

**Town of Pomfret Selectboard Meeting Agenda**

5238 Pomfret Road  
 No Pomfret, VT. 05053  
 Wednesday, June 3, 2020  
 7:00 p.m.

Agenda	Presenter	Time Frame
1. Call to Order	Chair	7:00
2. Public Comment		7:05
3. Agenda Review		
4. Recurring Items a. Approval of 05/04 & 05/20/2020 Minutes b. Warrants for Approval		
1. Items for Discussion or Vote a. Road Commissioner Report b. Howe Hill Project 1) Jon Harrington 2) Soil Compaction Studies approval 3) Financial Issues, Pike Bills c. Letter to Dog Owners d. Covid 19 and Selectboard Meetings e. Teago Store Project – Curbing, Intersection, Etc. f. Policies and Ordinances that need updating or creation		
5. Meeting Wrap-Up a. Select Board Correspondence b. Review of Assignments c. Agenda Items for Next Meeting d. Meeting Adjournment		

<https://zoom.us/j/95395079923?pwd=ZjBEEd3ZuZWgvWmx2M0tpOE8zbjg2dz09>

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Town of Pomfret Selectboard Meeting  
Zoning Hearing  
May 4, 2020  
Draft Minutes

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

Public: Irispoli, Wild Apple, Jane, Cy Benoit, Tree Warden, Alan Blackmer, Zoning, Ben Brickner, Zoning, Katie Brickner, Bob Crean, Marie, Cross, Dot, Deans, Phil Dechert, Zoning, Ellen DesMeules, Treasurer, Bill Emmons, Planning Commission, Kristin Etsy, Jerry Fields, Erika Gebhart, Kevin Geiger, Moderator, Alan Graham, Jon Harrington, Cynthia Hewitt, Selectboard Assistant, Lyndsy Hyde, Margaret Kannestine, Laura & Sherman Kent, Craig McCrae, John Moore, Planning Commission, Lamson Nelson (& Carol), Planning Commission, Bob O'Donnell, Karen Osnoe, Zoning Administrator, Cathy Peters, Pam Pickett, Ann Reynolds, Planning Commission, Betsy Rhodes, Library Trustee, John Ricketson, Harold Schwenk, Betsy Siebeck, Lydia Spitzer, Orson St. John, Planning Commission, John Wright, Ellie Pizzani

Kevin Geiger, the Moderator, welcomed attendees to the Zoning Regulation Hearing and obtained roll-call attendance. The Selectboard is here to listen to the public. He stated he would ask each attendee in turn for their comments.

Emily Grube, Chair of the Selectboard, Called the Meeting to order at 7:10 pm Via Act 92 Providing Public Access through Zoom. She will be reading two letters from residents who wish to be on record at the end of the hearing.

There was no Public Comment.

Mr. Geiger then asked individual attendees for their comments. He had the Zoning Ordinance on his screen for all to view in case a particular point needed highlighting.

Graham – No comment

Raynolds – No comment

Siebeck – Would like to delay her comments until after listening to the other public comment

B. Brickner – No comment

Rhodes – No comment

Emmons -- Read the May, 4, 2020, Planning Commission letter to the Selectboard. It addressed the incorrect and misleading commentary in the Standard and via Listserv. He also stated that the Ordinance need not mirror the Town Plan, only conformance was needed. Mr. Emmons' letter is attached to these minutes.

Crean – No comment

Lamson – No comment

K Brickner – No comment

Gundersen – Thanked Bill and the Commission for tremendous time and effort

McCrae – Re: Businesses – are there any pending permits, and if so, what type? Bill Emmons stated there are no new inquiries, however, he imagined such businesses would be auto shop, paint shop, construction, etc. The State defines anything commercial as industrious,

i.e., artists, barbers, etc. Mr. Emmons also explained the State mandated the Town to name an industrial “Zone” and thus South Pomfret was chosen. Kevin pointed out the areas defined in the Ordinance.

Dean – Who is the Town’s legal counsel; Scott Woodward stated it was Stichel, Paige, & Fletcher from Burlington.

Benoit – No comment

Elly – When she first moved to So. Pomfret a carpentry shop next door ran a buzz-saw, which was annoying

Peters, C. – No comment

Grube – No comment. Emily did state she was grateful to all for participating this evening.

Schwenk – Thanked Bill Emmons for the letter which clarified recent Listserve and Vt. Standard confusion and also applauded the work done by Planning Commission for a job well done.

