

**Pembroke Planning Board
Minutes of Meeting
(Adopted)
Tuesday, September 28, 2010**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Cindy Lewis, Selectmen's Representative; Kevin Krebs; Larry Young, Sr.; Robert Bourque; Kathy Cruson

ALTERNATES PRESENT: Ron Nowe

EXCUSED:

STAFF PRESENT: Jeffrey Gaeta, Town Planner; David Jodoin, Town Administrator; Jocelyn Carlucci, Recording Secretary

Chairman Topliff called the meeting to order at 7:00 p.m. and appointed Alternate Member Nowe to vote in place of Member Cruson who was tardy.

Old Business

- 1. Update on Site Plan Progress. Chickering Meadow. Case #03-104, #03-105, and #07-104.** *Board to discuss progress on open items on Phases 1 and 2 from Town Engineer's 10-27-09 & 02-25-10 punchlists as well as drainage issues on an abutting parcel.*

Mr. Gaeta reported that 3 out of 4 checklist items pertaining to Phases 1 and 2 have been completed: (1) Owner must submit a sign-off from the Pembroke Water Works once a 2" RPZ backflow is installed at 229 Belknap Drive; (2) Clean catch basin #61 in front of units 210D and 212A; (3) Clean catch basin #60 behind units 210D and 212A.

The remaining uncompleted item is: Owner must submit a sign-off from Pembroke Sewer Commission once the sewer testing results are received by the Pembroke Sewer Commission. Mr. Gaeta said that the company which performed the sewer testing is out of business and Starter Homes is not financially capable of paying for the test results.

Mr. Gaeta was informed that Bob Pace has filed bankruptcy and no longer runs Starter Homes. It is his understanding that an agreement is in place between the bank and the realtor that states that when a unit is sold, a portion of the proceeds will be allocated to completing the sewer testing and a portion allocated to correcting the drainage issues on the Batchelder property. A plan has been devised to correct the drainage issues.

Mr. Gaeta said that there remains approximately 5 units to be completed and the Town is holding the Certificate of Occupancy on the last unit.

Mr. Jodoin said that he is unsure at what point the bank will take over the properties.

(Member Cruson arrived. Chairman Topliff asked that Member Nowe continue to vote in place of Member Cruson for this case.)

Based on the recent information, the Board was unsure whether the Town had authority to continue to hold the last Certificate of Occupancy.

Chairman Topliff noted that, although the case was not advertised as a public hearing and the Board has limited knowledge based on the newest developments in the case, he invited audience members to ask questions.

Jason Esposito, 226C Liberty Drive, President of the Board of Directors of Chickering Meadow said that there are 5 unsold units. He asked which unit the Town was holding the Certificate of Occupancy for and why it has taken so long to resolve these issues. He said that the grading in certain areas has not been corrected and an existing punch list has not been completed. The residents are becoming impatient.

Member Bourque said that the last property to be sold will be the one that the Town will hold the Certificate of Occupancy.

Chairman Topliff said that the Town has very little leverage to make Mr. Pace comply with the last items. The drainage issue pertains only to the property adjacent to the Batchelder property. Once the owner has secured site plan approval from the Town, the only leverage that the Town has is to withhold the Certificate of Occupancy once the inspections have been completed. Since Mr. Pace has filed bankruptcy, the Town may not have any further leverage.

Larry Perron, 229 Dearborn Road, said that when the project began, he informed the Board and the engineer for Keach Nordstrom that the culvert on Dearborn Road located between his house and the neighbor, was not functioning correctly. There is a rise between the culvert and the flow path of the water. Because of this rise, the water is diverted across Dearborn Road. The engineer asked Mr. Perron to call him when the problem is occurring. On occasion when he has done so, it has been on a weekend and Keach Nordstrom was not open for business. All the water between Pembroke Street and Smith Avenue drains to the rear of the houses on Dearborn Road rather than into the ditch that was originally dug for the overflow.

Mr. Jodoin said that the Department of Public Works is aware of the problem.

Mr. Jodoin concurred that Mr. Pace is no longer involved with Chickering Meadow. There is no money and no way of attaching Mr. Pace to correct the remaining issues. There is a minimal amount of money remaining in the escrow account to pay for the engineer's inspections.

Depending on when the properties go to tax lien, the Town could own them or the Bank could auction off the properties at a low price which would reduce the value of the other condominiums.

David Boucher, 270 Belknap Drive, asked if there is a written agreement between the Bank and the realtor?

Mr. Gaeta said that, to the best of his knowledge, the agreement is not in writing.

Member Bourque reiterated that the Planning Board can only enforce the conditions imposed upon Chickering Meadow when the application was approved. The Board has no control over any additional items outside of the conditions stated on the application, such as the drainage problems that some of the

residents are currently experiencing. If Keach-Nordstrom signed off on items according to the approved plan, the Board cannot revisit those items and tell the applicant to make a change.

Bill Rossignol, 218A Kearsarge Drive, suggested that the Board not allow Mr. Pace to ever work in Pembroke again.

New Business

2. Special Use Permit - Aquifer. Pembroke Animal Hospital. Case #10-105-SUP-AC. Map 563, Lot 5 at 13 Sheep Davis Road in the Commercial/Light Industrial (C1) District and Aquifer Conservation (AC) Overlay District. The applicant/property owner, Andrew Julian, requests a Special Use Permit from Article 143-68.E, Aquifer Conservation District, which is required for any activity taking place in the District. This permit is associated with the related minor site plan application #10-107, a 1,680 sf addition to the existing animal hospital facility. *Public hearing to be held.*

Present: Andrew Julian, DVM and Warren Andrew, builder.

Selectmen's Rep. Lewis recused herself from the Board. Chairman Topliff appointed Member Nowe to vote in place of Selectmen's Rep. Lewis.

Mr. Bourque said that generally, if the minor site plan is denied, the Special Use Permit (SUP) would also be denied and the applicant would have to apply for a SUP associated with a major site plan. With that in mind, Mr. Gaeta suggested that the Board vote on the Waiver Request before voting on the Special Use Permit.

Chairman Topliff read aloud the letter from Andrew Julian, DVM dated September 9, 2010.

Chairman Topliff stated that the percentage of the existing floor space determines whether a project requires a major or minor site plan. Since the 1,680 sq. ft. is more than 10% of the existing floor space, this would be a major site plan application. The number of parking spaces is also predicated on the square footage of the building.

Mr. Gaeta said that the property was originally a single family home. In 1997 it was converted to an animal hospital. In 1999 they expanded. The existing pool came with the original house.

A minor site plan would only require that the applicant update the 1999 plan to show the existing proposal. No engineering stamp would be required. A major site plan would require resurveying the property, obtaining a drainage study and soil tests from a soil scientist, and would require an engineering stamp.

Mr. Gaeta clarified that, if the property was sold and the new business was something other than a veterinary hospital, the new business would be required to come before the Board and apply for a Change of Use Permit. All parking requirements would take affect at that time.

Member Nowe said he visited the site today and did find that the parking was not adequate. Vehicles were parked on the lawn. The consensus of the Board was that a minor site plan was sufficient although the parking should be addressed.

Mr. Gaeta said that there are presently 15 parking spaces and one handicapped parking space. The regulations require 6 additional parking spaces based on the square footage of the building.

MOTION: Member Bourque moved to accept the waiver request for the minor site plan and deny the waiver request for the parking requirements. Seconded by Member Cruson.

VOTE: A. Topliff – Y B. Seaworth – Y B. Bourque – Y K. Krebs – Y
 L. Young – Y R. Nowe – Y K. Cruson – Y

MOTION TO ACCEPT THE WAIVER REQUEST FOR THE MINOR SITE PLAN AND DENY THE WAIVER REQUEST FOR THE PARKING REQUIREMENTS PASSED ON A 7-0 VOTE.

Chairman Topliff opened the public hearing on the Special Use Permit - Aquifer. Pembroke Animal Hospital. Case #10-105-SUP-AC at 7:43 p.m.

Dr. Julian asked for an explanation of why the Board was concerned about the property’s proximity to the aquifer, when it was not an issue in the past. Chairman Topliff clarified that a few years ago, the government increased the aquifer protection area. The U.S. Geological Survey showed that, with the increased footprint on either side of the Soucook River for protection of the aquifer, this property is now over the aquifer and must be protected from any contaminants that could harm the drinking water.

Dr. Julian said that he has no hazardous materials on site. OSHA is very strict about how their materials are disposed of. All contaminants are packaged and shipped out for disposal. Feces is disposed of by Waste Management.

Harold Thompson, Sewer Commissioner, said that he checked with the Allenstown Sewer Plant on the Hospital’s capacity and the additional square footage of the building will not require increased sewer capacity.

Dr. Julian said that he does not anticipate increasing his business because of the limited lot size. He said that parking is presently adequate. In order to increase the parking by 6 spaces, he would have to remove some of the landscaping. One doctor is leaving his practice and, therefore, business and traffic flow will decrease. Based on the configuration of his lot, he concluded that, in order to increase his business, he would have to move to another location.

There being no further questions or comments from the Board or the public, Chairman Topliff closed the public hearing at 7:54 p.m.

MOTION: Member Bourque moved to approve the Special Use Permit - Aquifer for Pembroke Animal Hospital. Case #10-105-SUP-AC. This permit is granted conditionally until the Minor Site Plan, Case #10-107 has received final approval at which time this Special Use Permit becomes final for as long as the Case is approved. If at any time the Case is revoked or final approval is not received, this Special Use Permit becomes invalid. Seconded by Member Krebs.

VOTE: A. Topliff – Y B. Seaworth – Y B. Bourque – Y K. Krebs – Y
L. Young – Y R. Nowe – Y K. Cruson – Y

MOTION TO TO APPROVE THE SPECIAL USE PERMIT - AQUIFER FOR PEMBROKE ANIMAL HOSPITAL. CASE #10-105-SUP-AC. THIS PERMIT IS GRANTED CONDITIONALLY UNTIL THE MINOR SITE PLAN, CASE #10-107 HAS RECEIVED FINAL APPROVAL AT WHICH TIME THIS SPECIAL USE PERMIT BECOMES FINAL FOR AS LONG AS THE CASE IS APPROVED. IF AT ANY TIME THE CASE IS REVOKED OR FINAL APPROVAL IS NOT RECEIVED, THIS SPECIAL USE PERMIT BECOMES INVALID PASSED ON A 7-0 VOTE.

3. Minor Site Plan. Pembroke Animal Hospital. Case #10-107. Map 563, Lot 5 at 13 Sheep Davis Road in the Commercial/Light Industrial (C1) District and Aquifer Conservation (AC) Overlay District. The applicant/property owner, Andrew Julian, proposes to construct a 1,680 sf addition to the existing animal hospital facility. *Application to be considered for acceptance prior to public hearing.*

Mr. Andrew gave the Board copies of the building design. He commented that the owner will be filling in the pool area and creating a structure in its place that would house an office, lounge, and exam room.

MOTION: Chairman Bourque moved to accept the application as complete. Seconded by Vice Chairman Seaworth.

VOTE: A. Topliff – Y B. Seaworth – Y B. Bourque – Y K. Krebs – Y
L. Young – Y R. Nowe – Y K. Cruson – Y

MOTION TO ACCEPT THE APPLICATION AS COMPLETE PASSED ON A 7-0 VOTE.

Chairman Topliff opened the public hearing at 8:05 pm.

Dr. Julian said that the present employee lounge occupies an upstairs bedroom. That room will remain empty once the new lounge is created. The room is too far from the hospital to be useful.

Member Young suggested: (1) that the Board require the 6 additional parking spaces and allow the engineer to determine the best location for the spaces; and (2) that the Board allow the applicant to determine whether to gravel or tar the parking spaces. He felt that, if the spaces were gravel, it would be less intrusive to the site.

There being no further questions or comments from the Board or the public, Chairman Topliff closed the public hearing at 8:14 p.m. with the understanding that the public hearing will be continued if consideration of the application is not concluded. No prior notice of the public hearing will be given.

Mr. Gaeta said that, if the application is approved with the condition of adding 6 parking spaces, the applicant will be required to submit a revised plan. The Board can request that the applicant return to the Board or can authorize the Planner to ensure that the Board's conditions were met.

Mr. Gaeta said that the Tax Assessor has stated that the lot size is 2 acres and not 2.61 acres as noted on the tax map. He plans to review the acreage discrepancy with the Tax Assessor.

The consensus of the Board was that, in the future, no matter how the existing rooms are used or divided, the overall square footage of the building would not change and, therefore, would not require any additional parking spaces beyond the 6 presently being discussed. They also felt that the decision to create either tarred or graveled parking spaces should be left to the applicant's discretion.

MOTION: Member Bourque moved to approve the minor site plan - Case #10-107 with the following conditions: (1) That the applicant create 6 parking spaces as required by the square footage regulations; (2) That the decision to install the parking spaces as either gravel or pavement be left to the applicant's discretion; (3) To provide an amended site plan to the Planner showing the proposed parking spaces; and (4) Add a note to the site plan specifying that a Special Use Permit – Aquifer, Case #10-105-SUP-AC was approved as part of the application. Seconded by Member Young.

Mr. Young clarified that the Board is not asking for the parking spaces to be located in any particular area nor is the Board prohibiting the parking spaces from being divided on the site i.e. 3 in one area and 3 in another area. Chairman Topliff agreed.

VOTE: A. Topliff – Y B. Seaworth – Y B. Bourque – Y K. Krebs – Y
 L. Young – Y R. Nowe – Y K. Cruson – Y

MOTION TO APPROVE THE MINOR SITE PLAN. CASE #10-107 WITH THE FOLLOWING CONDITIONS: (1) THAT THE APPLICANT CREATE 6 PARKING SPACES AS REQUIRED BY THE SQUARE FOOTAGE REGULATIONS; (2) THAT THE DECISION TO INSTALL THE PARKING SPACES AS EITHER GRAVEL OR PAVEMENT BE LEFT TO THE APPLICANT'S DISCRETION; (3) TO PROVIDE AN AMENDED SITE PLAN TO THE PLANNER SHOWING THE PROPOSED PARKING SPACES; AND (4) ADD A NOTE TO THE SITE PLAN SPECIFYING THAT A SPECIAL USE PERMIT – AQUIFER, CASE #10-105-SUP-AC WAS APPROVED AS PART OF THE APPLICATION PASSED ON A 7-0 VOTE.

Chairman Topliff announced a recess at 8:19 p.m.

Chairman Topliff reconvened the meeting at 8:25 p.m.

Selectmen's Rep. Lewis returned to the Board. Chairman Topliff announced that Alternative Member Nowe will no longer be voting.

Discussion

4. Exaction Fees (Revisited)

Mr. Gaeta presented proposed exaction fees. Exaction fees are not impact fees but fees that are imposed by the Planning Board for onsite or offsite improvements specific to a project such as traffic signals, roadway improvements, drainage, etc.

The Board agreed that language such as "and anything else that the Planning Board deems appropriate for this development" be added as Item 3(D).

The Board discussed whether the specific calculation in Item 5(B) would become problematic when justifying roadway improvements based on vehicle weight rather than traffic counts. Mr. Gaeta felt that the formula was vague enough to also accommodate counts for heavy vehicles.

Chairman Topliff read aloud Site Plan Regulation Subsection 203-49, Site Plan Review, Off-Site Improvement Agreements presently in force.

It was the Board's consensus to not change the existing language in the Town ordinance.

5. Site Plan Enforcement

The Board agreed that it is difficult to force an applicant to abide by a site plan application once it is approved. Once the business is operating, it is difficult to know if an agreement (such as the PSNH and Red Rock Investment Joint Use Agreement) has expired.

The following questions were asked: (1) How does the Board become aware of a condition that has lapsed; (2) Once the Board is aware of a problem, how can the Board encourage the applicant to quickly correct the issue; (3) How long should the Board wait before revoking a site plan; (4) What can the Town do to ensure that the applicants abide by their site plan?

Mr. Gaeta said that once the property owners have been given a chance to comply with the ordinance, it is up to the Planner, Code Enforcement Officer, and Town Staff to decide when a Cease and Desist should be issued.

Chairman Topliff said that the Planning Board can only revoke the approved site plan which would mean that the property owner can no longer occupy the site business until they receive approval.

The Board agreed that enforcement is key.

Selectmen's Rep. Lewis said that the Planning Board should be less lenient and should stand firm on their decisions. Temporary Certificates of Occupancies should not be given because it is difficult to make the applicant complete the site plan requirements once their business is operating. She said that the Pembroke Planning Board is perceived as difficult to work with when following the Town ordinance but ,if the applicant ignores the Town ordinances, the Town is weak on enforcement measures.

With regard to the Pembroke Animal Hospital case, Chairman Topliff proposed that Mr. Gaeta consult with the Code Enforcement Officer to review the revised site plan. Selectmen's Rep. Lewis stated that, in the past, the Planning Board never approved a minor site plan without knowing where the parking spaces were located.

Member Nowe said that it is important not to make it so difficult for businesses that they would move to another town.

The Board agreed that it is the Code Enforcement Officer's duty to ensure that the applicant abides by the site plan approval and to make sure that all the conditions are met. The Planning Board can only stipulate what is on the site plan based on the ordinance.

Mr. Jodoin said he would present standard bond language to the Board for their review. He said that bonds or Letters of Credit can be held until the applicant complies with the Board's requests.

With regard to Nicole's Greenhouse, Mr. Gaeta said that the applicant has until the end of October to complete the fence. The Code Enforcement Officer is on site at least once a week to check on improvements.

The Board questioned the number of signs on the Nicole's Greenhouse site.

Mr. Jodoin said that Hooksett concluded that it was the Town Planner's responsibility to ensure that the site conforms to the site plan. Selectmen's Rep. Lewis said that the Code Enforcement Officer is the only person who can legally go on the site.

Mr. Jodoin said that if a case is taken to court, the costs are expensive, the process is quite lengthy, and usually the judge will side with the Town and instruct the applicant to follow the rules that the Planning Board has been asking them to do for months.

Again, Selectmen's Rep. Lewis suggested that the Planning Board be very careful on dates and times of approvals, not issue Temporary Certificates of Occupancies, and bond whatever remains to be completed.

Mr. Jodoin suggested that: (1) The Board and the Code Enforcement Officer receive the list of conditions for Nicole's Greenhouse and (2) The Code Enforcement Officer visit the site prior to the meeting to remind them of the remaining items to be completed. The Board agreed. Mr. Gaeta will implement the suggestions.

Chairman Topliff instructed Mr. Gaeta to add the following to the October 12, 2010 agenda: (1) Compliance status update of Nicole's Greenhouse; (2) Continue discussion on enforcement issues.

6. Possible Ordinance Changes for 2011 Town Meeting

Mr. Gaeta said that Stephanie Alexander will meet with him to work on regulation compliance.

Chairman Topliff asked Mr. Gaeta to review the information compiled by Ms. Alexander on the growth ordinances or phasing ordinances held by other Towns.

Member Cruson noted that a change in the last sentence of the first proposed ordinance change should be made: "Approved commercial vehicle sales are exempt from the provisions of this article."

The Code Enforcement Officer submitted a list of ordinance changes. After a discussion, it was concluded that Mr. Gaeta should invite Everett Hodge to attend the October 12th meeting to speak on each of the proposed zoning changes.

MOTION: Member Bourque moved to table the review of the 2011 ZBA ordinance changes along with remaining Agenda Items to the October 12, 2011 work session with the exception of #8 - Non-Structures for Trash Bins. Seconded by Member Cruson. Unanimously approved.

7. Non-Structures for Trash Bins

Mr. Jodoin said that, based on the Town ordinance, the trash bins are not to remain on the side of the road indefinitely. Residents' with long driveways are building small structures near the road to house the trash bins rather than returning them to their homes. The reason why this issue is before the Planning Board is because the structures are being built in the setback.

Some Board members felt that the trash bin storage units would look more intrusive than allowing the residents to leave their trash bins indefinitely on the side of the road.

Other members did not object to allowing trash bin storage units to be built on the owner's property as long as it is not in the setback.

With regard to the already-built trash bin storage units, some members felt that the residents should be given an ultimatum – move the storage unit out of the setback or apply for a variance from the Zoning Board of Adjustment.

Member Krebs was of the opinion that residents should remove their trash bins from the side of the road once the trash is picked up and the Board should not allow trash bin storage units to be built in the setback. He also said that if the residents want to build the structure outside the setback, the Board should allow it, but should obtain a variance from the Zoning Board if the structure is to be built within the setback.

At a poll, 4 members were in favor of allowing the trash bin sheds to be built within the setback as long as it didn't interfere with snow removal.

Mr. Gaeta will draft appropriate language for the Board's consideration at the October 12th work session.

a. Planner Items

Mr. Gaeta reported that the Planning and Land Use Regulation books will be ordered.

The Fall Planning and Zoning Conference will be held in Whitefield, NH and the application is available at the Planning Office.

b. Committee Reports

Conservation Commission - Member Krebs had nothing to report.

CIP – Alternate Member Nowe had nothing to report.

Roads Committee – Vice Chairman Seaworth reported that the Committee continues to work on the Broadway project.

Chairman Topliff asked the Board to bring copies of the August 24, 2010 minutes and the proposed ordinance changes to the next meeting for review.

MOTION: Member Bourque moved to adjourn. Seconded by Member Cruson.

The vote was unanimous in favor of the Motion.

The meeting adjourned at 10:13 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary