

**BOARD OF SELECTMEN
TOWN OF PEMBROKE, NH
September 20, 2023 at 6:30 PM**

Present: Selectman Karen Yeaton, Selectman Richard Bean, Selectman Peter Gagy, Selectman Rick Frederickson, Selectman Sandy Goulet

Staff: Town Administrator David Jodoin

I. Call to Order:

Chairman Yeaton called the meeting to order at 6:32pm.

II. Citizen Comment

None

III. Scheduled Meetings

Matt Miller – Finalize Energy Committee Documents

Matt Miller, Energy Committee, explained this meeting is a follow up to the previous meeting regarding an email to the utilities in order to facilitate the launch of the Community Power Program. Selectman Yeaton explained the Board reviewed what items have already been approved and completed by the Selectboard and the Town and what is left to be completed before the launch in February. The remaining actions do not need to come to the Selectboard for a vote. The Energy Committee will work with Selectman Frederickson who is the Authorized Official. David Jodoin will send the emails to the utility companies and the named CC'd individuals.

Katie Booker – 160 Main Street

Katie Booker, 8 Millard Street, explained 160 Main Street, the former church property, was sold in February 2023. From that point on there was a lot of activity from people coming and going from the property. After some research, Katie learned the property was now a rooming house. It does not appear any permits were pulled and it was not brought before the Zoning Board (ZBA) for a change of use permit. The property is currently listed as a single-family house. The Code Enforcement Officer sent a letter to the owner on April 5, 2023 stating that neighbors had witnessed many people coming and going from the property. In the documents there was no added information. There was a notice of violation for fixing the foundation of a barn without a permit. The use appears to be a live in sober house. Katie is concerned that the business owner has not taken the proper steps to operate. Katie is also concerned that there is no sewer capacity for this use and they are not being charged the appropriate rate for a rooming house.

Selectman Goulet asked if there is a DHHS license for rooming house on file and if it was to change from a single to multi-family house, would the owners need a permit from Zoning.

Selectman Yeaton read aloud letters from residents that were requested to be entered into the record.

From Moe Paquette - 3 Prospect Street

My name is Morris Paquette. I am a homeowner and resident of the town of Pembroke. I own the property at 3 Prospect Street, the closest abutter to the location in question at 160 Main Street formerly the parsonage of the united methodist church. I appreciate the opportunity to bring forth concerns homeowners have had regarding the activity at 160 Main Street. First and foremost, I would like to put it on record that my wife and I work in healthcare and fully support addiction and recovery services housing etc. As healthcare providers, we treat alcohol and substance abuse disorder in an outpatient setting. Our issue with the residents at 160 Main is an issue of transparency. The town property tax card lists a single-family house with 5 bedrooms and 2 bathroom and unfortunately, we think the building is being used outside of a residential status. We believe the property at 160 Main Street has been transitioned to a multi-unit dwelling as defined in New Hampshire RSA 153:16. I believe this would require a variance from the town or a change in the zone itself and believe the public should have the opportunity to provide input to those changes. It is with strong conviction I believe the building was purchased as a residential property, but the owner is receiving payments from a corporation or company providing services reimbursed by the client's public or private healthcare or government subsidy that makes it a commercial property and its primary use is financial through an altruistic kaleidoscope attempting to mask a profit. If the building is being used as a multi-unit rooming house for more than 8 residents, it needs to comply with the State's fire and life safety code this would require and not limit to fire alarm systems, sprinkler systems, evacuation plan, etc. The NH Board of Fire Control RSA 153:10-d does provide an exemption from certain requirement to the state fire code however it does stipulate 14 specific requirements be in place and the recovery house must be in compliance with rules adopted by the Commissioner of Health and Human Services under RSA 172- b:25 for the voluntary registry for operations of recovery houses and must apply for exemption for exemption through the state Fire Marshall's office. This would and does require inspection of the property to ensure compliance as well as annual inspection by the local fire department. I am unaware of any such inspection and from my own witness they are not in compliance with many of the rules. I witnessed a "fire drill" last week utilizing a hand held boat horn and announcing the building was "on fire" and as a Chief Fire Officer in a neighboring community that provides mutual aid to the Town of Pembroke, proper pre-fire planning and knowledge of the residents is paramount to the safety of our fire department members and residents. I have reviewed the State of New Hampshire's DHHS website of compliant and registered sober living facility and this property and Avenues Recovery Program was not listed as registered or certified. I do realize certification

is voluntary and the owner need not certify the recovery house on the state resource list but the company managing the program misses out on countless referrals and resources from State Agencies. This feeds further into the less than transparent business practices that stimulate a response from the community. I do not know the intentions of the documented property owner but if his intent is a "safe healthy family like substance free living environment "as defined by RSA 153:10- d. He/she/they should be willing to fully certify the recovery house in order to fully provide the most safe and healthy environment for the clients occupying the space in order to fully utilize resources to help clients and not just to cover the costs of the investment property. Again, through an altruistic prism. Gain in closing I would like to reiterate my support for alcohol and substance use recovery and would like to give an opportunity to members in recovery to reintegrate into the community and participate in community events providing support to their recovery. I have spent countless hours providing resources and medications to people seeking help with addiction. I would just rather support an above-board open transparent business who complies with the rules and regulations in order to fully function as a human service entity providing the best services to the clients he/she/they are supporting.

From Kelly Sue Bokhum – Kimball Street

Please take this as my notice of interest in obtaining information in regards to he current use of property located at 160 Main Street, Pembroke NH 03275. As a registered voter & taxpayer of this town, I would like to be given the opportunity to contribute towards a resolution that is in the best interest of the residents of Suncook.

Selectman Goulet made a motion to read an email dated Tuesday, September 19, 2023, from the Town Attorney, Steven Whitley from Drummond Woodsum. Selectman Gagyí seconded the motion. Motion passed 5-0.

Karen,

I understand that the Board at tomorrow night's meeting may hear from town residents concerned about the operation of a sober living or recovery house in town. I have had an opportunity to review the Town's zoning ordinance as well as information provided by the operator. In summary, this use is allowed by right and therefore the Town has no basis to pursue enforcement or to require any approvals from the ZBA.

Based on this review, I offer the following further guidance to the Board in no particular order:

- 1. The use in question constitutes a residential use within a zoning district where such uses are allowed by right, more specifically as a single family dwelling. This is based upon the Town of Pembroke Zoning Ordinance definitions of various use categories. Zoning Ordinance provisions from other communities do not apply in Pembroke.*
- 2. I do not believe this use can be classified as a "rooming house" because the rooms here are not available for rent as required by that definition. Rooms may only be occupied by the owner, house manager, or those staying as part of their addiction recovery.*

3. *Nor could this be considered a "community facility" or "hospital" because it does not have "24 hr in patient services" as required by that definition; instead, no medical care is provided to those staying.*
4. *The ZBA only has jurisdiction to review variances, special exceptions, administrative appeals, or equitable dimension waivers. None of those are applicable here so the ZBA has no jurisdiction over this operation.*
5. *Enforcement of the zoning ordinance has been delegated to the town's code enforcement officer. So it is not within the purview of the ZBA to begin an enforcement action. Also, the Selectboard cannot overturn a zoning interpretation of the Code Officer.*
6. *The Master Plan is a planning tool and not a document that regulates use; the town document that regulates a property's use is instead the zoning ordinance.*

If the Board is inclined to make this opinion publicly available, a majority of the Board can vote to do so and it could be provided to anyone who asks or even read into the public record.

If there are further questions, please let me know.

Thanks,

*Steven M. Whitley
Attorney*

Dana Carlucci, 8 Prospect Street, explained he wrote to the Building Inspector on March 31st inquiring about the use of the property. His email stated the front entry of the building was being redone and the roof is planning to be redone. On April 6th, area businesses emailed also him inquiring about the use of the property. The Building Inspector was unable to explain the use of the property at the point but sent an email to the owner saying boarding houses are not permitted in Pembroke. Dana made the assumption the Building Inspector checked with the Town Attorney. The City of Concord allows them by special exemption in three districts, but we do not. A sober living facility would require a variance from the ZBA and there is nothing listed in the table of uses that would allow them to receive the variance.

Justin Etling - Representing the sober living facility stated he understands the concerns about them not asking the Town for permission prior to purchasing the house. They are currently being certified by the State Fire Marshall and by law they cannot be required to change the use of the building to be anything more than a single-family home. He is open to working with the Town and does not want to work against the Town. Anyone is welcome to come to the house, visit, and learn about what they are doing. There have been no issues and there will be no issues. They have rules and regulations for the occupants that protect the other occupants of the house and the Town. If a resident is no longer adhering to the rules, they are escorted out of the Town.

Steven Fowler, 443 North Pembroke Road, has worked on similar projects in Town. They have taken properties where they had to change the use and go to the ZBA. This

Town requires the owner to go to the ZBA to change of use. This facility should have to go through the same process.

Sarah Biddle, 10 Lindy Street, On July 24th she witnessed a man looking through windows and rattling doors on the corner of Main Street and then run back to the building in question. It raised concerns and she alerted other business owners of the activity.

