

**APPROVED**  
**TOWN OF PELHAM**  
**BOARD OF SELECTMEN - MEETING MINUTES**  
**January 23, 2018**  
APPROVED – January 30, 2018

**PRESENT:** Mr. William McDevitt, Ms. Amy Spencer, Mr. Hal Lynde, Town Administrator  
Brian McCarthy

**ABSENT:** Mr. Doug Viger, Mr. Paul Leonard

**PLEDGE OF ALLEGIANCE**

**MINUTES REVIEW**

**December 19, 2017**

**MOTION:** (Spencer/McDevitt) To approve the meeting minutes of December 19, 2017 as amended.

**VOTE:** (3-0-0) The motion carried.

**ANNOUNCEMENT(S)**

- Town Deliberative Session – Tuesday, February 6, 2018 at Sherburne Hall, 6 Village Green, Pelham, NH beginning at 7pm
- School Deliberative Session - Wednesday, February 7, 2018 at Sherburne Hall, 6 Village Green, Pelham, NH beginning at 7pm
- Town Meeting – Tuesday March 13, 2018 at Pelham High School – polling hours 7am-8pm
- Fireman’s Ball – Harris’ Inn – Saturday, January 27, 2018

**OPEN FORUM**

No one came forward.

**APPOINTMENT(S)**

**John Picard – Clearing of Class VI roads**

Mr. Lynde informed he was an abutter to the road. He stated he would not take part in the discussion but would remain seated as a facilitator and to maintain the Board’s quorum.

Mr. Picard came forward and told the Board that during the past several years he had been clearing Class VI roads within the Town to try and get them back into public use. He said he had been asked to stop doing so for a while and was now meeting with the Board to request permission to continue doing so. He explained he was a life-long resident of Pelham and as a child he would play and explore the back woods of the Town and had found interesting places along the way. From time to time he would check on the areas and through the years some areas had fallen into disrepair, become overgrown and in other cases been blocked off by abutter’s actions. Mr. Picard had done research regarding the legality of blocking the areas off and learned that he was able to drive on the roads. He and his friends have volunteered their time to make the areas passable as they have a historical interest in preserving the roads for future generations.

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Mr. Lynde stated that the law is clear about needing permission from the Town before any work could be done on Town roads.

Mr. McDevitt commented he had spent a lot of time reading through correspondence and information. He spoke about his knowledge of the areas from past to present, and was concerned about the Town's density and homeowner's having a different expectation about who was doing what. He was also concerned about clearing and further opening up Class VI roads as it may lead to an invitation to dirt bikes, etc. disregarding the law and result in more complaints. Mr. McDevitt told Mr. Picard he could continue to ride and access the Class VI roads that he had cleared and believed the question was about continuing to clear the roads. He stated the challenge was making decisions for the 'greater public good'. He believed the Town might see more petitions, such as the one they received to close a portion of Gumpas Hill Road, if people saw increased access on the roads.

Ms. Spencer was torn. She spoke about her connection to Town. Her family had been in Pelham since the late 1800s and she had come to Town every summer and during holidays since she was born. She had similar memories to Mr. Picard of exploring the areas. She saw the situation from both sides; however, the roads were public and didn't belong to the abutters. Ms. Spencer stated she was disinclined to allow someone to lay claim to land, and remove the right of the public to use the road without the Town and taxpayers being compensated for it. She was concerned about the risk and liability issues of opening the roads. At this time, she was undecided on the point.

The Board discussed how to proceed. Mr. McDevitt made a motion to deny any further action that would improve Class VI roads. Ms. Spencer seconded for discussion. Mr. Lynde commented that the Town had a right, at any time, to maintain a road and the Statute state that anybody that wants to do it on their own needs permission from the Town. He said this was a specific case where Mr. Picard was asking to maintain roads (specifically a section of Jeremy Hill Road). Mr. McDevitt believed the motion covered the point, but to further clarify he added Mr. Picard's name. Ms. Spencer had no objection to modifying the motion.

**MOTION:** (McDevitt/Spencer) To deny Mr. Picard from taking any further action that would improve Class VI roads.

**VOTE:** (1-1-1) The motion failed. Mr. McDevitt voted in the affirmative. Ms. Spencer voted in opposition. Mr. Lynde abstained.

Mr. Lynde said the Board would wait for another meeting to take further action. Mr. McCarthy stated he could add an agenda item for the January 30, 2018 meeting.

Mr. Lynde invited members of the public to come forward and speak.

Mr. Scott Jacques, 96 Jeremy Hill Road came forward and informed the section of road being referenced ran in his front yard. He said it would be dangerous to clear and was the steepest part of Town. He didn't recommend allowing the proposed action to occur. He provided the Board with a color (aerial) photograph of the road highlighted with three colors to show the existing condition. He believed clearing the road would invite dirt bikes, possible injury and unwanted access.

Ms. Spencer questioned if the road ran close to Mr. Jacques property, or close to his front yard. Mr. Jacques replied he owned a ten-acre lot and the proposed area was approximately 75ft. from his front door.

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90 Mr. McDevitt asked for clarification of the photograph. Mr. Jacques replied the yellow section was the  
91 current path Mr. Picard wanted to open, that ran directly to his property. He noted that the access to  
92 the fire tower was currently clear. He didn't want to limit access to the fire tower; however, he wanted  
93 to limit access that went directly into his property. Ms. Spencer clarified what section was maintained.  
94 Mr. Jacques replied the road was well maintained to the fire tower. Mr. Picard noted he recently  
95 maintained the Class VI road to the fire tower access road. He clarified that he didn't do anything on  
96 the State's property.

97  
98 Mr. Picard said he had asked the Selectmen why he was asked to stop clearing. He referenced RSA  
99 236:9 and read a portion aloud. He explained that the trimming and things he was doing was not  
100 excavating, digging up, or disturbing the travel surface of the road; he was clearing the pathway, which  
101 he believed he had a legal right to do. Mr. McDevitt replied the Selectmen had gone to Town Counsel.  
102 The response was clear that the Board had a right to ask him to stop. Mr. Picard confirmed that at this  
103 moment it was still a Class VI road, a Town road, and not a trail or anything else. Mr. McDevitt  
104 answered yes. He believed Town Counsel couldn't have been any clearer that they had not only the  
105 right, but the obligation to manage what happens on the Class VI roads.

106  
107 Mr. Scott Godin, a lifelong resident of the Town and lifelong friend of Mr. Picard came forward to  
108 speak in favor of clearing the Class VI roads. He spoke about exploring the areas and learning the  
109 history of the Town. He hoped the Board understood the request, and that the cleanup would be an  
110 asset to the Town at no cost. He said everyone could enjoy exploring. Mr. Godin stated they had  
111 hauled loads of tires and debris from the roads. He believed with their presence, there was less illegal  
112 ATV (all terrain vehicle) and dirt biking activity. He understood certain activities attracted the 'wrong  
113 crowd'; however, the traffic that would be invited with their activities were those who were interested  
114 in learning the history of the Town. The vehicles that would come in were registered and the people  
115 weren't loud. He noted they clean up and didn't leave things behind. Mr. Godin reiterated there was  
116 no cost to the Town for them to do what they were asking. He said it was the responsibility of the  
117 citizens of the Town to make sure they didn't give something up and regret it in the future.

118  
119 Ms. Spencer confirmed Mr. Picard had consulted with Conservation Chairman Paul Gagnon. Mr.  
120 Picard stated that he had contacted him several times through the years. Ms. Spencer felt it might be  
121 informative for the Board to invite him to speak on the issues. She was interested in hearing his opinion.  
122 Mr. McDevitt stated he sent Mr. Gagnon an email to ask his opinion and the response was that he had  
123 no problem (from a conservation perspective) with Class VI roads being cleared. He then turned to  
124 Mr. Godin and stated he understood he (Mr. Godin) was not the problem. He noted that the person  
125 behind the Town getting conservation money years ago was worried about dirt bikes and trash when  
126 they were putting trails through Town property. He stated the 'good people' weren't the problem. Mr.  
127 Picard commented that the trails throughout the Town were the same type of 'attractive nuisance' as  
128 the Class VI roads and was surprised that Mr. McDevitt was against what they were doing. He spoke  
129 about the Town trail and road system and suggested posting what is legal, rather than just closing things  
130 off. He noted the vehicles he (and others like him) used were legal on the roads in certain areas only.  
131 He was in favor of marking the trails and the Class VI roads, so people could be clear what is allowed  
132 and where they are allowed. Monitoring the areas are important. Mr. Picard pointed out with the roads  
133 being open it was easier for law enforcement to access.

134  
135 Mr. Lynde stated the Selectmen had to see a compelling need for the work to be done and then that  
136 person needed permission. Mr. Picard replied he had spoken with the Town and had received  
137 permission. Mr. McCarthy stated Mr. Picard had spoken with the Town and got permission. However,  
138 at the time permission was given Mr. McCarthy was not aware of the 'chain of command' and once he  
139 learned it, Mr. Picard was contacted.

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Mr. Rob Dustin came forward and spoke of his concern that the 5% would ruin things for the other 95%. He commented that the house he currently owned contained an easement for three other properties to access through. His previous home had a Class VI road behind it, so he understood how they are accessed. He noted things like those are noted on a property's chart (deed). Mr. Dustin said the expectations of a Class VI road was that they are accessible to anybody. Most towns want them open so emergency responders/crews could access areas if needed. He found it sad that they were looking at things that 'might happen' making it so that the majority couldn't enjoy properties. Exceptions were made for the rule breakers and that didn't do anyone in Town a service. Mr. Dustin spoke about the history within the Town and felt that residents should be proud and share that information.

Ms. Charlene Takesian, Jeremy Hill Road came forward and understood there were two things being considered: 1) a request to work on Class VI roads, and 2) a citizen petition to close off a portion of the Class VI road. She understood that Mr. Picard was asking permission to go onto a Class VI road to clear them and heard a little 'push back' from the Selectmen. She owned property on one of the Class VI roads, which was closed to gates and bars. At one end there is a physical bar across the road and at the other end there is obstruction; someone constructed a driveway and rock wall. The previous owner and current owner had both done work. She didn't think either had asked permission to do so. In effect, without permission, they blocked off half the road access, which her land was on. She was not in favor off off-road vehicles, but agreed that the roads were part of the Town's history and people could go on them, unless posted otherwise. She was kind of appalled that Mr. Picard was asking permission and receiving 'push back', but someone else had put a permanent structure on the Class VI road and no one seemed to care. Mr. Picard pointed out it was illegal to do so, and had previously provided photographs of the obstruction to the Town.

Mr. McDevitt said he wished posting signs would work. Mr. Picard suggested that installing a trail camera could help the Police identify ATVs on the roads. Mr. McDevitt replied they didn't have the resources to patrol all the areas, which was frustrating. He was concerned with opening the areas up to abuse. He wished the Town had the money for a full-time park ranger. He spoke about the clean up activity for Gumpas Pond.

Generally, and in spirit, Ms. Spencer was in favor of the work being done. Her concern was the Town's inability to monitor. She also was unsure about the risks of liabilities. She needed more research and what the whole situation meant.

Mr. Lynde stated he was very familiar with the area and supported passive recreation (i.e. geocaching, cross-country skiing, hiking); however, the Town was bound by State laws. He said there may be some danger in the maintenance where the Town may need to keep it up. He believed they needed to go through a process and define what they mean. He added that they had an obligation to be concerned about the activities occurring. Mr. Lynde said if Mr. Picard saw an issue, it should be brought to the Town's attention.

### **Review of Citizen's Petition**

The petitioner, Mr. Scott Jacques came forward for the discussion and to requested that the Board recommend his petition. He stated that the purpose was to close a portion of Gibson Road (trail). He said the road was next to his property, and he had experienced theft and damage. He provided the Board with a photograph (aerial). He explained that the trail ends at his property and when people drive down his driveway they break his gate. The road essentially leads directly to his ten-acre parcel of land.

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Ms. Spencer questioned if the petition passed, that it was Mr. Jacques position for the land (from the road) to become part of his property and to pay taxes on it. Mr. Jacques answered yes. It was his understanding that the path would go to the abutters.

Mr. McDevitt understood that the Town didn't have a deed to the road; it was on the map from 1892, but was older than that. He said the Selectmen wouldn't be taking a position on the hearing until after a public hearing was conducted. He felt the petition was confusing and said it was unclear what area would be closed. He noted whatever language was in the article would have to survive at least fifty years, so in the future people would understand exactly what action the Town had taken. He suggested it be a little clearer as far as distances. Mr. Jacques stated he wouldn't want to limit access to the fire tower, which was 1,500ft. from the southern end of Jeremy Hill. There was a brief discussion regarding what portion was classified as the Class VI portion. Mr. McDevitt reiterated his feeling that the petition should be clarified. He explained a motion to amend could be made at the Town Deliberative Session; if it passed, anyone would be allowed to change the petition.

Mr. McCarthy didn't believe the Selectmen were required to have a public hearing specifically regarding the petition. However, they were required by law to notice abutters, which had already been done. He agreed that anyone could make a motion to make amendments to the petition during Town Deliberative Session. The Selectmen had the opportunity to take a position on the article until the warrant was posted. Mr. McCarthy stated the warrant would be posted January 29, 2018. Mr. McDevitt noted that the Selectmen could hold a brief meeting directly after the deliberative session and decide if they wanted to include a recommendation or not.

Mr. Lynde invited the public to comment.

Mr. Rob Dustin came forward. He was sorry Mr. Jacques had things stolen from his yard, but didn't see how closing off a road would make a difference. He noted that the road/pathway had been there forever. If the petition was approved, he questioned what would stop anyone abutting a Class VI road from wanting to close it. He didn't hear any good reason to close it; the road was in that location long before the house. Mr. Dustin would like to see the Selectmen not recommend the petition.

Mr. Scott Godin questioned how the Town could be the authority on the land if there wasn't a deed. Ms. Spencer replied there was Statutory law, some of which had been provided to the Board, and some of which she still had questions about.

Mr. McDevitt commented that the Town didn't have a deed to other roads, such as Nashua Road, but there was well established case law that covered the Town's responsibility.

Mr. Lynde stated when a road was discontinued, the Town ceases to own that portion and that ownership reverted to the abutting property. Ms. Spencer commented that the Board had heard and would continue to consider both the law and policy. She invited everyone to come and speak to the issues during Town Deliberative Session.

*The Selectmen took a short recess to speak/ to Town Counsel regarding legal advice.*

*Recess began at approximately 8:04pm and ended at approximately 8:42pm.*

### **OTHER BUSINESS**

#### **Review of the CMAQ / Roundabout warrant article**

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Mr. Lynde stated one of the warrant articles would be to request funding to deal with traffic issues at the junction of Mammoth Road/Sherburne Road and Mammoth Road/Marsh Road. The total project is estimated at \$2 million, of which \$1.2 million would be through a Federal grant. The remaining \$800,000 would need to be funded by the Town. There is exaction money (from building development projects) that will be used to off set the amount; the fund balance may also be used. Mr. Lynde read aloud the proposed article. The Board discussed the wording. Mr. McDevitt suggested amending the article during Town Deliberative Session to take money from the fund balance to offset the Town's portion. Mr. Lynde believed the exaction fees that have been collected had to be used for the project.

Planning Director Jeff Gowan came forward. He informed they were currently holding \$134,512.50. the calculation for the lots that are approved, but not yet built is \$135,487.50. Mr. Lynde wanted the article to be clear that the exaction fees would be used, and the remaining amount would be offset by the fund balance. Given the exaction fees, Mr. McCarthy said the voters could be told that the remaining amount would not exceed \$666,000. The Voter's Guide could explain that there was potentially an additional amount to be collected from exaction fees.

Mr. McDevitt stated he was in favor of the roundabouts, but recalled on the night the Board discussed the options with Nashua Regional Planning Commission ('NRPC') (October 10, 2017), there was a long discussion whether the project should be roundabouts or traffic signals. He noted the Board was split between the two options and said the article didn't reflect the view that the Board took, other than to accommodate the application. Mr. McDevitt read a portion of the meeting minutes aloud. He feared the voters would decide based on whether they like roundabouts. He said they might want to not pin down the option and modify the wording to reflect a 'traffic solution' rather than a specific thing. Mr. Gowan explained that the whole process would be done through numerous phases and believed there could be an opportunity through the engineering and costing for an opportunity to realize the information and do the lesser (traffic signal) project. He stated the Town applied for and was awarded funding for roundabouts and was worried the funding could 'go away' if the wording in the warrant article differed from what was in the grant application. Mr. Lynde shared some of the concern, but assumed the process would involve the NH Department of Transportation ('DOT') to come up with how they would proceed. He said they had more leeway with explanations in the Voter's Guide.

