

**Pembroke Planning Board
Minutes of Meeting
(Adopted)
Tuesday, October 14, 2008**

MEMBERS PRESENT: Robert Bourque, Chairman; Alan Topliff, Vice Chairman; Kevin Krebs; Kathy Cruson; Mark Zydel; Todd Terrien; Cindy Lewis, Selectmen's Representative

ALTERNATE PRESENT: Brian Seaworth

EXCUSED:

STAFF PRESENT: Carol Murray, Interim Town Administrator and Jocelyn Carlucci, Recording Secretary

Chairman Bourque opened the meeting at 7:00 p.m. Member Zydel recused himself. Chairman Bourque appointed Alternate Seaworth to vote in Member Zydel's absence.

Chairman Bourque announced that he is employed by Public Service of New Hampshire (PSNH) and does not deal with the department in question pertaining to Grace Capital Church. He asked if anyone in the audience or on the Board was uncomfortable with this affiliation and would like him to recuse himself. There were no objections.

Chairman Bourque announced that Member Krebs is also employed by PSNH, works in-house on transformers and other oil-filled equipment and has nothing to do with field personnel. Chairman Bourque asked if anyone from the audience or on the Board was uncomfortable with Mr. Krebs's affiliation, as Mr. Krebs would be happy to recuse himself from the upcoming discussion. There were no objections.

1. Enforcement – Grace Capital Church.

Jae Whitelaw, Pembroke Town Counsel was present.

Margaret Probish of Sheehan, Phinney, Bass and Green, counsel to Grace Capital Church asked if Chairman Bourque or Member Krebs was representing PSNH with respect to the matter before the Board. Chairman Bourque responded no.

Attorney Probish said that she is present because of the PSNH easement which was in the easement for the retention pond that the Church was granted from Associated Grocers of New England (AGNE). She said that they have been working hard to resolve the problem.

Frederick Mock, PE of McFarland-Johnson, Inc. noted three site plans, referenced as A, B, and C. He said that Plan A was the original approved plan by the Board which no notations of the lines or PSNH easement are shown. Plans B and C indicate the area after Dig Safe was contacted, and located the conduit. The conduit location was placed on the plan. A revision to the detention pond was made to meet the standards indicated by the Planning Board in Plan A. That plan was provided to Town and KV Partners.

He said that Plan C indicates the pipe shown on Plan B and the easement. The easement was recorded but was not uncovered in the original design effort. The difference between Plans B and C is that, after communication with PSNH, they were able to note the location of the easement on the Plan. The location of the easement is not described in the easement. It simply says that it runs on or along Cooperative Way. Mr. Mock said it was not possible to determine where the easement was without knowing where the lines were.

Mr. Mock said that he spoke with Diane Montieth of PSNH on Friday who established those things that were and were not acceptable in the easement. Plan C is in response to those things that Ms. Montieth felt were important.

Mr. Mock said that PSNH's engineers have reviewed the plans as submitted. Ms. Montieth indicated that Fairpoint has a conduit line in the easement which was not originally located by Dig Safe. Mr. Mock spoke with Wes Jones of Fairpoint Communications who said that he would send a letter indicating that Fairpoint does not have any concerns with the project.

Mr. Mock said that Ms. Montieth and Mr. Jones stated that "as long as PSNH is happy, then they are happy".

Member Krebs asked if KV Partners approved Plan C? Mr. Mock said they have not seen Plan C.

Vice Chairman Topliff asked if Dig Safe was contacted before the excavation began? Mr. Mock said that he believes that there was a lag between contacting Dig Safe and the beginning of the construction but did not know the exact timing.

Member Terrien noted that the letter from Attorney Shelia H. Kaufold of Wiggin & Nourie, PA, dated October 10, 2008 indicates that AGNE and PSNH are in agreement that no further work should be done on the project unless a plan acceptable to all parties, including AGNE and PSNH is proposed, reviewed by all, and approved by the Town.

Mr. Mock said that he had a meeting this morning with Attorney Probish, Jonathan Halle, representatives of the Church, Mike Bourgoine of AGNE, and their attorney. They all agreed that AGNE does not want this problem to impact their service.

Mr. Mock said that Plan C is following the slope requirements. Selectmen's Rep. Lewis said that she is concerned that the applicant is taking the slope on the town's road parcel. Mr. Mock said that the finish grade of contour 328 moves into the right-of-way on Plan C.

Interim Town Administrator Murray stated that KV Partners approved Plan B to function as the original, not Plan C. She noted that Plan C shows a change to the outlet control structure. Mr. Mock acknowledged the change and said that Plan C provides a more direct route for the stormwater.

Selectmen's Rep. Lewis noted that anything below contour 320 will not drain. Mr. Mock said that the water will not sit at contour 320 and that there is a manhole with different perforations along with a pipe that will allow contour 320 to drain.

Chairman Bourque said that he would like to see both the underground utility going back to the pole and Grace Capital Church's underground service noted on the next revised plan.

Mr. Bourgoine of AGNE said that he has always been in favor of this project and, as long as AGNE has assurance from PSNH that the project will not compromise PSNH from servicing AGNE's utility line in the future, they are still in agreement with the project.

The Board discussed the need to request that Grace Capital Church submit an amended site plan and hold a public hearing on November 11, 2008. Selectmen's Rep. said that the Town Engineer should review Plan C.

Attorney Probish asked that the Board allow work to continue with the understanding that the amended plan has to be submitted and approved. Because the cold season is approaching, the applicant would like to pave the parking lot, and driveway. Mr. Mock said that they would also like to continue with the lights, conductors and conduit for the lights, drainage structures, along with the minor paving in the existing driveway.

Jonathan Halle said that, with regard to the construction site work, the material that is being removed from the area where the overflow will be placed, is material that they are using in the other portion of the parking lot. If the applicant postpones the detention pond which is 85% completed, the applicant will not have the material to finish the lot and, therefore, will miss the paving date if they are forced to wait until November.

Chairman Bourque said that he wanted the applicant to be aware that, if the Board allows the work to continue and there is a major change for approval, it would be at the applicant's own peril. Mr. Mock said he understood.

Attorney Probish said that PSNH's engineer has approved the changed plan and are planning to send a crew to the site this week. They will have their formal, written approval to the Town by next week.

Vice Chairman Topliff noted that there have been a number of errors on this project as a result of possibly rushing, such as the easement not being researched, no one checked for the transformers which were noted on the plan, and the excavation was begun before Dig Safe was contacted. He felt that a little time may be appropriate to make sure that everything is properly in place.

MOTION: Chairman Bourque moved to allow Grace Capital Church to continue work as needed to meet paving requirements, conduit lighting, etc. and, for final approval of the Board, provide documents from Associated Grocers of New England, Public Service of New Hampshire, Verizon/Fairpoint Communications, and Town Engineer that all parties involved approve the plans. Seconded by Member Krebs.

VOTE:	Robert B. – N	Brian S. – Y	Kevin K. – Y	Todd T. - N
	Kathy C. – N	Alan T. – N	Cindy L. – Y	

MOTION TO ALLOW GRACE CAPITAL CHURCH TO CONTINUE WORK AS NEEDED TO MEET PAVING REQUIREMENTS, CONDUIT LIGHTING, ETC. AND, FOR FINAL APPROVAL OF THE BOARD, PROVIDE DOCUMENTS FROM ASSOCIATED GROCERS OF NEW ENGLAND, PUBLIC SERVICE OF NEW HAMPSHIRE, VERIZON/FAIRPOINT COMMUNICATIONS, AND TOWN ENGINEER THAT ALL PARTIES INVOLVED APPROVE THE PLANS WAS DENIED ON A 4-3 VOTE.

MOTION: Chairman Bourque moved to require Grace Capital Church to submit all documents, including the revised plans and engineering documentation, to the Town Engineer for approval and present approvals from Associated Grocers of New England, Public Service of New Hampshire,

Verizon/Fairpoint Communications, the Town Engineer, and any other parties involved to the Planning Board at the public hearing on November 11, 2008. Seconded by Member Terrien.

VOTE: Robert B. – Y Brian S. – Y Kevin K. – Y Todd T. - Y
 Kathy C. – Y Alan T. – Y Cindy L. – N

THE MOTION TO REQUIRE GRACE CAPITAL CHURCH TO SUBMIT ALL DOCUMENTS, INCLUDING THE REVISED PLANS AND ENGINEERING DOCUMENTATION, TO THE TOWN ENGINEER FOR APPROVAL AND PRESENT APPROVALS FROM ASSOCIATED GROCERS OF NEW ENGLAND, PUBLIC SERVICE OF NEW HAMPSHIRE, VERIZON/FAIRPOINT COMMUNICATIONS, THE TOWN ENGINEER, AND ANY OTHER PARTIES INVOLVED TO THE PLANNING BOARD AT THE PUBLIC HEARING ON NOVEMBER 11, 2008 PASSED ON A 6-1 VOTE.

Chairman Bourque asked that the Applicant call either Stephanie Alexander, Interim Town Planner or Carol Murray, Interim Town Administrator, to discuss the escrow and to verify the deadline to submit all documentation for the November 11, 2008 meeting.

Mark Warren of Grace Capital Church said that Dig Safe was contacted before any excavation or construction was done.

Jae Whitelaw, Pembroke Town Counsel excused herself.

Mark Zydel joined the Board.

Guests

2. Steve Whitman of Jeffrey H. Taylor & Associates – Open Space Ordinance

Members of the Conservation Commission Present: Ammy Heiser, Chairman, Carol Bertsimas, Vice Chairman, Stetson Heiser.

Steve Whitman explained that he will perform an audit consisting of: (1) a comparison of the Master Plan and the regulations presently in place, (2) a review of land use policies in the Master Plan, (3) determining which policies are priorities to the Planning Board, (4) long term and short term goals; and (4) determining which existing regulations will help or not help the Board attain those goals.

The first meeting, according to Mr. Whitman, will include a discussion on how the regulations are presently working, the Board's priorities (with a focus on the open space development ordinance), and the possible inclusion of new language. With regard to phasing, his letter to Ms. Alexander indicated that they can include phasing language about approved projects, whether it be under site plan or subdivision, but phasing related to growth control is beyond what they have committed to.

He will identify land use policies that may help control new growth (location, density, and extent of the project) with a possible phasing clause.

Topics which the Board would like addressed:

- (1) placing timelines on phasing (limiting each phase to a certain number of lots)

- (2) changes to help the Town control growth
- (3) create a master definition chapter
- (4) attempting to incorporate the presently existing ordinance footnotes into the new ordinance text for easy viewing
- (5) establish design guidelines to help improve the look of subdivisions i.e. encourage developers to **not** place the houses at the front portion of the subdivision while leaving the back portion for open space
- (6) establish a course for development that consists of a Planning Board consultation review prior to the applicant proceeding with engineering or approaching other departments
- (7) recommendations from DES regarding rainwater percolation into the soil with regard to open space
- (8) alternatives to cul-de-sacs
- (9) review §143:73B to see if “pedestrian friendly designs” is something the Board would like
- (10) establish criteria for land designation as conservation land or open space;
- (11) clarify types of easements
- (12) consider defining regulations to provide open space cluster development in rural portions of town vs. open space to protect adjacent conservation land
- (13) clarify RSAs with relation to “public access” to conservation land.

Mr. Whitman suggested inviting other Town Boards and Committees to make suggestions and recommendations.

He also suggested establishing a four-step design process consisting of (1) areas not suitable for development, (2) areas most suitable for development, (3) buffering from the main road which would allow the development to fit the land. Mr. Whitman said that Towns that offer incentives such as density incentives are meeting their design objectives and have encouraged early meetings with the Board. The incentives peak the developer’s interest and make it more financially feasible for them.

The Board agreed to view a number of subdivisions, with Mr. Whitman, on Saturday, October 25, 2008 at 9:00 a.m. Selectmen’s Rep. Lewis will provide a list of key developments to be reviewed. The invitation was extended to the Conservation Commission.

Mr. Whitman will e-mail a draft of the audit to Ms. Alexander for circulation to the Board. The Board agreed to review the draft on November 25, 2008. Mr. Whitman said that if the Board would like to invite other Boards and Town Committees, he would be willing to explain what is being done. Chairman Bourque asked Interim Town Administrator Murray to invite the Zoning Board of Adjustment, Conservation Commission, and the Roads Committee to the November 25, 2008 meeting.

3. ZBA Zoning Ordinance Changes.

- Develop Height definition and/or measurement criteria

William Bonney, Chairman of the Zoning Board of Adjustment, asked the Planning Board to clarify how to measure the height of a structure (i.e. measure 35 ft. from the final grade of the front of the structure, 35 ft. from final grade to the uppermost living space windows, 35 ft. at the building side on all sides).

Vice Chairman Topliff suggested that any occupied spaces shall not have the bottom of the windows exceeding 35’ from the ground.

Selectmen's Rep. Lewis said height should be based on esthetics and on life safety regulations.

Dana Carlucci said that the definition in the zoning ordinance (§143:8) presently measures from ground level to the highest point. He and Vice Chairman Topliff both asked whether it was a life safety issue if the attic level is not occupied? Harold Paulsen of the Fire Department told Mr. Carlucci that he would like to be part of this conversation.

- Change Note 5 average setback to apply to accessory structures

Mr. Bonney said that in §143-21, Note 5 of the Table of Dimensions the Board should consider adding accessory buildings rather than just dwellings. Selectmen's Rep. Lewis suggested that all permanent, full foundation structures should maintain the setbacks.

Everett Hodge, Code Enforcement Officer said that on the North side of Brickett Hill, sheds have to be 40 ft. from the property line because they are in the LO District but on the South side, sheds can be 15 ft. from the property line because there is an exception in the Zoning Ordinance (in R1 and B1) which decreases the rear setback to 15 ft. The result is that the North side residents have to spend \$300 to come before the Zoning Board in order to put a shed on their property because there is no exception.

- Change open space setbacks from R-1B criteria to R-1A

Mr. Bonney said that a resident wanted to add an 11' x 12' deck and already had a 4' x 8' deck which was located in the setback. Under §143:81 there is criteria for anyone in the R1 or LO districts with town water only, or in the R1 and LO Districts without town sewer and water but this particular resident had town water and sewer. He suggested that the Board review §143:81 and consider creating criteria for open space cluster subdivisions with town water and town sewer.

Selectmen's Rep. Lewis explained that some subdivisions have "building area lines" rather than property lines on their site plan which determine building locations. The Planning Board will look into this further.

Chairman Bourque asked Mr. Hodges to make recommendations to the sign ordinance if he felt that it needed modifications.

Selectmen's Rep. Lewis asked Mr. Hodge to update the Board on the progress of the main directory sign at Pembroke Commons. Mr. Hodges said that Richard Anagnost refused to put up the new sign because he was unsure what other businesses would be occupying the space. Mr. Hodge said that there appears to be drainage issues with regard to grease from the Meathouse. The Sewer Department cleaned the pump station and found grease approximately 4" deep. Selectmen's Rep. Lewis said that the Board understood that the Meathouse was to be a retail store. They are now processing meat. Mr. Hodge said that their use seems to have changed. He said that the alternative is to add an outside grease trap.

Chairman Bourque asked Interim Planner Murray to send a letter to the Meathouse regarding the sign.

The Board recessed at 9:08 p.m.

Discussion

Chairman Bourque called the meeting to order at 9:14 p.m.

MOTION: Member Terrien moved to postpone the following discussions:

- (1) Zoning Board Definition Changes i.e. Review Draft “buildable land” definitions from the last meeting. What to do about “usable land” in Zoning? and
- (2) Review “wetlands buffer”. Add no construction permitted within buffer area, relevant parts of NHDES resources, BMPs for stormwater management, etc.

to November 25, 2008. Seconded by Member Cruson.

The vote was unanimous in favor of the Motion.

Minutes

4. Review and Approve Meeting Minutes of September 23, 2008

MOTION: Chairman Bourque moved to accept the September 23, 2008 Meeting Minutes as amended. Seconded by Member Terrien.

VOTE:	Robert B. – Y	Mark Z. – Y	Kevin K. – Y	Todd T. - Y
	Kathy C. – Y	Alan T. – Y	Cindy L. – Y	

MOTION TO ACCEPT THE SEPTEMBER 23, 2008 MEETING MINUTES AS AMENDED PASSED ON A 7-0 VOTE.

Miscellaneous

5. Mylar Review – Borough Road

Chairman Bourque reviewed and signed the mylar.

6. Correspondence - None

7. Committee Reports

Alternate Member Seaworth reported that the Roads Committee decided to postpone discussion of next year’s priorities until their meeting with the Board of Selectmen. The Roads Committee would like Member Zydel’s e-mail address. They also asked for clarification on Member Zydel’s status as a Planning Board Rep. to the Committee. Member Zydel will e-mail Ms. Alexander with status clarification.

8. Developments Status – Grace Capital, Mills Falls, North Pembroke Road

Member Krebs noted that in Mr. Hodge’s letter to the Planning Board dated September 17, 2008 regarding the Cormier subdivision, “trees and vegetation should not have been removed from the area between the brook and the Wet Lands marker”.

Selectmen's Rep. Lewis said that a lot on Sixth Range Road had been clear-cut. She said that the cutting has gone through wetlands and the range road has been graded without Town knowledge. She asked who would be the enforcing agent. After a short discussion, the Board agreed that Interim Town Planner Murray will call the NH Department of Environmental Services for assistance.

9. Other Business - None

Adjournment

MOTION: Vice Chairman Topliff moved to adjourn. Seconded by Member Terrien.

The vote was unanimous in favor of the Motion.

The meeting adjourned at 9:36 p.m.

Respectfully submitted,
Jocelyn D. Carlucci, Recording Secretary