

**Pembroke Planning Board
Minutes of Meeting
Tuesday, July 27, 2010**

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

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 7:01 p.m.

Old Business

1. Minor Site Plan Amendment. Dirt Doctors. Case #10-102. Map 632, Lot 8 at 709 Keith Avenue in the Commercial/Light Industrial (C1) District, Aquifer Conservation (AC) Overlay District, Floodplain Development (FP) Overlay District, Shoreland Protection (SP) Overlay District, and Wetlands Protection (WP) Overlay District. The applicant, Dirt Doctors, on behalf of property owner Red Rock Investments, LLC, proposes the storage of mulch and landscape material on site in accordance with an updated Joint Use Agreement with Public Service of New Hampshire.

Present: Richard Y. Uchida, Esq. of Orr & Reno, PA representing Dirt Doctors and Red Rock Investments, LLC and Joshua M. Pantesco, Esq. of Orr & Reno, PA.

Members Krebs and Bourque recused themselves. Chairman Topliff appointed Alternate Member Nowe to vote in place of Member Krebs.

Attorney Uchida thanked the Board for its patience in awaiting the revised plans.

He summarized that the site plan was originally approved in 2005 when Goodnow Trucking and Red Rock Investments were on site. In 2006 Goodnow Trucking left the site and Enpro arrived on the site. The plan was amended in 2006 by the Planning Board for Enpro's changes to the site. In June 2009 the Joint Use Agreement governing the relationship between Public Service of New Hampshire (PSNH), Goodnow Trucking, Dirt Doctors, and Red Rock Investments LLC expired.

A new Joint Use Agreement with PSNH has been prepared and is awaiting execution by the parties pending approval of the present site plan. As requested by the Planning Board, specific rights and obligations set forth in the Joint Use Agreement are listed on page 2 of the Plan.

Attorney Uchida said that the most notable changes in the plan from 2006 to the present are: (1) The trailer parking was removed and substituted with mulch and landscaping storage areas. (2) The creation of landscape material and mulch storage areas have been placed in the former surge area; (3) With regard to the power poles, there are protections around the poles, restrictions on access, clearance provisions to stay away from them, and height restrictions; (3) The firewood storage originally under the poles will be moved outside the Joint Use Agreement area.

In April 2010, the Board requested a landscaping plan (which the applicant has submitted) and an agreement with Pembroke Water Works for testing the on-site monitoring wells. A letter from Attorney Pantesco to Pembroke Water Works dated May 18, 2010 states that in September 2010, the applicant will

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test the water in the monitoring wells for VOCs, IOCs, copper, and lead. If there are findings of pollutants in the water and additional testing is required, the applicant will pay for the testing if the pollutants are coming from the applicant's site. The applicant received formal confirmation from the Pembroke Water Works that the proposal outlined in Attorney Pantescó's letter is acceptable.

Attorney Uchida addressed Mr. Gaeta's July 20, 2010 comments as follows:

- (1) The applicant will provide the owner's signature on the plans;
- (2) The parking layout on the site does not perfectly comply with the ordinance. The parking aisle width is 20' rather than the required 22'. It is an existing condition and, therefore, the applicant has submitted a waiver request.
- (3) The set of parking spaces that back up to one another (presently used for employee parking) has existed since 2005. The applicant would like to maintain those sites. If the applicant lost those spaces, the site still has more than enough parking spaces to meet the zoning ordinance.
- (4) Snow storage areas are located on page 4 of the plan.

Selectmen's Rep. Lewis suggested placing a height "band" around the power line poles in order to make it easy for everyone to see whether the pile heights have reached the maximum height. Mr. Gaeta said he spoke with PSNH and they were not in favor of the idea because, in their opinion, the line of site would vary depending on the position of the person checking the height.

Chairman Topliff reopened the public hearing at 7:12 p.m.

Attorney Uchida said that the note "ditch line currently in construction" appearing on Sheet 1 of 2 remained from the old plan. The plan revision date of 7-8-10 is on the plan.

There being no further comments from the Board or from the public, Chairman Topliff closed the public hearing at 7:14 p.m. and noted that, if the application is continued, the public hearing will also be continued.

MOTION: Selectmen's Rep. Lewis moved to waive the parking aisle and the double parking spaces. Seconded by Vice Chairman Seaworth.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y
 L. Young – Y R. Nowe – Y K. Cruson – Y

MOTION TO WAIVE THE PARKING AISLE AND DOUBLE PARKING SPACES PASSED ON A 6-0 VOTE.

MOTION: Selectmen's Rep. Lewis moved to approve the plan with the following conditions: (1) Approval of the Monitoring Well Agreement with the Pembroke Water Works; and (2) Place the owner's signature on the Plans. Seconded by Member Young.

Mr. Gaeta offered to ask PSNH to reconsider the request to mark the pile height requirements on the power line poles in order to facilitate measuring the height of the piles.

Robert Bourque said that he spoke with Jim Jiotis of PSNH who indicated that the poles would not be marked by PSNH because he did not want Dirt Doctors under the impression that it was PSNH's responsibility to monitor the pile height.

AMENDMENT: Selectmen's Rep. Lewis moved to amend the previous motion by adding the following condition: (3) Mr. Gaeta to speak with PSNH to confirm if PSNH would allow height requirement markers to be placed on the poles and to indicate that Dirt Doctors and the Town of Pembroke have the ability to monitor the pile height. Motion and amendment seconded by Member Young.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y
 L. Young – Y R. Nowe – Y K. Cruson – Y

MOTION TO APPROVE THE PLAN WITH THE FOLLOWING CONDITIONS: (1) APPROVAL OF THE MONITORING WELL AGREEMENT WITH THE PEMBROKE WATER WORKS; (2) PLACE THE SIGNATURE OF THE OWNER ON THE PLANS; AND (3) MR. GAETA TO SPEAK WITH PSNH TO CONFIRM IF PSNH WOULD REQUIRE HEIGHT REQUIREMENT MARKERS TO BE PLACED ON THE POLES AND TO INDICATE THAT DIRT DOCTORS AND THE TOWN OF PEMBROKE HAVE THE ABILITY TO MONITOR THE PILE HEIGHT PASSED ON A 6-0 VOTE.

Selectmen's Rep. Lewis said that she is very happy that the monitoring wells are still in place and that the parties have come to an agreement for the overall protection of the Town's wells.

Members Bourque and Krebs returned to the Board. Alternate Member Nowe will no longer vote.

2. Minor Subdivision. Hillman. Case #10-03. Map 870, Lot 3 at 533 Buck Street in the Rural/Agricultural-Residential (R3) District. The applicant, Marilyn H. Bergevin, Trustee of the Alfred K. Hillman Revocable Trust, proposes a two-lot subdivision in order to convey one parcel to the Town of Pembroke, which is to be placed in conservation.

Mr. Gaeta reported that, at the last meeting, the application was not denied but was not continued, which required that the abutters be renotified. Renotification was not done. The applicant submitted the plan a day late for the public notices to go out, therefore, the case would be postponed to the next meeting in order to allow the required abutter notifications to be submitted.

Mr. Jodoin stated that the Conservation Commission is on the Board of Selectmen's agenda for August 23, 2010 to discuss this project. August 23rd is the day before the Planning Board meeting.

New Business

3. Special Use Permit. Nicole's Greenhouse. Case #10-104-SUP-AC. Map 561, Lot 6-1 at 91 Sheep Davis Road in the Commercial/Light Industrial (C1) District and Aquifer Conservation (AC) Overlay District. The applicant, Lisa Mills dba Nicole's Greenhouse, requests a Special Use Permit from Article 143-68.E, Aquifer Conservation District, which is required for any activity taking place in the District. A related minor site plan will be considered under application #10-106.

Present: Lisa Mills of Nicole's Greenhouse.

Mr. Gaeta requested that Ms. Mills submit a major site plan application, due to the fact that Ms. Mills has asked to partake in activities not previously approved by the Board such as the sale of propane gas, bark

mulch, landscaping products, wood pellets, produce, and Christmas trees. Her business is located is over the aquifer which requires a special use permit.

Ms. Mills said that a fertilization system was installed but it did not work so it was never tested. They need to purchase a new one.

Chairman Topliff opened the public hearing at 7:30 p.m.

John Duggan, 443 Deerpath Lane, asked why monitoring wells were required for Dirt Doctors and not for Nicole's Greenhouse.

Chairman Topliff said it was because Dirt Doctors was processing material and Nicole's Greenhouse is not.

Ms. Mills said that they would be selling vegetables at the site supplied by Pearl Farms and Dimond Farms.

There being no further questions from the Board or the public, Chairman Topliff closed the public hearing at 7:34 p.m.

Member Krebs commented that, in his opinion, selling propane is not normally associated with a greenhouse.

Chairman Topliff said that nothing precludes an applicant from asking for uses of a site that are not in strict definition of the original request as long as they come before the Board. The Special Use Permit pertains to the additional uses of the site that may occur over the aquifer.

MOTION: Vice Chairman Seaworth moved to approve the special use permit for Nicole's Greenhouse (Case #10-104-SUP-AC.) Seconded by Member Young

A discussion ensued as to whether it was possible to separate the uses. This would prevent the entire list of uses from being denied if the Board voted against the Special Use Permit because of an objection to only one of the requested uses. Ms. Mills expressed her concern about not being allowed to sell Christmas trees if the Special Use Permit was denied.

Selectmen's Rep. Lewis suggested that the Board address the Minor Site Plan and the Special Use Permit simultaneously. The Board agreed.

MOTION: Vice Chairman Seaworth moved to withdraw his previous motion. Seconded by Member Young.

4. Minor Site Plan. Nicole's Greenhouse. Case #10-106. Map 561, Lot 6-1 at 91 Sheep Davis Road in the Commercial/Light Industrial (C1) District and Aquifer Conservation (AC) Overlay District. The applicant, Lisa Mills dba Nicole's Greenhouse, proposes the outside display of products and materials including propane, bark mulch, hardscape materials, wood pellets, a wood shed, and Christmas trees on the existing parcel as well as the sale of produce inside the existing one-story building.

Ms. Mills clarified that the produce will be sold inside and on the deck of the existing building. The wood pellets will be stored inside the greenhouses. The Christmas trees will be placed in the areas previously occupied by products not in use in the winter.

Ms. Mills said that they met the parking requirement with the paved area and the gravel area is for overflow.

The Board agreed: (1) That the propane facility should be placed within the set-back line; (2) Since propane may also be sold in the winter, and the gravel overflow area is also used for snow storage, the Board felt that the propane facility should be moved to a safer location; (3) The wood shed display must be in the set back because it is a building; (4) The propane facility should be located where vehicles can easily turn around; (5) Guy wire locations noted on the plan needed clarification.

The Board recessed at 8:10 p.m. in order to allow Ms. Mills to confirm whether there were overhead guy wires on the northeast corner of the site.

Chairman Topliff reconvened the meeting at 8:13 p.m.

Ms. Mills reported that she called her husband during the break and there are no guy wires at the northeast corner of the site. PSNH installed the wires underground.

Member Bourque suggested that jersey barriers be placed on the road side of the propane tank.

MOTION: Vice Chairman Seaworth moved to approve the Special Use Permit for Nicole’s Greenhouse (Case #10-104-SUP-AC). This Special Use Permit for activity in the Aquifer Conservation District is subject to the approval of Case #10-106 and granted conditionally until the above-mentioned Case 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 was not received, this Special Use Permit becomes invalid. Seconded by Member Young.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y K. Krebs – Y
L. Young – Y B. Bourque – Y K. Cruson – Y

MOTION TO APPROVE THE SPECIAL USE PERMIT FOR NICOLE’S GREENHOUSE (CASE #10-104-SUP-AC). THIS SPECIAL USE PERMIT FOR ACTIVITY IN THE AQUIFER CONSERVATION DISTRICT IS SUBJECT TO THE APPROVAL OF CASE #10-106 AND GRANTED CONDITIONALLY UNTIL THE ABOVE-MENTIONED CASE 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 WAS NOT RECEIVED, THIS SPECIAL USE PERMIT BECOMES INVALID PASSED ON A 7-0 VOTE.

MOTION: Member Bourque moved to accept the minor site plan for Nicole’s Greenhouse as complete. Seconded by Selectmen’s Rep. Lewis.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y K. Krebs – Y
L. Young – Y B. Bourque – Y K. Cruson – Y

MOTION TO ACCEPT THE MINOR SITE PLAN FOR NICOLE’S GREENHOUSE (Case #10-106) AS COMPLETE PASSED ON A 7-0 VOTE.

Chairman Topliff opened the public hearing at 8:22 p.m.

Ms. Mills confirmed that she understood that the Board may impose conditions based on the location of the propane tank and the wood shed.

There being no further questions or concerns from the Board or the public, Chairman Topliff closed the public hearing at 8:23 p.m. with the understanding that, if the application is continued, the public hearing will also be continued.

MOTION: Selectmen’s Rep. Lewis moved to approve the minor site plan for Nicole’s Greenhouse (Case #10-106) with the following conditions: (1) That the propane facility be moved to the Northeast corner of the site within the set backs (next to the dumpster location); (2) That the wood shed for display be moved within the set back area; (3) That the Applicant contact the Pembroke Water Works regarding the Dosatron fertilization system; (4) Revise Note 1 to include the Special Use Permit (Aquifer) approval of the Planning Board on the same date; (5) Revise Note 12 to include the date the Special Exception was granted (07/29/09); (6) Add a Note to the recordable Site Plan that a Special Use Permit for activity within the Aquifer Conservation was granted on June 27, 2010 by the Planning Board and that all provisions of Zoning 143-68 Aquifer Conservation (AC) District will be followed; and (6) Change the site plan to reflect the accurate utility locations. Seconded by Member Krebs.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y K. Krebs – Y
L. Young – Y B. Bourque – Y K. Cruson – Y

MOTION TO APPROVE THE MINOR SITE PLAN FOR NICOLE’S GREENHOUSE (CASE #10-106) WITH THE FOLLOWING CONDITIONS: (1) THAT THE PROPANE FACILITY BE MOVED TO THE NORTHEAST CORNER OF THE SITE WITHIN THE SET BACKS (NEXT TO THE DUMPSTER LOCATION); (2) THAT THE WOOD SHED FOR DISPLAY BE MOVED WITHIN THE SET BACK AREA; (3) THAT THE APPLICANT CONTACT THE PEMBROKE WATER WORKS REGARDING THE DOSATRON FERTILIZATION SYSTEM; (4) REVISE NOTE 1 TO INCLUDE THE SPECIAL USE PERMIT (AQUIFER) APPROVAL OF THE PLANNING BOARD ON THE SAME DATE; (5) REVISE NOTE 12 TO INCLUDE THE DATE THE SPECIAL EXCEPTION WAS GRANTED (07/29/09); (6) ADD A NOTE TO THE RECORDABLE SITE PLAN THAT A SPECIAL USE PERMIT FOR ACTIVITY WITHIN THE AQUIFER CONSERVATION WAS GRANTED ON JUNE 27, 2010 BY THE PLANNING BOARD AND THAT ALL PROVISIONS OF ZONING 143-68 AQUIFER CONSERVATION (AC) DISTRICT WILL BE FOLLOWED; AND (6) CHANGE THE SITE PLAN TO REFLECT THE ACCURATE UTILITY LOCATIONS PASSED ON A 7-0 VOTE.

Minutes

5. Review and Approve Meeting Minutes of June 8, 2010

MOTION: Member Young moved to approve the meeting minutes of June 8, 2010 as presented. Seconded by Vice Chairman Seaworth. Unanimously approved with Members Krebs, Bourque, and Cruson abstaining.

6. Review and Approve Meeting Minutes of June 22, 2010

MOTION: Member Young moved to approve the meeting minutes of June 22, 2010 as amended. Seconded by Vice Chairman Seaworth. Unanimously approved.