Mr. McCarthy understood part of the grant application process was to generate a warrant article specifically for roundabouts. He believed if they change the wording to not specify a roundabout the Town may be in jeopardy of losing funding. Mr. Gowan commented that the application process was daunting and discussed the complexity. Mr. Lynde noted that Pelham was fourth from last on the scoring sheet. He felt the process would work itself out with DOT being involved.

Mr. McDevitt pointed out if the article passed, as worded, they couldn't install traffic signals. He suggested an amendment that replaced 'roundabout' with the words 'traffic control'. He said that would allow options. Mr. McCarthy replied he would get together with Mr. Gowan and make contact to see if the wording could be adjusted.

The Selectmen will have further discussion at their next meeting. Mr. McCarthy noted he would send a press release out after the Board's next meeting, when they planned to make a decision.

### **Discussion on a hearing for the Keno Warrant Article**

The Public Hearing will be held Tuesday, February 13, 2018 at Sherburne Hall, beginning at 6:45pm.

### **Board of Selectmen vote on a new Default Budget number**

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The approved default figure has been adjusted to include the lease cost for Police cruisers.

**MOTION:** (McDevitt/Spencer) To approve the adjusted default budget of \$15,332,552.

**VOTE:** (3-0-0) The motion carried.

### **Review of the 2018 Voter's Guide**

The Board was provided with a draft of the 2018 Voter's Guide to review and offer comments. The final copy will be mailed out after the Town Deliberative Session. Mr. McCarthy asked the Board if they would like (description) titles added to the top of the articles. The Board felt it would be a good idea.

Mr. McDevitt offered minor amendments. Mr. Lynde said adjustment could be made until deliberative session.

### **Discussion on the draft sign policy**

Mr. McCarthy told the Board that he and Ms. Spencer had done some work on drafting a sign policy, but no formal vote had been taken. He said the Board could decide to have a policy that had certain stipulations on what they would/would not allow, or to have a policy that states signs aren't allowed on Town property.

Mr. McDevitt understood that counsel's advice was that signs are too risky to have on Town property; however, he personally felt they should allow signs on Town property and it was a risk worth taking. He believed they could regulate size, whether it was lit, etc. and limit to non-commercial. Ms. Spencer suggested also prohibiting obscenity. She asked Mr. McCarthy to provide the Board with the red-lined version of the policy to be able to review the recommended changes.

Mr. Lynde questioned if the policy should limit the number of signs within an area. Ms. Spencer agreed with a geographic distance. The Board discussed possible wording, such as specifying a maximum size of 3ftx5ft, signs to be removed within 24hrs. of an event, if Town removes a sign it will be discarded after ten days, no illumination, and signs shall be separated by no less than 200ft. and not more than three signs on any Town parcel.

The Board agreed to have a sign policy and will review further at their next meeting.

### **SELECTMEN / TOWN ADMINISTRATOR REPORTS**

Mr. McCarthy provided the Board with a draft version of the 2018 Town Warrant and asked for any corrections to be forwarded by Friday. He will be posting the morning of Monday, January 29, 2018. The MS737 and default budget have been printed and are awaiting appropriate signatures.

Mr. Lynde informed he testified regarding House Bill 1666, which would create a new voting district for Pelham only. The Selectmen thanked Mr. Lynde for testifying. Mr. Lynde then summarized the actions of the Planning Board meeting from January 22<sup>nd</sup>.

### **REQUEST FOR NON-PUBLIC SESSION**

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**MOTION:** (Spencer/McDevitt) Request for a non-public session per RSA 91-A:3,II,a  
(Personnel)

**ROLL** Mr. Lynde-Yes, Mr. McDevitt-Yes; Ms. Spencer-Yes

**CALL:**

341 It was noted that when the Board returned, after the non-public session, the Board would not take any  
342 other action publicly, except to possibly seal the minutes of the non-public session and to adjourn the  
343 meeting. The Board entered into a non-public session at approximately 9:32pm.  
344

**MOTION:** (McDevitt/Spencer) To leave non-public session.

**VOTE:** (3-0-0) The motion carried.

345  
346 The Board returned to public session at approximately 9:40pm.  
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348 **ADJOURNMENT**

349  
350 The meeting was adjourned at approximately 9:40pm.  
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352 Respectfully submitted,  
353 Charity A. Landry  
354 Recording Secretary