

Town of Pomfret Selectboard Meeting
Zoning Hearing
May 4, 2020
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>

Subject: Zoning

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

To: emily.grube@pomfretvt.us

Cc: John Moore <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

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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 gues 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