Miscellaneous

7. Correspondence

Mr. Gaeta reported receiving the following:

1. Abutter's notice for a cell phone tower from the Barnstead Planning Board. Mr. Gaeta will thank Barnstead for their notification.
2. Notice from the Local Government Center (LGC) regarding their annual November conference. The sign-up will occur in September.
3. Nominations for the Municipal Volunteer of the Year Award are being accepted by LGC.
4. An educational wetlands seminar is being presented on September 14, 2010 in Manchester. See Jeff for Applications.
5. LGC publications catalog.
6. New Hampshire Business Review.
7. New Hampshire Town and City magazine for July and August.
8. Business New Hampshire magazine for July
9. Energy Technical Assistance in Planning for New Hampshire communities' postcard.

8. Committee Reports

Member Krebs said that the Conservation Commission discussed the Hillman property at their last meeting and were hoping that tonight's meeting would have produced a decision on the subdivision. He also said that there is a great deal of disappointment that it was not discovered that the Conservation Commission needed more time to notice abutters for tonight's application. He stressed that the required timelines are crucial. The funds from the federal government will disappear on a certain date. The Commission, like the Planning Board, consists of all volunteers and they get no outside help. They just found out that the Town cannot own the property and manage it at the same time. Hearing tonight that the application was not going to be heard will be very disappointing to the Commission.

Member Krebs stressed that the Conservation Commission has no Town help. If they had someone like Mr. Gaeta to help them, they would have a clearer understanding of all the requirements and the timelines could be monitored more closely.

Chairman Topliff had suggested that Ms. Heiser speak to Mr. Jodoin about getting Town help.

Mr. Jodoin said that the USDA has made changes regarding the grant. There are strict deadlines to be filed and there may be a need for a special Town meeting in order to reach the Commission's goal. The timing is vital. There is a cost to a special Town meeting. The Conservation Commission will come before the Board of Selectmen on August 23, 2010 in order to work through the areas of concerns.

Chairman Topliff said that it was inappropriate for the plan to be brought before the Planning Board with the specific intent for land to be used as conservation land.

Member Young said that the discussion was necessary because of the way that the application was presented.

Vice Chairman Seaworth reported that the Roads Committee is attempting to move forward with the Broadway project. They held a special meeting with the Board of Selectmen and the engineer to resolve issues.

Selectmen's Rep. Lewis said that the plan is a 3-phase project and one phase could take 2 years to complete.

9. Other Business

- a. August 8 Meeting Agenda will include Exaction Fees and Nik Coates (CNHRPC) will speak on Energy Efficiency Regulations

- b. Planner Items

Mr. Gaeta reported that the Zoning Board of Adjustment (ZBA) met July 26, 2010 to hear testimony on the proposed Bible College. The hearing was tabled to August 3, 2010. Town counsel will review the testimony.

The ZBA also opened the public hearing for Continental Paving. The City of Concord was notified as an abutter and asked that it be deemed a development of regional impact. The hearing will be held on August 30, 2010.

Member Cruson asked if the ZBA could refuse the Bible College's application based on the fact that the district where it would like to build was specifically created for business development? Mr. Gaeta said that that was one of the topics being addressed by Town Counsel. Selectmen's Rep. Lewis said that, per the Town's ordinance, a college is a permitted use in other districts other than the Commercial District and that is why the Bible College was before the ZBA.

c. Board Member Items

Member Cruson said that it would be helpful to the Board's decisions if the members of the Board had the opportunity to drive by the locations that are presented at their meetings. It would give the Board so much more information than someone just presenting in front of the Board. Specifically, she felt that if the Board had driven by the High Street location that was previously before the Board, they would have had a much more detailed picture as to how their decision may affect the area. Although it may not have changed the Board's decisions, it would have been helpful. She encouraged the members to drive by the locations being presented to them and view the level of traffic, the vegetation that may be discussed and the possible affects that the decision will have on abutters.

The Board agreed that they should discuss how much time Mr. Gaeta should give the applicant vs. the Conservation Commission.

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

The vote was unanimous in favor of the Motion.

The meeting adjourned at 9:11 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary