

**Pembroke Planning Board
Minutes of Meeting
(Adopted)
Tuesday, October 12, 2010**

PLANNING BOARD ATTENDANCE: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman ; Kathy Cruson; Cindy Lewis, Selectmen's Representative; Larry Young, Sr; Ron Nowe, Alternate Planning Board member

EXCUSED: Robert Bourque, Kevin Krebs

STAFF PRESENT: Jeff Gaeta, Town Planner; David Jodoin, Town Administrator; and Susan Gifford, Recording Secretary

Vice Chairman Topliff called the meeting to order at 7:00 p.m. and noted that Members Bourque and Krebs were excused. Ron Nowe was designated to vote for Kevin Krebs.

Guests

Everett Hodge- Code Enforcement Officer/Building Inspector

Everett Hodge, Code Enforcement Officer/Building Inspector, met with the Planning Board to provide insight and information on some possible ordinance changes for 2011 Town Meeting based on the ZBA cases heard so far this year. The Planning Board appreciates Everett Hodge coming to the work session and explaining the perspective of the Zoning Board on some possible ordinance changes that would be helpful for clarification.

Discussion

1. Possible Ordinance Changes for 2011 Town Meeting -

Regulation of vehicles for sale -

Everett Hodge explained that in the past two years, 24 cars have been offered for sale on Pembroke Street, not counting USA Auto , which is up for sale. USA Auto is repairing cars for people who sometimes cannot pay for the repairs and reclaim the vehicle, so they put them up for sale to recapture the lost income. On Route 106, 12 cars have been for sale for 60-90 days. The house across from Mobil advertises snow plowing, and fixes and sells snowmobiles. Property owners agree to sell the car for friends in a high visibility area. There is currently nothing in the zoning ordinance to limit how many cars a person can offer for sale without becoming a "dealer." Selectmen's Representative Lewis noted that the same thing happened with the sale of Christmas trees along Pembroke Street. Beginning in the 1980's, trees were sold at Lang's and now also at several gas stations. There was at one time a policy of 2 cars per year per property could be sold, and they must be the owner's vehicles, but Everett is unable to find anything in writing describing what this limit was based on.

Chairman Topliff noted that property owners need to have reasonable opportunity to sell vehicles on their property. The difficulty lies in defining what kind of vehicle sale should be regulated by the town and whether a time limit or limit on number of items for sale should be established. Everett Hodge has seen a chipper for sale for two years, and a cement mixer for sale on Pembroke Street for an extended time. There is a boat for sale on Broadway, with no trailer and no engine. Member Nowe asked for the reason a time limit would be needed. With this economy, vehicles can stay for sale all summer, and all winter as long as they are not too close to the road.

Everett Hodge sends a notice to the property owner if the vehicle encroaches on the road right-of-way or has been sitting too long. In the case of renters, Everett sends a letter to the landlord. Some property owners voluntarily move the item. However, there is nothing specific in the ordinance that Everett can cite. Everett receives anonymous letters stating that Route 106 looks bad with items for sale all along it - campers, motorcycles, dirt bikes, snowmobiles. Is there guidance in State RSA when a

private seller becomes a “dealer?” It was noted that a recent proposed bill that was too restrictive did not pass at the State level. The State wanted to leave the issue to be handled at the local level.

Everett Hodge noted that sale of more than 3-4 cars or vehicles approaches the level of minor or major home occupation. Some residents voluntarily go to the ZBA for permission for a home occupation with no outside storage. Others put out a tractor with a sign “Rent my Tractor.” Member Seaworth asked about enforcement when someone starts a minor home business without asking permission from the town. If Everett receives a complaint, he will investigate and send letters to the property owner as appropriate. If the situation is not resolved, he can ask the Board of Selectmen to sign a Cease and Desist notice, and eventually the matter can end up in court. Member Topliff asked if an adequate definition would be having 6 cars in your yard to repair and sell would be a dealer? Many Planning Board members thought that the State of NH sets a limit of 5 vehicle sales before a person becomes a “dealer.”