Field – No comment

Blackmer – Thank you on behalf of the Zoning Board. The changes will be very helpful in decision-making. However, he did reiterate his suggestions to the Board at the 01/08/2020 Hearing regarding stronger language granting authority and enforcement to the ZBA.

Jane – No comment

Moore – No comment

Peters, J – Thanked Bill Emmons and John Moore for their work. J. Peters would like to comment re: sound provisions, at the end of the commentary.

Wright – No comment. Happy to have the confusing Listserve discussions sorted out.

Ricketson – No comment. He has never seen so much discussion over issues and feels he needs time to absorb due to the Listserve activity.

Osnoe – No comment

Esty – No comment

Kent – Would not like to wait six-months for this to pass, it will be a process with future improvements anticipated

Hyde – No comment

Irispoli

Spitzer – No comment

Kannestine – Thanks for all the work. She is concerned about future sound and light issues and would appreciate some follow up.

Cross – No comment

Pickett – Appreciates the work that has gone into the process. She does think the noise standards and measurable decibels should be reconsidered.

Dechert – When he thinks “industrial,” smoke stacks and lots of noise come to mind. However, he feels the new Bylaws need to be adopted and put into use as the Zoning Board cannot go any longer without a working ordinance. He feels after 18-24 months any issues that arise could be addressed and necessary changes effected. In the meanwhile, he is sending some notes to the Selectboard and the Planning Commission, rather than discuss in this forum.

Woodward – Applauds the work of the Planning Commission and is pleased this healthy discussion has resulted. Scott states that the Legislature has provided the ability to extend deadlines, and that the new Ordinance is actually already in effect. There is time to create conformance with the Town Plan. The plan uses intentional language. He feels that omitting the sound provision, though he did vote to do so, has broken a “gentlemen’s

promise” with a Purple Crayon settlement agreement. He also reminded attendees that this is the first time the current version of the Bylaws has been considered.

Chamberlin – No comment

O’Donnell – Thanks the Planning Commission for a job well-done

DesMeules – Encourages the public to compare the old Zoning Ordinance to the new before advocating holding off on adoption. The Bylaws need to be brought into the 21st century using new guidelines and standards. For example, the old has no provisions for traffic safety, parking, lighting, screening impact, run off, etc. She applauds the Planning Commission.

St. John – Supports the encouragement of home-based business and encouraged the audience to look specifically at Articles 4.1 and 4.2, which provide the Board lots of guidance to preserve the rural character. Mr. St. John also thanked Phil Dechert for all his work over the years.

Raynolds – Thank you to Ben Brickner for all his expertise in helping the Planning Commission,

Peters, J – Feels the removal of a sound provision was not a bad idea, but there have been no issues. By having a sound provision, the potential for lawsuits exists. He feels the Ordinance needs to be adopted as quickly as possible so the potential for a viable source of income is available for any new residents.

Siebeck – Thanks to the Planning Commission and all Board members and employees. She feels an in-person meeting would be more preferable to this electronic version but believes Kevin is doing a wonderful job. She stated that Billy wrote a good letter. She feels rigorous review and strict standards cannot be enforced without a noise ordinance. If a noise impact analysis were to be done, there is nothing to compare it to; as well, nuisance standards are difficult to prove. Ms. Siebeck has been in touch with Brandy Saxton, a professional planner, now the planner of Addison County. Ms. Saxton had provided a report to our Planning Commission some time ago. Ms. Saxton stated that town-wide industrial use is not common. Ms. Saxton also conveyed that the language used in describing our nuisance standards is old and not common or recommended. She also felt that most towns have noise standard ordinances. Ms. Siebeck has two possible solutions which would provide “breathing room” to the Selectboard. 1) Take a vote now on the ordinance that was put forward in July, the ordinance that did not have stand-alone light industrial as a conditional use in the Rural District and did have a noise standard. Then the changes of town-wide light industrial and a meaningful sound standard can be discussed in future hearings or meetings, hopefully in person. Any changes to the ordinance can be made at this point. 2) Take a vote now on the ordinance with the amendments in place, but the Selectboard will also create a moratorium on any light industrial permits until such time that the town can give input, hopefully in person, regarding both the concept of stand-alone light industrial in the Rural District and the adoption of a meaningful sound standard. Any changes to the ordinance can be made at this point.

The Moderator recapped that the key points of this Hearing seem to be the town-wide light-industrial development and the sound standards. He reminded participants that this was a Hearing and no decisions would be made. He then turned the meeting back to Chairman Grube, who read into the minutes letters from two residents who wished to be heard – Bob Harrington and Doug Tuthill. These letters are attached. Emily spoke of the history of Trafalgar Square which grew from a home-based business which grew from 2 employees to 40 employees and

larger buildings; with 7-8 tractor trailer deliveries each day. They came in as a home-based business and did indeed change activity and the required services. There was no opportunity for business unless it was home based. Businesses have seemed to slither in via agricultural or forestry or other avenues – it is really time to look at bringing soft industries to town so people can earn a living and not have to drive elsewhere to work. This light industrial activity gives the opportunity for such people to come into town.

Emily thanked participants for joining the meeting and felt the turnout was critical. Emily explained the Selectboard would determine the path forward, beginning at its May 6, 2020 meeting. She has an opinion from a VLCT Attorney that needs to be considered. The Board will determine if there needs to be another hearing. She also thanked Kevin Geiger for a fantastic job on his own time and entertained a motion to adjourn. Scott Woodward moved and John Peters seconded adjournment at 9:17 pm. Unanimous vote.

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## TOWN OF POMFRET, VERMONT

PLANNING COMMISSION

May 4, 2020

Selectboard  
Town of Pomfret  
5218 Pomfret Road  
North Pomfret, Vermont 05053

To the Selectboard:

There have been several listserv messages and a *Vermont Standard* article with information about the draft Zoning By-law to be discussed at tonight's public hearing. The Planning Commission feels that some of this information has been incorrect or misleading. As you will soon decide how to proceed on the draft, we feel it is important to correct the record immediately.

It has been argued that the 2016 Town Plan completely prohibits any allowance in a Zoning By-law for light industrial uses not associated with home-based businesses in the Rural District. We disagree. The Town Plan does not define "industrial" uses, nor does it distinguish between "industrial" in general and "light industrial" in particular.

The draft By-law does provide these definitions and distinctions, consistent with the Regional Plan. We believe this represents an improvement upon the Town Plan, as the draft By-law carefully defines "Light Industrial" in a manner that could make these uses appropriate in the Rural District under certain, limited circumstances.

As you know, Pomfret's Zoning By-law need not mirror the Town Plan in all respects. State law only requires "conformance", which has been interpreted by the Environmental Division as requiring overall "harmony, agreement, or compliance" and not duplication. The town's attorney has advised us accordingly. We believe the draft By-law easily meets this standard.

Moreover, the *Standard* was incorrect that "the Planning Commission has moved to permit standalone light industrial uses in the Rural District". This omits a critical distinction between "permitted" uses and "conditional" uses requiring a ZBA hearing and approval. The draft By-law subjects standalone light industrial uses to a rigorous review process and numerous development standards, all intended to avoid adverse impacts, just as the Town Plan requires.

The Planning Commission believes standalone light industrial uses are at least worth considering in the Rural District under appropriate circumstances. An example could be future uses of the Prosper Valley School, should that facility be returned to the town. Indeed, standalone light industrial uses already exist in the Rural District today. The Planning Commission does not wish to prohibit these uses entirely, but rather allow a narrow opportunity for an applicant to come

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before the ZBA and have their proposal reviewed under the draft By-law's development standards.

Regarding process, a Selectboard member was quoted in the *Standard* as saying the Planning Commission "has not offered an explanation" for changes made after its July 2019 hearing. This is not correct. Light industrial and other changes were explained in my February 17, 2020 letter to the Selectboard, which was discussed at length at your February 19 meeting, at which the quoted Selectboard member was present.

Similarly, in a listserv message, a resident wrote that the light industrial change "was neither formally conveyed to the public nor to the Selectboard". This is also incorrect. This change was conveyed to the Selectboard and published on the town website in November, ahead of the Selectboard's January hearing. It was discussed at the January hearing and at multiple Selectboard meetings thereafter.

In the same listserv message, it was stated that a sound standard was deleted "as one of the recommendations made by the Planning Commission". This is misleading. The Commission recommended a 70-dB standard (taken from Woodstock's zoning) in its November 2019 draft to the Selectboard. This standard was in fact strengthened after the July 2019 hearing in response to a public comment *by the individual who sent the listserv message*. Moreover, deletion of the sound standard was a *unanimous* decision of the Selectboard, as one of three options presented by the Planning Commission.

The same listserv message also states that "all sound limits have been removed from the regulations . . . day or night, every day, any sound, regardless of how loud, is allowed". This, too, is misleading. The current By-law does not contain a sound standard. The draft By-law maintains the status quo in this respect. Moreover, the current By-law and the draft By-law both prohibit nuisances. Some sounds at certain times and/or certain volumes would be prohibited under the draft By-law. And among the many things the ZBA can require of applicants during a conditional use review under the draft By-law is a noise impact analysis.

\* \* \* \* \*

As you know, the draft By-law has been in progress for several years. It was developed by the Planning Commission, with advice from two professional planning firms and legal counsel. It also has been discussed at two prior hearings, many meetings of the Planning Commission and several meetings of the Selectboard.

Following so much public process, the Planning Commission is surprised by the late attempt to delay adoption of the draft By-law indefinitely. And we are dismayed that this has resulted in inaccurate and misleading comments being made, to the detriment of both the interested public and the Selectboard who now must decide how to proceed. As you do so, we urge you to focus on the following questions:

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**Was the process legal and legitimate?** Thanks to Two Rivers and the town attorney’s guidance, we know that all legal steps have been properly taken. Whether the process has been legitimate is for the Selectboard to decide. We believe it has been. There will have been three public hearings and numerous public meetings as of tonight. This has afforded ample opportunity for public input, and more opportunity than is required.

**Is the current draft better than the alternative?** We believe so. A survey of residents’ views on future development has been proposed, as have amendments to the Town Plan. These are excellent suggestions, and they can inform future revisions of the Zoning By-law. But if either is to be completed before action is taken on the current draft, the town must be prepared to live indefinitely with the current By-law. This document is out of date and already has been the focus of a dispute resulting in substantial legal fees. We believe there is considerable risk in delaying the current By-law’s replacement much longer.

\* \* \* \* \*

In another listserv message, the Selectboard member stated that the life of the draft By-law can be “extended indefinitely”. This is not accurate. By-law amendments not approved within a certain time are deemed disapproved under state law and must restart the adoption process. The current deadline is July 23, which might be extended a short while under the governor’s COVID-19 emergency order. But the town’s attorney has advised against relying on this uncertain possibility, and expressed his preference that the town meet the original deadline if possible.

We believe the Selectboard should assume the July 23 deadline remains in effect, and that any further delay will require the adoption process to begin anew, leaving the current Zoning By-law in place for months or even years longer.

Thank you for this opportunity to provide our feedback. We look forward to hearing additional input at tonight’s hearing.

For the Pomfret Planning Commission,



*William B. Emmons, III, chair*

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**From:** Bob Harrington <[bobsharrington@gmail.com](mailto:bobsharrington@gmail.com)>

**Subject:** Zoning

**Date:** May 4, 2020 9:18:59 AM EDT

**To:** [emily.grube@pomfretvt.us](mailto:emily.grube@pomfretvt.us)

**Cc:** John Moore <[jmooreinc@gmail.com](mailto:jmooreinc@gmail.com)>

Hi Emily. I won't be on the zoom tonight, but ask that you enter my opinions through this letter which you're welcome to read at the hearing.

I am not in favor of the proposed revised zoning ordinance. Furthermore, I would recommend the select board take action and vote to get rid of zoning completely and not reconsider for a five year period. We have a Town Plan and Act 250 for adequate review of larger projects to include solar .

Pomfret needs to focus on its people and not just on its beauty. Over the past 50 years it has become much less attractive to younger permanent residents , and much more attractive to the retirees that can afford it, and the wealthier people, who have more time on their hands to write regulations. As a result, we don't even have enough permanent folks to run our own school. In essence, the slippery slope of zoning regulations has sucked the life blood out of our community.

The average person wants freedom, not regulations. They will seek a home where other people aren't telling them what to do all the time, where to build, what to build, how to build, when they can make noise and when they can't , when they can start up their chain saw, etc etc. where does it end?? Let's rename Pomfret Call it Sleepy Hills .

Here's what I feel is too excessive and has gotten more strict in favor of less development for permanent average residents over the years:

65' from the road should be 50'

12% grade max should be 16% or state standards

750' from top of hills in ridge line should be 250' as it started out when I was on the planning commission and made the Maps, which I now regret.

Eliminate the review of structures and roads in the ridge line.

Allow light industry and commercial anywhere in town, as a conditional use, with no restricted lot size.

These are a few examples of how zoning will go too far and create a Quechee Lakes suburb out of Pomfret. .

I submit my thoughts as a sixth generation Pomfreter who loves this town as much as anybody , not just for its Beauty and serenity , but for its people. I've been fortunate enough to live here and raise two families, serve in numerous community roles over the years, and enjoy the peace and tranquility of our lands and people.

Respectfully submitted,

Bob Harrington

Horizons Engineering, Inc.  
PO Box 248  
North Pomfret, VT. 05053

(802) 457-3151

doug via pomfret list <pomfret@lists.vitalcommunities.org>

To:pomfret@lists.vitalcommunities.org,wbemmons3@gmail.com

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Mon, May 4 at 5:16 PM

Hi All ,

This is a direct response to Scotts letter ,

I have lived in Town along with my siblings our entire lives , almost 59 years for myself , but , My parents bought their house here in or around 1954 . Pomfret has transformed drastically in that period of time , I delivered Gritt news papers when I was young , I knew every person from the West Hartford town line to the Chase farm at the entrance too Galaxy hill road . There were many farms in town back then , and some quality employers as well , max Boynton comes to mind in South Pomfret .Today , I would not even try to guess who lives in this area ,they no longer wave , they drive at excessive speeds , and the list goes on .

We have lost the farms and a lot of those farmers went on to become independent contractors etc . Many small business were started and kinda flew under the radar like I said previously , some would argue in defiance of the zoning regulations . I worked with Will Russell after he Started Chippers where the Maxham farm was , I remember plenty of cows in the barn where their shop is , and I can assure you , the property is much more organized today then it was then , though , I wish it was still a farm , those days are gone .

Vermont is in need of change , we can no longer depend on our major centers such as Hartford , Rutland , Burlington etc , providing all the jobs , we encourage small business and try to promote them across the state . We in Pomfret , cannot stay a bed and breakfast community whose workers have to travel out of town , and in a lot of cases out of state to work . These changes in this latest zoning go a ways into both protecting what already exists , and seeing to it that others may purchase these business that are already here and maintain them without the fear of over burdensome zoning regulations , In Pomfret we have some very looked up to and respected small companies , Trafalgar , David Moore , Chippers , Kieth Chase , Miller Hewitt , Dale Harrington , Kieth Sawyer ,Frank Perron , Bob Harrington . and a long list of others that operate , or have operated within our town , they are all good people , good neighbors , and contribute greatly to our town in many ways , these are the folks that these changes are addressing , please support them and all the other landscapers , builders , gardeners ,that already exist in our town .

Though no document will ever be perfect for all situations , we must remember , this is a fluid document that will continue to be looked at for years to come , and as generations change , like the changes in my lifetime here , so to will zoning . The planning commission has worked on these issues tirelessly for over at least fifteen years and longer , When I was on the planning commission way back when , we were tackling these issues , It is time to make these changes , way past time in my opinion , Everyone understands , I detest zoning completely as I see it as a rich mans dreams and a poor mans worst nightmare , But , I appreciate all the time and effort that has gone into this , and support it 100 percent . I will not be on Zoom , nor any other pod cast , but I do want this letter entered in the official meeting minutes and read into the record .

Thank You All  
Douglas Tuthill

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 6<sup>th</sup> 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:

		<b>Location</b>	<b>One Hour Equivalent Average dBA (L<sub>1h</sub>)</b>	<b>Instantaneous Slow-Response Maximum dBA (L<sub>Smax</sub>)</b>
<b>Daytime</b>	<b>Between 7:30am and 10:00pm</b>	Property Lines	70 dBA	80 dBA
<b>Nighttime</b>	<b>Between 10:00pm and 7:30am</b>	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 17<sup>th</sup>, 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.**

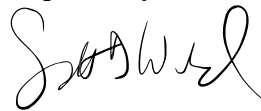
Additionally, contrary to what has been stated publicly, there has not be a formal legal review as to whether the specific language in the Town Plan requires stricter conformance since the prohibition on stand-alone industrial uses is stated as “*shall not be located . . .*” This is an important piece 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 "S. Woodward". The signature is fluid and cursive, with the first name "S" being particularly prominent.

Scott D. Woodward  
Pomfret Selectboard  
Scott.woodward@pomfretvt.us  
(802) 332-3953  
[www.forestandwater.com](http://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

