I sincerely appreciate the work of the Planning Commission. I am not trying to pick a fight, but it's my view that the Town as a whole benefits from having greater visibility and discourse on the issues. There are more issues with the zoning regulations than those highlighted below, but these two are the most important.

Absence of Sound Regulation. The zoning regulations should not have been adopted without a sound provision. The initially proposed July 2019 regulations included a sound provision, which the Selectboard struck from the regulations in January of this year. It was argued in January of this year that we don't have sound issues in Pomfret and therefore there's no need for sound regulation. But one of the main purposes of zoning is to prevent conflicts from occurring. It's the responsibility of government to be proactive instead of being reactive. Quantitative regulations are proactive. The need for sound regulation is even more important because, in the new zoning regulations, the Rural District is essentially now a mixed-use district with fewer restrictions than in the Village District. Moreover, there's a deep under-appreciation for the difficulty in relying on nuisance law to abate sound problems. In fact, application of nuisance law in regard to sound issues is how the Town ended up in litigation with Purple Crayon productions.

Ironically, after voting unanimously to adopt the proactive, quantitative sound provision included in the settlement agreement with Purple Crayon Productions, the Board reversed course, striking the sound provision from the regulations, putting the Town back in the position of having to rely on nuisance law. Aside from the argument that we don't have sound issues in Pomfret, the sound provision in the settlement agreement was also rejected because it was purported to be too restrictive and because it would be too difficult to enforce. Both of these assertions are not correct.

As it relates to regulating daytime noise, the standard in the originally proposed zoning regulations and in the settlement agreement are identical with a maximum of 70 decibels (dBA), as measured at the property line (the equivalent of a running vacuum cleaner). The only difference between the two standards is that the sound standard in the settlement agreement included a reduced decibel level between the hours of 10pm and 7:30am at 45 dBA as measured inside the building (the equivalent of rain falling or a refrigerator running) whereas the originally proposed zoning regulations did not include any nighttime restrictions. It's not unreasonably restrictive to have a nighttime limit. ***Originally proposed sound standard in the July 2019 version of the zoning regulations, before the Selectboard voted to remove all sound standards from the zoning regulations:

Noise. With the exception of customary activities incidental to residential uses, activities that emit noise in excess of 70 decibels (dBA scale of a standard sound meter) at the property line are prohibited.

***Sound standard included in the settlement agreement with Purple Crayon:

Sound levels shall not exceed the following limits:

		Location	One Hour Equivalent Average dBA (L_{1h})	Instantaneous Slow-Response Maximum dBA (L_{Smax})
Daytime	Between 7:30am and 10:00pm	Property Lines	70 dBA	80 dBA
Nighttime	Between 10:00pm and 7:30am	Dwelling or Temporary Lodging Facility	45 dBA	60 dBA

The standard in the settlement agreement were modeled on Act 250 and passed through both legal and engineering reviews. Subsequent to rejecting the sound standard in the settlement agreement, the same engineers consulted by the Planning Commission characterized the settlement’s standard as “superior to most existing noise ordinances, including Pomfret’s current by-law.”

There is also an issue of fairness as it relates to the lack of a sound standard in the zoning regulations. As part of the settlement agreement between the Town and Purple Crayon, a gentlemen’s agreement was made with Kathleen Dolan that her properties in South Pomfret would have to play by the same rules as everyone else in Pomfret. It was never the intent that the Grange Theatre would be the only property in Pomfret with a quantifiable sound standard. This is the principle that underpinned the negotiations and Kathleen relied on the agreement that the Selectboard would make the sound standard in the settlement agreement a town-wide standard.

In fact, the standard was designed so that it would fit throughout Pomfret, not just South Pomfret. Now, suddenly, there seems to be collective amnesia in having made this promise. If we really are a community where someone’s word means something, then it was morally wrong, in my opinion, to have walked away from that agreement for no good reason. There is absolutely nothing wrong with the sound standard contained in the settlement agreement.

Conformance with the Town Plan. Pomfret’s Town Plan contains specific language related to industrial uses, language intentionally drafted to limit where industrial uses are allowed to be located in Pomfret. This language was included in the 2016 amendment to the Town Plan after the Two Rivers Ottawaquechee Regional Planning Commission (TRORC) pointed out in its “enhanced review” that the Town had not taken an affirmative stance on the placement of industrial uses. State-wide land use planning goals center on compact village centers with

preservation of outlying rural areas. It was to support this goal that prompted the Planning Commission to write the specific and commanding policy language now in the Town Plan, as it applies to the rural area:

“Residential, agricultural, and forestry uses are to be the primary and dominant land uses in the Rural Residential Area. Except for new home-based businesses, secondary retail, or existing commercial or industrial activities, ***new commercial or industrial activities not associated with home-based businesses shall not be located in the rural areas.*** Primary retail activities shall not be located in the rural areas.” (emphasis added)

The Planning Commission has rested on the premise that state law does not require strict conformance with the Town Plan. While this may be true, in its municipal reporting form, which is required by law, the Planning Commission did not address how conditionally permitting industrial uses in the Rural District “conforms with or furthers the goals and policies contained in the municipal plan.” In fact, the changes in regard to industrial uses are not even mentioned in the February 17th, 2020 municipal reporting form (see below).

(B) And shall include findings regarding how the proposal:

1. Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing:

The draft ordinance brings the zoning into conformance with the Pomfret Town Plan adopted August 17, 2016, by designating land use areas that align with the future land use map attached as Exhibit C of the Plan. The draft ordinance also allows for development of multi-family housing and accessory dwelling units to ensure a variety of housing options are available to residents.

2. Is compatible with the proposed future land uses and densities of the municipal plan:

The draft ordinance is in conformance with the Plan as land use areas are based on the text and future land use map from the Plan.

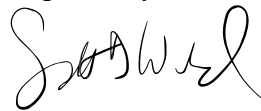
Additionally, contrary to what has been stated publicly, there has not be a formal legal review as to whether the specific language in the Town Plan requires stricter conformance since the prohibition on stand-alone industrial uses is stated as “*shall not be located . . .*” This is an important piece of due diligence that should have been completed before adopting the zoning regulations.

Noteworthy is that in the adopted zoning regulations, primary retail establishments are prohibited from being located in the Rural District, which is consistent with the Town Plan. But the main argument for having changed the zoning regulations to conditionally permit stand-alone, light industrial uses in the Rural District was to allow the ZBA to review potentially worthy economic enterprises. Based on that logic, and if strict compliance with the Town Plan is not required, why wouldn't the zoning regulations similarly allow primary retail establishments in the Rural District, such as another Teago General Store, or a hardware store? The reasons offered for conditionally permitting light industrial uses in the Rural District is logically inconsistent with not allowing other kinds of businesses to be established in the Rural District. Aside from potential conformity issues, the logical inconsistency is problematic. The better course of action would have been to hold off on conditionally

permitting stand-alone, light industrial uses in the Rural District until the Town Plan is amended.

It's not clear why there was such a rush to conditionally allow stand-alone, light industrial uses in the Rural District. The new zoning regulations do not legitimize those light industrial uses already in existence. If existing industrial operations have not been complying with permit conditions all this time, then that would mean we've had historical enforcement issues. It's more likely that these industrial uses would be grandfathered in as permitted uses under the now "old" zoning regulations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott Woodward". The signature is fluid and cursive, with the first name "Scott" and last name "Woodward" clearly distinguishable.

Scott D. Woodward
Pomfret Selectboard
Scott.woodward@pomfretvt.us
(802) 332-3953
www.forestandwater.com

This letter is subject to the Vermont Public Records Act, 1 V.S.A. §§ 315-320. Any views presented are my own and do not represent the collective views of the Selectboard, unless otherwise indicated.

D & D EXCAVATING, INC.
P.O. Box 179
Hartland, VT 05048

Matt Dow
(802) 291-1551

Mark Dow
(802) 291-3260

May 8, 2020

Town of Pomfret
Attn: Pomfret Selectboard
5218 Pomfret Road
North Pomfret, VT 05053

Dear Selectboard:

RE: 2020 – 20201 Screened Sand Bid from D & D Excavating, Inc.

Please find below our bid for the 2020 – 2021 winter season for screened sand to be hauled to Pomfret.

- 2,450 yards (equivalent to 3,500 tons) of screened sand – price delivered to Town Garage, 100 Labounty Road, Pomfret, VT 05053: **\$13.50/yd (~\$33,075) or \$9.45/ton (~\$33,075).**

Please contact Matt Dow at (802) 291-1551 or Mark Dow at (802) 291-3260 if you have any questions pertaining to this bid.

Sincerely,



Tricia Cornelius
D & D Excavating, Inc
P.O. Box 179
Hartland, VT 05048