Member Cruson noted that she does not notice vehicles for sale on private property as she drives on Pembroke Street. One or two vehicles for sale is not an eyesore to me. It is not a nuisance, does not affect my travel time, and does not interfere with neighbor’s rights. Member Cruson stated that she has more of an issue with neighbors who have 4-7 registered vehicles in their driveway belonging to residents. Jeff Gaeta asked, what if private sales were more prevalent, on every property along Route 3? If the items were deemed a hazard or nuisance, the Health Officer can get involved. If they are parked in the line of sight, police can get involved. Member Seaworth noted that if the situation does get worse, the Planning Board can still do something later by public vote on the issue. In spring and summer, there are more cars on the market. Member Nowe has a hard time with government telling people what they can and cannot do on their own property.

Planning Board consensus was that unless Everett Hodge receives a signed, written complaint, the Code Enforcement Officer should not be involved in a vehicle sale situation. People with private wells should be more concerned about leaking gas and oil from obsolete equipment, or older vehicles on their neighbor’s property. Unfortunately, it takes only a small amount of pollutant to ruin a well, and by the time you know, it is too late. Member Nowe stated that if we could agree on a point where occasional private sales become a business, that would be a start. Member Nowe would rather see the focus on enforcing site plan conditions and requirements.

Chairman Topliff summarized Planning Board consensus as they are not comfortable regulating the sale of 1-2 vehicles on an occasional basis. If the situation borders a Minor Home Business or becomes a hazard to the aquifer, they would appreciate enforcement action of the ordinance in place.

Storage pods - Everett Hodge explained that there is a section in the ordinance for “storage trailer” but not for the newer portable storage “pods” that remain on the property. Concerns are number of pods per lot (suggesting one pod per lot per calendar year), location of pod too close to property line (must meet setbacks), storage of combustible material (visit and inspection from Fire Department?). Everett Hodge suggests adding language to **Section 143-39 Storage Trailers** to cover storage pods, as well as office and construction trailers. It appears that a request for a 180 day trailer permit, or less than a year, goes to the Board of Selectmen. If use is for longer than one year, the property owner must go to the Planning Board for a Special Use Permit. The storage trailer location must meet setbacks.

Selectmen's Representative Lewis clarified that less than 12 months is considered a temporary storage trailer and a permit is obtained from the Code Enforcement Officer. The Board of Selectmen, upon request from the resident, can extend the permit for up to another 12 months. Any storage trailer expected to remain on the property over 12 months must go to the Planning Board for a Special Use permit. This will be clarified in the proposed draft adding "storage pods" to the Storage Trailer section.

Member Cruson stated that any trailer she had observed in use in Pembroke has either had a relationship to a construction project or a family that has experienced a fire and is rebuilding their home. In the case of a fire, they want to have their goods and belonging on site and accessible. The property owner must get a permit, meet setbacks, and limit hazardous material storage. For a business and residential solution that makes sense, Member Cruson stated the cost for a permit should be the same. Everett Hodge noted that currently, a business trailer permit is \$50 and a residential permit is \$25. Consensus was that a permit fee for a trailer should be uniform at \$25. Selectmen's Representative Lewis noted, again, that the rules are written for the 10% of people who have an issue with the ordinances.

MOTION: Member Young moved to amend 143-39 as discussed by adding language about storage pods and clarifying the permit process, and bring the proposed zoning ordinance change to public hearing. Member Nowe seconded.

VOTE : Cindy L. - Y Alan T. - Y Larry Y. - Y
 Ron N. - Y Brian S. - Y Kathy C. - Y

MOTION TO BRING PROPOSED ORDINANCE CHANGE TO PUBLIC HEARING APPROVED ON A 6-0 VOTE

Definition of 'cooking facilities' - Everett Hodge explained that a definition of 'cooking facilities' is lacking from the perspective of a dwelling unit. A dwelling unit has sleeping, cooking and sanitary facilities for the exclusive use of a household. The Sewer Commission bases hookup fees and ongoing bills on number of dwelling units in a property. Sometimes the Code Enforcement Officer becomes aware of multi unit dwellings through real estate ads that include the phrase - house in Pembroke for sale with "in-law apartment", 2-family unit for sale, etc. Does the Planning Board consider a refrigerator and microwave as having 'cooking facilities'? Selectmen's Representative Lewis stated that the interpretation in the past is that a microwave oven reheats, not cooks. Microwave ovens did not exist at one time. Cindy's understanding is that to be considered a kitchen, a unit must have stove top and oven, sink and refrigerator. Member Cruson asked was that a permanent, or portable stove? This is a very gray area for the ZBA and the Sewer Commission regarding hookups. It was noted that HUD requires a range with oven in its housing units. Planning Board members agreed that a sentence should be added to the end of 143-8 that "cooking facilities are defined as a stovetop and oven".

