

PEMBROKE PLANNING BOARD
Minutes of Meeting
(Adopted)
Tuesday, December 11, 2007

MEMBERS PRESENT: Roland Lemoine, Chairman, Robert Bourque, Vice Chairman; Cindy Lewis, Selectmen's Representative; Alan Topliff
ALTERNATES PRESENT: Kathy Cruson; Kevin Krebs
EXCUSED: Kevin Foss; Mark Zydel; Todd Terrien
STAFF PRESENT: Stephanie Alexander, Interim Planner and Jocelyn Carlucci, Recording Secretary

Chairman Lemoine opened the meeting at 7:03 p.m. He appointed Alternate Member Krebs to vote in place of Member Terrien, and Alternate Member Cruson to vote in place of Member Foss.

Chairman Lemoine thanked Vice Chairman Bourque for presiding over the November 27, 2007 meeting in Chairman Lemoine's absence.

Discussion and Approvals

1. Annual Building Permit Limitation for Growth Management Ordinance (GMO)

- 2007 Draft Building Permit Limitation
- Last Year's 2006 Findings of Fact
- Discussion of Town Counsel Recommendations

Stephanie Alexander noted the following documents in the member packets: (1) 2007 Building Permit Limitation; (2) Growth Management Ordinance Status of Growth in Pembroke December 11, 2006; and (3) Memo from Jae Whitelaw, Esquire dated December 6, 2007 regarding Growth Control Ordinances. Ms. Alexander said that every year the Planning Board must evaluate the Growth Management Ordinance and decide if the ordinance should remain active. She reviewed the data on each document noting that there were 8 residential building permits given this year.

Ms. Alexander said that the Board must provide the Board of Selectmen with a report outlining the need for the Growth Management Ordinance.

Selectmen's Rep. Lewis clarified that the reason the Town is no longer collecting impact fees is that the School Board and the Town agreed to follow the School Board Recommended Capacity figures since they are providing special education in-house and special education needs more space than what the Department of Education requires per student. If the School Board and the Town continued to collect impact fees, the School Board's numbers would increase (School Board Maximum Capacity figure) and would be forced to increase out-of-district placements.

Ms. Alexander called Town Counsel, per the Planning Board's request, regarding the phasing component without the building permit component of the GMO. Town Counsel said that it was not a logical step to take because if the building permit limitation was removed, there would be nothing to stop 20 20-lot subdivisions from coming into Town per year, each subdivision

allowed to build 5 homes per year. If the building permit restriction is not in place, there is nothing to counteract the growth. Ms. Alexander said that Attorney Whitelaw did not feel that the Growth Ordinance would be valid if it was challenged and that a new Growth Management Ordinance would be subject to all criteria presently required by the courts.

Vice Chairman Bourque said that he would like to see some type of control and that phasing may be a possibility. He said that if a builder wants to build 250 homes that, without phasing control, they could be built all at once and put a strain on Pembroke's infrastructure. Vice Chairman Bourque suggested a 5-year phasing control program which would limit a contractor to building no more than approximately 20% per year of the total approved plan.

Selectmen's Rep. Lewis agreed that an increase of 200 homes in one year would tax the school system, Solid Waste Facility, the Public Works Department and other Town departments.

Member Topliff suggested waiting to revise the GMO for 2009 if it is justified by 2008's building growth.

Ms. Alexander said that the Board originally wanted to keep just the phasing component and eliminate the building permit component of 5 per subdivision per year. Ms. Alexander reiterated that Town Counsel's opinion is that it does not make sense to have phasing without a building permit component.

Ms. Alexander said that it is possible to have both GMO and impact fee ordinances but has not asked Town Counsel for her opinion on that possibility. She also stated that an impact fee schedule must have a methodology and a rationale behind the numbers.

Selectmen's Rep. Lewis stated that in the past, Pembroke did not meet any of the state requirements for excess regarding the library, or recreation. The only thing that the Town had in excess was the schools. She said that keeping track of the impact fees required additional work from Town hall which became a burden with no benefits. The school benefited by approximately \$60,000 per year. The School Board decided to use their figures, which were not 30 sq. ft. per child, to control growth.

Ms. Alexander said that if the Board wants to keep the GMO, it is possible to merely change the date from March 2008 to March 2011 and add a rollover clause. She could also ask Town Counsel for suggestions regarding how to keep in compliance with the new regulations.

Selectmen's Rep. Lewis asked what would happen if, given a 100-lot subdivision that has only completed the first phase (road construction and 5 houses), and the market dies but in 15 years, the builder brought back the approved plan, having done substantial work during the first phase? Ms. Alexander said that substantial development in 12 months will grandfather the builder for 4 years and then becomes subject to new regulations. Ms. Alexander said RSA 674:39 entitled Four Year Extension, states "that every subdivision plat approved . . . and . . . recorded . . . shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances . . . for a period of 4 years after the date of

approval; provided that” they had built something within the first 12 months. She said that after the 4 years, they have to abide by the regulations in place.

Vice Chairman Bourque pointed out that in that example, the developer already has approval to build 20 but having only built 5, there is nothing to stop him from coming back 10 years later and building the other 15. Ms. Alexander said that the Planning Board can revoke approval under certain circumstances.

Vice Chairman Bourque said that if that same subdivision did not do any work in 4 years, then they would lose their subdivision approval because they did not do any significant improvements in that amount of time.

Vice Chairman Bourque asked the Board’s opinion on the following example: Pembroke Meadows has a total of 100 homes to be built (20 per year for 5 years). After the first year, construction stops. Could Pembroke state in their regulations that the developer must continue to build in order not to lose the subdivision approval and, if construction stops, the developer must come before the Planning Board and are subject to the new regulations?

Ms. Alexander clarified that the RSA says that the builder is exempt for the first 4 years if they have done substantial improvements in the first year. If they do not do any substantial improvements in the first year, the builder is subject to the other ordinances in play at the time that the builder wants to resume building.

Selectmen’s Rep. Lewis said that the way it stands now, if the builder has done substantial work, at any point, they can walk away and come back to finish the units at a later date. The Town could be left with many unbuilt lots.

Vice Chairman Bourque also expressed concern that a developer with an approved subdivision can walk away from the project by selling the property with approvals. He feels that there should be a stipulation that if a developer does not continue to build in a timely fashion, he will be subject to all the new regulations at the time he continues to build.

Ms. Alexander stated that, with relation to the 4-year exemption, (RSA 676:4-A Revocation of Recorded Approval), if the builder has done nothing in four years, the Planning Board can revoke approval and that the RSA specifies procedures for doing so. She also said that the Board has provisions in Subdivision Regulation §205:24. She said that if the developer starts something within the first 12 months, they are vested for 4 years. If the developer waits until after the 4 years, they do not have to come back to the Planning Board unless the Board revokes their approval but they are subject to the new regulations.

Vice Chairman Bourque suggested that the Board make changes to the subdivision regulations to address the Board’s concern regarding the timeframe associated with a development.

Ms. Alexander stated that the Board could place conditions of approval on the subdivision and if the conditions are not met, the approval can be revoked. She also said that usually conditions of

approval are administrative but she would be willing to research what conditions of approval are acceptable. Ms. Alexander said that a separate public hearing was necessary for each condition of approval. She recommended discussing these issues with Town Council.

The Board agreed to allow Ms. Alexander to speak to Town Council about the issues. Selectmen's Rep. Lewis also asked Ms. Alexander to inquire if Town Council has ever done a phasing plan where only one phase at a time is registered and only registered after the completion of an existing phase. The intent is that the remainder of the lots would not be approved and would not already be subdivided. This is in case the project is never completed. The remainder of the property would continue to be one large lot rather than already subdivided smaller lots.

To clarify, Vice Chairman Bourque said that the builder would already be approved for the four phases but the subdivision would not take place until they start the phase, which would be registered, and the balance would remain one large parcel. The lots would be approved per phase and recorded per phase.

With regard to the North Pembroke Road subdivision, Ms. Alexander said that the approval date is the date that the conditional subdivision was approved. If the applicant has not made any improvements after one year that the mylar was signed, the Board can revoke the approval.

Ms. Alexander will discuss the following questions with Town Council: (1) The criteria for what the courts have established as necessary for a valid GMO; (2) the conditional approval for a full build-out timeframe be valid under the RSA; (3) and whether it is possible to register one phase at a time.

Vice Chairman Bourque recommended extending the GMO for one more year (change sunset date to March 31, 2009) while the Board reviews the issues discussed and develops a new GMO which would include phasing, and building permit elimination.

Ms. Alexander said that the Building Permit Limitation and the Growth Management Ordinance Status report must be revised and presented to the Board of Selectmen. She will contact Geoff Ruggles and explain the timeline for completion. Selectmen's Rep. Lewis will contact the schools and the Sewer Department to get the necessary information. Chairman Lemoine suggested that Ms. Alexander speak to Mr. Ruggles about the information needed from the Public Works' Department.

Ms. Alexander asked that all components be given to her by January 2, 2008.

2. 2008 Planning Board Meeting Schedule

Ms. Alexander reviewed the Planning Board Schedule for 2008. There will be one public hearing on January 8, 2008 (Academy Condominium). The Board approved the schedule.

3. Zoning Ordinance/Subdivision Regulation Revisions

- §143-42, Commercial Kennels (revisions to be provided)

Chairman Lemoine thanked Ms. Alexander for revising the Commercial Kennel ordinance for him.

Ms. Alexander pointed out that she could not find any reference to boarding or breeding of animals other than horses in the definition of Commercial Kennel. She stated that she attempted to incorporate the Board's concerns on boarding and breeding in the ordinance and included veterinary hospitals into the ordinance.

After reviewing the ordinance, the Board approved the ordinance as revised with one exception:

143-42 E to read: "One 12 square foot free standing sign is permitted or dimensions compliant with 143-59, or whichever is more restrictive;"

- Article X, Cluster Subdivision Provisions (revisions attached)

Alternate Member Krebs explained that the word "cluster residential" was eliminated and "open space" was added in its place throughout the document. He reviewed the proposed changes.

The Board agreed to accept Article X as proposed with the following additional changes:

§143-78G to read: "There shall be a minimum of 50 feet separation between principal structures." (eliminating the words: "to ensure that emergency vehicle access is provided:")

Alternate Member Krebs will speak to Members Zydel and Foss about not changing the "30 feet separation" to "50 feet separation" in §143-78G. It was agreed that the change can be made at the public hearing.

Alternate Member Krebs clarified that the reason for increasing the lot areas in the R1 and LO Districts in §143-81 was to increase the square footage of the lots rather than making the lots long and narrow. Member Topliff pointed out that it makes it more difficult to create open space.

Alternate Member Cruson said that the increased frontage would allow more frontage from neighbors and the rear would have more common land.

Vice Chairman Bourque made the following suggestions:

1. §143-74 Review criteria to read as follows: "An open space development proposal requires a special exception and approval . . ."

2. §143-76 – Give an example.
 3. §143-77 – “An open space development . . . housing units measured from the closest edge of buildings.”
 4. Create a new §143-78A to read: “Applicants for open space developments must come before the Planning Board first for conceptual consultation and then for design review.”
 5. Consider a number of houses for the cluster, i.e. 10-20 homes (depending on loop road or cul-de-sac).
- §143-67 Architectural Design District

Selectmen’s Rep. Lewis did not have the draft with her. She will e-mail it to Ms. Alexander.

- §143-69 Floodplain Development District – DONE
- Article VIIIA, Telecommunications Facility & Antenna Criteria – DONE

§143-66.2 B to read as follows: “Wherever an applicant is required to secure a special exception in this ordinance the applicant shall subsequently make application to the Planning Board for site plan approval.”

§143.66.3E(2) to read as follows: “Antennas and/or towers . . . seventy-two (72) hours of erection unless otherwise approved by BOS.”

- Article XV, Enforcement and Penalties – DONE
- Article XIV, Zoning Board of Adjustment, Variances, and Special Exceptions – DONE
- § 143-28, Home Businesses

The following changes were added:

§143-30.1 Office Conversions: Do not omit. No changes to be made.

§143-70. Home Business (HB) Overlay District. To be omitted.

4. Review and Approve Meeting Minutes of November 27, 2007

MOTION: Member Topliff moved to accept the minutes of November 27, 2007 as amended. Seconded by Vice Chairman Bourque. Unanimously approved.

**MOTION TO ACCEPT THE MINUTES OF NOVEMBER 27, 2007 AS AMENDED
UNANIMOUSLY PASSED.**

Miscellaneous

- Annual Planning Board Town Report Insert

Chairman Lemoine will submit the Report to Elaine by January 15, 2008.

- Correspondence

Ms. Alexander said that the Town of Hooksett sent material to the Planning Board consisting of a plan set, environmental impact study, traffic impact study, archeological reconnaissance report, recreational impact study, and analysis. Chairman Lemoine asked that the documents be placed in the planning office for review by Members.

Ms. Alexander said that the Towns of Raymond and Epsom notified the Board of cell towers being erected.

Ms. Alexander said that she received an “as built” letter regarding Chickering Meadows.

MOTION: Chairman Lemoine moved to adjourn. Vice Chairman Bourque seconded.

The vote was unanimous in favor of the Motion.

The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Jocelyn D. Carlucci
Recording Secretary