John Seeman, 179 Buck Street, the consensus of people in the room is that the community is supportive of the use of the property but want the proper processes and procedures to be taken. His interpretation of the ZBA ordinances is that a change of use has to go through the ZBA. Whether or not this use is classified as a boarding house is up for debate. It could be considered a single-family residence with a business in it which would still require an occupancy notice per the zoning ordinance.

David explained when this first came to the town, they got legal involved right away. Paul, Code Enforcement Officer, did notice the work going on and did speak with the owner of the building to check on permits. They had the permits they needed. When he asked about the use of the property, the owner deferred to Justin. The Town spoke with two different attorneys at separate firms and they both agreed. This use is regulated under the American Disabilities Act and regulated by the Federal Government under the Fair Housing Standards. The Town has no say in the matter whatsoever. There is no requirement for them to go to the ZBA for any change of use. The use is still considered a residential use. There is no certificate of occupancy needed. The Town has done their due diligence on the entire issue. A recovery residence is a home that is alcohol and drug free and ethically operated, it is not a boarding house, hotel, or hostel. It is not as simple as making a reservation. These individuals are required to be there. The Town must comply with the Fair Housing Act. They cannot be prejudiced against any classified person under the American Disabilities Act. Federal law trumps state and local law. All steps by the Town have been documented.

Gerry Fleury, 21 Kimball Street, concerned with lack of transparency about the company running the sober living facility.

Katie Booker shared concerns that the company is bound by HIPAA and they are posting photos of their residents on their Facebook Page.

Selectman Goulet explained there are two issues that seem to be getting confused. When it comes to the building itself, the Town still has jurisdiction, and they must comply with Town ordinances. Since the house is still deemed a residential building, the Town cannot tell them who is allowed to live there.

Selectman Yeaton clarified that the Selectboard supports the decision of the Code Enforcement Officer that this is an allowed use. The Code Enforcement Officer

makes their determination based on the zoning ordinances that are written by the Planning Board and voted in by the Town.

Jocelyn Carlucci, 8 Prospect Street, asked if any house that has been used as a residence can be turned into this facility and they do not need to come to Town and they can add on bedrooms and serve as many people as they want. Selectman Yeaton answered that is correct. David explained if they were to add on bedrooms, they would need to go before sewer. Justin explained the only work being done on the barn is structural. They are not adding bedrooms. The foundation needed to be supported.

Mike Loso, 5 Harold Ave, asked if they meet ADA requirements for that building. David answered he is not sure. The laws are likely different for this use versus accessibility of a commercial or Public property.

Gerry Fleury, 21 Kimball Street, the Building Inspector is not the final word but there is always a right to appeal. Selectman Frederickson shared that since multiple attorneys have agreed with his decision, there is no appeal from the Board.

Justin asked if there is a way to work together because they are willing to do whatever the Town needs with the caveat that he does know his rights within the town ordinances and Federal Law. Chris LeDoux, also representing 160 Main Street, stated if there are concerns, to please come forward to talk to them and explained they are not HIPAA bound in a sober living house. They are looking to be fully transparent.

Joanne Bussiere, 4 Union Street, is concerned that there is no protection for the residents.

John Seeman, 179 Buck Street, now understands it is not a change of use but this should be classified as a business running out of the house. David explained that it is classified as a residential property. John stated maybe getting a certificate of occupancy would be a sign of good faith to the community.

Selectman Goulet asked if it concerned them that there is alcohol available with businesses on the street. Justin answered it does not. Selectman Goulet asked if they have a business plan. Justin answered they do. Selectman Goulet asked them to provide the Board with a copy.

Katie Booker, is concerned for sewer usage because of the increased people since the prior owners only had two people living in the house. Selectman Yeaton stated the sewer capacity is by bedroom and there has been no change to the number of bedrooms. Just because the home went from two people to more than two, does not mean that defaults going forward. It has 6 bedrooms in the house, and it is based on those 6 bedrooms and not the amount of people living there. Katie asked what is listed for sewer rates. Selectman Yeaton stated that legal is stating it is a residence. Selectman Goulet explained that the Town does not regulate who can live in a home and or how many. They have 6 bedrooms, that can have 6 people, 10 people, or 12

people. Gerry Fleury explained a residence is a type of structure. Who is in the residence is germane.

Patricia Fowler, 443 North Pembroke Road, stated they are not trying to discriminate against the occupants, they are looking for a change of use. Selectman Goulet clarified that they are considered disabled under the American Disability Act. The house is therefore considered a residence. They will try and get some answers for some of the other questions here tonight but as we have heard from legal, this is allowed under the federal Housing Act.

David explained if the business brings in their business plan and provides a copy of the rules and regulations for people living there, they will keep it on file at Town Hall for anyone who wants to read it.

Gerry Fleury – 2024 CIP Presentation

Gerry Fleury, Chair of the Capital Improvement Committee, presented the 2023 CIP report. Gerry reviewed the votes for high, medium, or low priority on each project.

VJ Ranfos – Main Street Update/ Library Sewer Issue / 10-year Plan

VJ Ranfos, Public Works Director, gave an update on Main Street. Project. VJ shared the project started back up on September 11th. At the first construction meeting, Mike Vignale presented a progress report between last year and now. The project was stalled by the utility companies for almost a year. The gas company will be finished in August and overhead utilities will also be finished the last week of August. Eversource has officially given permission to take down the old poles if they need to. Merrill Construction has done so. The water line relocation and drainage system has been installed. Curb and new pavement structures have been installed from Turnpike St. to Rt 3. The gas main and services have been relocated and the utility pole relocation has been completed. The work that remains is the slope and driveway excavation, to excavate and replace gravel for road base, and to excavate and grate sidewalks and driveways. Merrill Construction is hoping to have base of the road paved in first week of October and to install the granite curb right after. After that, they can work on sidewalks and adjust the utility structure as needed followed up by loan and seeding in late October with November 3rd as the final date. Final paving will be completed in the spring of 2024. Selectman Goulet shared concerns for the 6:30am start time for construction. VJ stated he will talk about it with Merrill. Selectman Frederickson asked if the original schedule included next year's paving. VJ explained the job would have been finished last year with the topcoat at the start of this year but the utilities set them back a year.

Jason Anderson, 201 Main Street, asked if someone is going to fix the walkway that got dug up. VJ explained the sidewalks are in the plans to be fixed.

VJ shared a proposal from Felix Septic Service that would be a permanent fix to the sewer issue at the library. The Town's current contracted plumbing and heating company said they would not give a proposal because they would have used Felix to do the work. Sewer has signed off on this plan.

Selectman Goulet made a motion to waive the bid requirements and accept the proposal from Felix Septic Service, Inc. in the amount of \$24,500 with a one-year warranty. Selectman Frederickson seconded the motion. Motion passed 5-0.

10-year plan discussion is tabled until next meeting.

IV. Old Business

None

V. New Business

Christmas in the Village Documents

Selectman Goulet made a motion to authorize the Christmas in the village request and to authorize the Chairman of the board to sign the documents Selectman Frederickson seconded the motion. Motion passed 5-0.

Manifest/Abatements

Selectman Goulet made a motion to accept the manifests and abatements as presented. Selectman Bean seconded the motion. Motion passed 5-0.

Minutes 8/2/23

Selectman Gagy made a motion to approve the minutes of August 2, 2023 as presented. Selectman Bean seconded the motion. Motion passed 5-0.

VI. Town Administrator Report

Old Home Day Committee sent a note thanking the Selectman for their donation.

Budget Committee begins meeting Thursday, September 28th.

VII. Committee Reports

Selectman Yeaton – Conservation is doing their land monitoring and Trail Dawgs was in to discuss a new potential route. Looking to survey the Beck parcel.

Selectman Fredrickson – Planning held a workshop to discuss zoning ordinances.

Selectman Bean – None

Selectman Gagyí – None

Selectman Goulet – None

VIII. Other/Citizen Comment

None

IX. Non-Public

Selectman Goulet made a motion to enter into non-public session in accordance with RSA 91-A:3 II (a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the requests shall be granted. seconded by Selectman Frederickson at 9:11pm

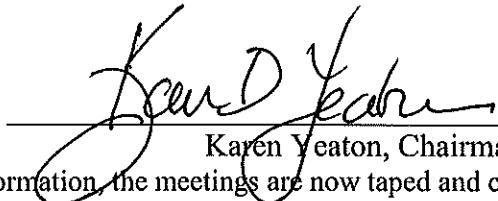
Roll Call Vote:

Selectman Gagyí	Yes
Selectman Frederickson	Yes
Selectman Goulet	Yes
Selectman Bean	Yes
Selectman Yeaton	Yes

The Board came out of non-public session at 9:34 PM

X. Adjourn

Selectman Gagyí made a motion to adjourn at 9:34 PM. Selectman Bean seconded the motion, and it was approved unanimously.



Karen Yeaton, Chairman

For more detailed information, the meetings are now taped and can be seen on www.townhallstreams.com click on Pembroke NH and look for the day of the meeting under the month.