MOTION: Member Young moved to amend 143-8 by adding a sentence at the end of section 143-8 that "Cooking facilities are defined as a stove top AND oven" as discussed, and bring the proposed zoning ordinance change to public hearing. Member Nowe seconded.

VOTE : Cindy L. - Y Alan T. - Y Larry Y. - Y
 Ron N. - Y Brian S. - Y Kathy C. - Y

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Non-Conforming Structures - Everett Hodge explained that the ZBA had two cases this year where an

addition was proposed that met the setbacks, but the lot size did not meet current lot size. The zoning ordinance states that one cannot enlarge a non-conforming structure or make a non-conforming lot more non-conforming. In the past, as long as the proposed addition met setbacks, Everett Hodge was able to issue a building permit. Based on a Town Counsel Ruling, the CEO could issue building permits as long as the addition met the setbacks. For instance, a 12' x 12' deck would expand the footprint of a house. There should be some way to differentiate between a structure addition, and an open addition like a deck. State RSA does address this issue in some manner. Everett Hodge will send an email to Local Government Center's Legal office to research State law, and table this proposed change for now.

Accessory Buildings - Everett Hodge explained that an amendment to 143-22, its heading and Table 143-21 is needed to allow residents in the LO District the same exception to locate a detached shed in the rear setback as is currently allowed in the R, B and C zoning districts. This is necessary because "LO" used to be an overlay district, but is now its own district. This will bring conformity to the exception in all zoning districts.

MOTION: Member Young moved to add "LO District" to Section 143-22 B(1) as proposed, add "LO District" to the section heading, and amend table 143-21 accordingly, and bring the proposed zoning ordinance change to public hearing. Member Seaworth seconded.

VOTE : Cindy L. - Y Alan T. - Y Larry Y. - Y
Ron N. - Y Brian S. - Y Kathy C. - Y

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1. Nicole's Greenhouse Site Plan Compliance Update- It was discussed that the fence is complete. Discussion focused on what items are complete, and what items remain to be done per approved plan. A condition of the temporary Certificate of Occupancy was that everything on the approved plan must be complete by October 31, 2010. This gave the owner until the end of the season to complete all items required and tied the receipt of the Final Certificate of Occupancy to completion of all items, including plantings to be in by October 31, 2010. The third greenhouse does not have to be built by October 31. Chairman Topliff directed Jeff Gaeta to communicate verbally and in writing with the property owner prior to October 31, reiterating that light poles and stop signs need to be in place as per approved plan, and goods stored in the right-of-way block the line of site and must be moved back to where the property ends or NH DOT District 5 will take action on that aspect. If the outstanding items are not complete by the end of October 2010, some options are that the Temporary Certificate of Occupancy will expire October 31 and Everett Hodge, CEO, will issue a Cease and Desist order, the Planning Board can revoke site plan approval, and/or the Planning Board can require a financial guarantee for any work not complete.

Action Item: Jeff Gaeta will put Nicole's Greenhouse on notice in writing that if she anticipates that all items required will not be complete by October 31, 2010 she must appear at the October 26, 2010 Planning Board meeting where she will be required to provide a financial guarantee.

3. Trash Bin Structures Language - Chairman Topliff discussed the proposed Zoning Ordinance change to allow construction of Trash and Recycling Bin Enclosures. The proposed ordinance, as suggested, states that the enclosures should not be within building setbacks, and are legal outside the setbacks. Planning Board consensus is that the enclosure must be within the buildable area of the lot. Enclosures are not considered structures. The proposed ordinance sets maximum size to allow storage of two carts, as two is the maximum bins allowed per household. The enclosure should be allowed for residents with a driveway over a certain length, to be determined. Front setbacks can be 50-60 feet.

Dependent on the weather, trash and recycling bins could be left out a day or so before they are picked up. In the future, notice of trash pickup cancellation will be tied to snow emergency communications about parking bans, so residents will know whether to put out the bins for pickup. If trash pickup is cancelled, residents should not put out their trash barrels. Everett Hodge's job is to enforce the ordinance. The current Solid Waste Ordinance does not allow residents to leave trash cans out (other than on pickup day), or cover them. Enforcement could be a nightmare. Currently, if the Code Enforcement Officer observes, or receives a complaint about, a structure 1) with no building permit or 2) in the setback, he takes enforcement action. Everett Hodge reported he has not seen very many enclosures to date and they have not been an issue. This winter will be a test. Member Young suggested enforcing the current ordinance regarding structures. Selectmen's Representative Lewis (and the Solid Waste Ordinance Committee) would like to see the Planning Board define a good enclosure now. Member Seaworth sees this as a fairness issue. All residents should be treated the same however enclosures are treated. If a resident needs to build in the setback due to hardship, they can go to the ZBA for a Variance.

Chairman Topliff noted that potential issues to consider are plow damage to bins in the right-of-way, siting the enclosure in the setback from the road, odd color enclosures, poorly built enclosures, enclosures blocking line of sight, and whether an enclosure needs a foundation. The enclosure, if built of wood, should have a base of pressure treated lumber and be set on blocks like a shed. Planning Board consensus is that residents' need for outside storage of bins and providing an enclosure for them will be an issue, either now or later. Selectmen's Representative Lewis would like Planning Board members to look at what other towns with a Solid Waste Ordinance in place are doing, particularly those towns that have gone through one or more winters with a Solid Waste Ordinance in place. She clarified that the intent of the draft ordinance change is to be proactive and allow enclosures for the bins this winter without a lengthy and costly ZBA process.

Everett Hodge noted that the criteria being length of driveway makes sense. Proper storage at the side of the driveway would benefit property owners during inclement weather. With regard to the experience of other communities, Everett noted that Goffstown and Manchester have experienced storage problems with trash and recycle bins. David Jodoin stated that as a disclaimer, the Town of Pembroke will not be responsible for lost, stolen or damaged carts in the right-of-way. Jeff Gaeta agreed that the town should not be liable for any damage whether the carts are in trash enclosures or not, or whether carts are in the setbacks or not. On a voice poll, Chairman Topliff found the majority of members wanted to be proactive and address the storage issue now. Member Young suggested waiting until after winter so resident suggestions could be considered at town meeting, based on the experiences encountered during the winter. Selectmen's Representative Lewis stated that waiting for suggestions at Town Meeting 2011 means that any proposed changes to the Solid Waste Ordinance would not go into effect until March 2012. This would mean going through two winters without an enclosure section in the ordinance. The Solid Waste Committee would like to address this issue sooner than later. Chairman Topliff noted that two Planning Board members were missing, and asked if the members would like to table this item for two weeks to October 26. Member Cruson stated that she would prefer to go through the document quickly tonight, make changes as needed, and move on. It was agreed that the Planning Board is taking way too much time talking about an issue that did not warrant such lengthy discussion. The document, after discussion, reads as follows:

Trash and Recycling Bin Enclosures

A) The purpose of this section is to provide guidance for residents with driveways longer than 200feet,

and who wish to construct and site a trash and recycling bin enclosure for the storage of said bins while not scheduled for pickup.

- B)** All regulations contained in **Section 133-2.1 AUTOMATED COLLECTION** must be followed to ensure proper collection of trash and recycling material.
- C)** The enclosure shall be sized not to exceed seventy-two inches (72") wide, forty-eight (48") deep, and seventy-two (72") high. A fourth wall consisting of a gate/door may be constructed.
- D)** The enclosure shall be maintained in usable condition on a continual basis.
- E)** Enclosures may be screened with plantings.
- F)** Storage is limited exclusively to trash and recycling bins in the enclosure.
- G)** A building permit shall be issued by the Code Enforcement Officer /Building Inspector for any resident who wishes to construct and site a bin enclosure. A sketch of the proposed enclosure shall be submitted along with the building permit application.
- H)** Trash and recycling bin enclosures shall not be located within the road right-of-way.
- I)** A Variance may be sought from the Pembroke Zoning Board of Adjustment for construction of an enclosure that does not meet these requirements.
- J)** The permit fee for trash and recycling bin enclosures shall be the same as for a detached shed.

MOTION: Member Seaworth moved to make the changes discussed to the Trash and Recycling Bin Enclosure document and bring the proposed zoning ordinance change to public hearing.
Member Young seconded.

VOTE : Cindy L. - Y Alan T. - Y Larry Y. - Y
 Ron N. - Y Brian S. - Y Kathy C. - Y

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Due to length of meeting, the following discussion items were tabled to 10/26/10:

- 4. Requiring New Deeds for All Lots within Approved Subdivision -**
- 5. Requiring Land Surveyor Stamp/Signature on Minor Site Plans -**

Minutes

6. Review and Approve Meeting Minutes of August 24, 2010

MOTION: Member Young moved to approve the minutes of August 24, 2010 as amended (first page, starts with Mr. Ansden - strike "points", last page, New Deeds section, end the sentence at 'subdivision'.) Member Seaworth seconded.

VOTE : Cindy L. - Y Alan T. - Y Larry Y. - Y
 Ron N. - Y Brian S. - Y Kathy C. - Y

MOTION TO APPROVE MINUTES OF AUGUST 24, 2010 AS CORRECTED PASSED ON A 6-0 VOTE

7. Review and Approve Meeting Minutes of September 28, 2010

MOTION: Member Young moved to approve the minutes of September 28, 2010 as amended (page 3, Selectmen's Representative recused herself. It was discussed that the Selectmen's Representative should have a dedicated appointed alternate, selected by the Selectmen's Rep, who votes when the Representative is absent or not voting. Also noted that section on Mr. Pace needs a verb, page four, top paragraph "did find that the parking was not adequate", "are" presently, page nine, two paragraphs up, underline 'exempt', page 9 at the bottom should be 'once' not 'on', page 7, should be either 'abides by his' or 'abide by their' Member Seaworth seconded.

VOTE : Cindy L. - Y Alan T. - Y Larry Y. - Y

MOTION TO APPROVE MINUTES OF AUGUST 24, 2010 AS CORRECTED PASSED ON A 6-0 VOTE

Miscellaneous

8. Correspondence - Jeff Gaeta listed correspondence received for the Planning Board since the last meeting that is available in his office for review, including

- New work force housing law now in effect.
- Pamphlets from Local Government Center on its Law Lecture Series and the Annual LGC Conference at the Radisson in Manchester NH in November.
- CTAP excavation regulations.
- UNH Cooperative Rain Garden and landscaping classes.

9. Committee Reports

Ron Nowe reported that his tenure on the CIP Committee is done for this year. He enjoyed working on the committee, and would be willing to be on it again next year. On a community note, Ron has volunteered to lead a project to rebuild falling down dug outs at the baseball field on Sunday, October 17, 2010 and would appreciate any volunteer help anyone would like to offer.

10. Other Business

- a. **October 26, 2010 Meeting Agenda** - Jeff Gaeta noted that there is no New or Old Business, Possible Work Session if all the items on tonight's agenda are not completed, and one or two Conceptual Consultations. A proposed day care facility on the northwest corner of Cooperative Way has a draft conceptual plan. The other conceptual is not definite.
- b. **Asphalt Plant question** - Jeff Gaeta reported that the Continental Paving Ricker Road asphalt plant would like to change their hours of operation. Current hours are 6:30 a.m. to 6:30 p.m., which is a condition of approval. Would a public hearing with abutters present be required to expand the hours to a 12-hour evening shift on occasion? Yes, a public hearing needs to be held with abutter notification. Also, Continental Paving would like to propose a maintenance building only on North Pembroke Road (needs site plan review) and would like to swap out old asphalt plant equipment with new equipment (does not need site plan review as long as the quantity of asphalt produced remains the same - no extra loads per day - and the footprint of the building remains the same.)
- c. **Planner Items** – Review of Pembroke Animal Hospital parking plan - Planning Board members reviewed plans for expanding the 3 space parking lot. It was noted that three cars were observed parked on the grass, and the proposed parking is in a good location where it needs to be.

Town voting occurs on Tuesday, November 2, 2010 which will not conflict with the next Planning Board work session date of November 9, 2010.

c. Board Member Items-

Chairman Topliff asked Jeff Gaeta to provide hard copy (three hole punched) of previously adopted ordinance changes to Planning Board Members, so they can update their binder to the most recent language. Jeff Gaeta noted that the most recent changes are in the ordinance that is on the website.

d. Audience Items - none

MOTION: Member Seaworth moved to adjourn. Seconded by Member Young.

The vote was unanimous in favor of the Motion.

The meeting adjourned at 10:05 p.m.

Respectfully submitted,

Susan Gifford, Recording Secretary