

**Pembroke Planning Board  
Minutes of Meeting  
(Adopted)  
Tuesday, November 23, 2010**

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

**ALTERNATES PRESENT:** Ron Nowe

**EXCUSED:** Robert Bourque; David Jodoin, Town Administrator

**STAFF PRESENT:** Jeffrey Gaeta, Town Planner; 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 Bourque.

**Guests**

**1. Stephanie Alexander – Excavation Regulation Revisions**

Present: Stephanie Alexander of the Central New Hampshire Regional Planning Commission

Ms. Alexander explained that the Town of Pembroke and the Planning Board received a grant through the Community Technical Assistance Program of the I-93 Widening Corridor. Part of the grant was to develop new excavation regulations along with an excavation application and fee schedule.

She said that she will assist the Town of Pembroke with the revisions of the documents until January 31, 2011. She also pointed out that these are Planning Board documents which must go to public hearing but not to Town Meeting.

In order to draft the new regulations and coordinating documents, Ms. Alexander used models of excavation regulations from other towns, the State (with the assistance of Mary Pinkham-Langer, Gravel Tax Appraiser with the New Hampshire Department of Revenue Administration) and Pembroke's existing regulations. Ms. Alexander said that her recommendations are in italics. She strongly recommended that the final regulations be reviewed by Town Counsel before their adoption.

Ms. Alexander reviewed the documents with the Board and noted the following questions and/or recommendation:

1. Edit the Planning Board signature page as follows: "Larry Young, Alternate" change to "Larry Young, Sr."
2. Article I. §197.5, Commercial Excavation. Is the removal of surplus topsoil from a house lot considered a "commercial operation"?
3. §197.6.B. was explained by Selectmen's Rep. Lewis as meaning that if an applicant wishes to excavate on an adjoining lot of an existing gravel pit, the applicant would be required to obtain a Permit to Excavate.
4. Does the Board want to follow the State Operations Standards or follow more stringent standards. (Example: Pg. 11, Article III. Operational Standards. §197.13. Minimum and Express Operational Standards, B(1).) Ms. Alexander explained that the Board may wish to increase the minimum distance of excavation from a property line from 50 ft. to 100 ft.

Selectmen's Rep. Lewis said that she would prefer to follow the State regulations. Member Cruson and Chairman Topliff favored the increase to 100 ft. Vice Chairman Seaworth expressed concern over deviating from the State regulations without evidence to justify the change. Member Young agreed that the Board should be able to substantiate a more stringent number. The Board requested that Ms. Alexander review gravel regulations from other communities such as Loudon and Canterbury.

Member Cruson asked where the burden of proof lies to justify whether or not an excavation project began prior to August 4, 1989. Ms. Alexander said that it lies with the applicant.

5. §197.14 Performance Standards. Many Performance Standards are not required by statute. The applicant would need a waiver to vary from the standards. To vary from the State standards, a Planning Board "exception" would be necessary.

Change the following sentence: "When an exception needs to be filed . . . from the Legal Escrow account" by replacing "amount" with "filing fee".

6. §197.14 F – Hours of Operation. Ms. Alexander suggested more specific hours. Chairman Topliff asked Mr. Gaeta to review the Town's noise ordinance for future Board discussion.
7. Selectmen's Rep. Lewis pointed out that §197.14 Performance Standards. L (2) regarding stumps and slash should be reviewed further by Ms. Alexander since it is no longer allowed to bury stumps, etc. Ms. Alexander will review the requirements and suggest alternative language.
8. §197.15 Depth of Excavation. Ms. Alexander recommended keeping this section since all existing sites are within the aquifer district.
9. Article IV. Reclamation Standards. Ms. Alexander asked the Board to carefully review the italicized text. Selectmen's Rep. Lewis questioned the difference between Article IV and the §197.14 Performance Standards B.

Selectmen's Rep. Lewis questioned the logic behind §197.17A: (a) Planting seedlings over the entire parcel of reclaimed land when, in fact, the seedlings may be destroyed with the future redevelopment of the site; (b) Planting seedlings over the entire reclaimed land even though the entire parcel is not visible from a public way or a residential abutter. She recommended that Ms. Alexander ask what the state's intent was with regard to that statute. Ms. Alexander said that the State allows exceptions from the Planning Board to the Reclamation Standards.

Ms. Alexander clarified that the State statute reads "Areas visible from a public way" but does not include "or by a residential abutter".

10. Chairman Topliff said it would be helpful to know what the State statutes presently are. Ms. Alexander will provide the Board with the State statute language for §197.17 and will place the language beside her "recommended" language.
11. §197.21 Local Blasting Permit Required. The Board agreed that the Blasting Permit would be issued by the Fire Chief.
12. Article VII. Application for Excavation. Ms. Alexander asked the Board to decide if they would prefer a detailed checklist or would they want to default to the Alteration of Terrain Permit

checklist? The Board agreed that they were not familiar with the Alteration of Terrain Permit checklist. Mr. Gaeta will make copies of the State's checklist for the Board's review.

13. Article VII, §197.25E(2)a should be changed to read: "A plan for the reclamation . . . and fill material, and shall include . . ."
14. Article VII, §197.25F should be changed to read: "Sheet 6, entitled, . . . not be limited to the following. All Plans must . . ."
15. Article VIII. §197.26 should be reviewed by Town Counsel.

Ms. Alexander said that the State does not enforce the Excavation Regulations. The Town is the enforcing agent. Chairman Topliff asked how Pembroke would be affected if it did not adopt and/or incorporate the State statute into Pembroke's Excavation Regulations. Would the State have any recourse with Pembroke? Mr. Gaeta will ask Town Counsel by e-mail so that the response will be in writing.

Selectmen's Rep. Lewis said that Pembroke already adopted the State's gravel regulations in 1991. Ms. Alexander said the laws have changed since 1991. Existing pits presently are required to prepare a reclamation plan but they are not required to bond the work.

Ms. Alexander said that there are 2 types of potential bonding to be considered by the Board: (1) bonding for the operational standards for areas not yet excavated; (2) bonding for the reclamation component for existing pits.

16. Article IX. Permit: Hearing, Issuance, Conditions, and Expiration. Ms. Alexander said that the recommended expiration date of the Operation Permit is a minimum of 5 years before the applicant would need to come before the Planning Board (this correlates with the Alteration of Terrain Permit process).

Selectmen's Rep. Lewis pointed out that most gravel operations will be much longer than 5 years. Ms. Alexander said that there is no process for renewal of the permit covered under the statutes. The length of time associated with the renewal is completely at the Board's discretion.

It was the consensus of the Board to have Town Counsel weigh-in on permit length and if the Board could establish a more straight-forward renewal process.

17. Article X. Fees. The Board should review all fees.
18. Article XI. Enforcement. The Board should decide: (a) Who is best suited as the enforcer/inspector, (b) How frequent should inspections be per year. Selectmen's Rep. Lewis suggested the following language: "Designee of the Town of Pembroke" rather than choosing an enforcement agent at this time. The Board of Selectmen would then have the option to choose a person best suited for the circumstance. This language should also replace "Town Engineer" where applicable.
19. Article XII. §197-40. A (1) remove the word "passbook"
20. Article XII. §197-40. B Ms. Alexander will review this paragraph to conform with the renewal process stipulated in other sections.

Ms. Alexander will make the recommended changes and send a new version of the documents to Mr. Gaeta.

## **Discussion**

### **2. Possible Ordinance Changes**

#### **A. Review revised Wetlands Protection (WP) District Language**

Upon review of the revisions, the Board agreed to accept the recommended changes.

**MOTION:** Member Young moved to bring the revised Wetlands Protection (WP) District Language to public hearing. Seconded by Member Cruson. Unanimously approved.

#### **B. Zoning Map Amendment (increase C1 District)**

Mr. Gaeta reviewed the map of the newly outlined C1 area.

Member Young said that a C1 District should have Town water and sewer since it is over the aquifer. He suggested designating the area on the North side of Borough Road to North Pembroke Road as the new C1 District since it may be a more direct route, and, therefore, less expensive, to bring Town water and sewer to that area.

Selectmen's Rep. Lewis said that no Town water or sewer lines have been planned for this area.

Member Young said that the reason why water and sewer lines were originally placed along Route 106 was to accommodate the C1 area. Eventually a business developer may be willing to extend the water and sewer to its project if the C1 area is close enough to Route 106 such as near the Kruger Construction property.

Selectmen's Rep. Lewis said that the Board should take their time evaluating the placement of the C1 district. She also recommended creating a C2 District rather than an extension of the C1 District since the new area does not presently have water and sewer and, most likely, will not have water and sewer in the near future. She said that the Water Department is concerned from an aquifer prospective because of onsite septic.

Mr. Gaeta said that the Fire Chief expressed his concern for fire protection purposes.

Harold Thompson of the Pembroke Sewer Commission said that it is possible to have sewer in the proposed area. It may only require one additional pump station.

Selectmen's Rep. Lewis said that sewer is also not possible without gaining more sewer capacity.

Presently, the land is zoned residential. Member Young suggested rezoning the area now rather than waiting until a residential development is proposed and the Board has missed the opportunity to expand its commercial district.

The concensus of the Board was to review the extension of the C1 area in greater detail and not to bring it to the March 2011 Town meeting.

Selectmen's Rep. Lewis said that the middle lot between Merrill's sand pit and Kruger Construction was purchased by someone in order to prevent water and sewer from going in there.

Member Cruson suggested that Chris Culberson of the Water Works be asked to come in and give his opinions on the subject.

### **C. Definitions (Calculated Buildable Area, Contiguous Buildable Area, etc.)**

Selectmen's Rep. Lewis explained that presently steep slopes (15% or greater) are not counted as buildable area when determining the number of units allowed on a piece of property (i.e. a subdivision). If a builder had a parcel of land with large areas containing 15% slopes, it would be more difficult to create a subdivision because road and driveway standards become more difficult to meet.

Since it is possible to remove or use 15% or greater slopes such as by creating a "walkout" basement, all slopes are included in the calculated buildable area of an individual house lot.

Mr. Gaeta said that many of the surrounding towns had increased their slopes to larger than 15%.

The consensus of the Board was to keep the definitions of Calculated Buildable Area, Contiguous Buildable Area, and Non-Buildable Area as presented.

### **D. Review revised Wetlands Definition**

Mr. Gaeta presented the revised Wetlands Definition. He said that the definition has been linked to that of the Wetlands Bureau and the appropriate RSA. The consensus of the Board was to accept the definition.

**MOTION:** Selectmen's Rep. Lewis moved to bring the Wetlands Definition as presented to public hearing. Seconded by Member Cruson. Unanimously approved.

## **3. Conditional Approvals and Bonds**

Mr. Gaeta has not reviewed available bond language with David Jodoin.

Selectmen's Rep. Lewis said that the Planning Board was considering requiring bonds on uncompleted items before issuing a temporary Certificate of Occupancy.

Mr. Gaeta said that Senate Bill 328 does not allow the Planning Board to hold applications for permits from other departments as a condition of approval. The Board can require the applicant to submit a copy of a Wetlands Bureau permit as a condition of approval.

## **Minutes**

### **4. Review and Approve Meeting Minutes of November 9, 2010**

**MOTION:** Vice Chairman Seaworth moved to approve the Meeting Minutes of November 9, 2010 as amended. Seconded by Member Young. Unanimously approved.

## Miscellaneous

### **5. Correspondence**

Mr. Gaeta reported:

- Letter from NH DES with their approval of Peter Speiwak subdivision.
- Notification from the Town of Londonderry regarding a new communication's tower.

### **6. Committee Reports**

Roads Committee: Member Seaworth announced that the bids for the Broadway Project were reviewed and a recommendation has been made to the Board of Selectmen.

Conservation Commission: Member Krebs said that the commission did not meet since the last Planning Board meeting.

Selectmen's Rep. Lewis announced that the Conservation Commission/Hillman property project came before the Board of Selectmen and the Selectmen voted to send the project to Town meeting. The property was assessed at \$579,000 and Selectmen's Rep. Lewis was the only Board member that expressed her concern that the value was too high. Mr. Young agreed that \$579,000 was high for raw land. Selectmen's Rep. Lewis said that \$579,000 was the total once conservation use was removed from the total. The Hillman's are donating approximately \$100,000 above the \$600,000 original price. The federal grant will cover half of the \$579,000. The Conservation Commission will pay the remainder. She encouraged the Planning Board to attend the Town meeting.

### **7. Other Business**

#### **A. December 14 Business Meeting Agenda**

Mr. Gaeta said that two applications have been submitted: (1) A change-of-use application for the Bingo Center. They are proposing a Children's Play and Party Center; and (2) Richard Kruger will try to resolve issues associated with on-site landscape material processing which was not part of his approved site plan.

Selectmen's Rep. Lewis said that she understands that someone has moved into the PAR building on Commerce Way. The site was used as a machine shop and another use is now occupying the site without notifying anyone of the change of use. She also said that a building permit was granted.

Mr. Gaeta said that his understanding from Everett Hodge was that the property was a warehouse facility and the new occupants have not changed its use.

Selectmen's Rep. Lewis said that there are town entities that are upset at the lack of communication between departments. She said that there is a lack of consistency between applicant requirements.

#### **B. Planner Items**

Mr. Gaeta said that Mr. Jodoin asked the Planning Board to review a new Private Sales with Outdoor Display ordinance. The Board can either: (1) Change the language of the ordinance in such a way that is

acceptable to the Planning Board and then bring it to public hearing; or (2) Vote not to consider the ordinance which would then require the Board of Selectmen to draft it as they deem appropriate. The Planning Board would not be able to change the ordinance at a later time. It will only be able to recommend or not recommend it at Town meeting.

Mr. Gaeta asked if the Planning Board would like to review the new ordinance language.

Selectmen's Rep. Lewis said that the reason that this ordinance has been drafted is to be able to enforce "the situations that we have." Selectmen's Rep. Lewis said that there have been many letters that have come to the Board of Selectmen about this issue and she was surprised that the Code Enforcement Officer indicated that he was not aware of them. Chairman Topliff asked if it would be possible to see how many complaints had been filed? Selectmen's Rep. Lewis said that Mr. Jodoin would not have presented this ordinance if private sales and outdoor displays were not an issue.

Member Young said that if there are only a few complaints, it would be foolish to draft an ordinance. Vice Chairman Seaworth said that the Board cannot assume that there are many complaints and, therefore, it would be nice to know how many complaints had been filed.

Member Cruson said that she recalled that, at the meeting where this ordinance was discussed, Mr. Jodoin said that he did not want Pembroke to be another Hooksett. Chairman Topliff said that it was clear to him that it was a minority of people who were complaining and recalls that Mr. Jodoin did not dispute that fact. Chairman Topliff asked again if the Planning Board could have copies of the complaints that had been filed so that the Board could make an informed decision. Selectmen's Rep Lewis said that copies probably could be gathered.

Selectmen's Rep. Lewis said that, because of the time constraints, the decision must be made immediately on whether the Planning Board will edit the draft ordinance. Chairman Topliff said he was not comfortable making last minute decisions. Selectmen's Rep. Lewis reminded the Board that this ordinance had been before the Planning Board at three separate meetings.

Member Nowe said that this is the first time that he has seen a draft of the ordinance.

Chairman Topliff said that the last time we discussed this issue, it was very clear that the Board was not in favor of this type of ordinance. He asked if the Board felt differently now.

Member Young said that he would drastically change all the items associated with this ordinance if the Planning Board reviewed it.

Member Nowe said that he would not want car lots on Pembroke Street, but also does not like the restrictiveness of the ordinance. He also said it was important to allow the Town's people to vote on the subject.

Selectmen's Rep. Lewis said that this draft ordinance would set an amount of time that "for sale" vehicles could be displayed.

Member Krebs said he would rather have the ordinance reviewed by the Planning Board so it would have a better chance of being passed at Town meeting. If, in the end, the Planning Board is still not satisfy with the way that the ordinance is written, the Planning Board can still decide, at that time, not to send it to Town meeting. If the ordinance is written as a Petition by the Board of Selectmen, the Petition will still go through the public hearing process but the Planning Board will not be able to change the wording of the Petition before it goes to Town meeting.

Member Young said that he would like to see the article go to public hearing so that the public has a chance to express their thoughts. He also wished that the Planning Board had knowledge of whether there is truly a problem in Town to warrant the ordinance.

Member Nowe said that he was of the opinion that there were only a few people who were concerned about the “for sale” items along Pembroke Street. Selectmen’s Rep. Lewis said that the Code Enforcement Office gave the impression that the complaints were few, but she and Mr. Jodoin told the Board that there were a number of complaints, yet the Planning Board is choosing not to listen to Town officials.

Chairman Topliff said that Mr. Jodoin attended the last meeting and chose not to elaborate on the problem. The Board did not choose to ignore Town officials. It merely was given the impression that the problem was a minor one.

**MOTION:** Chairman Topliff moved to bring the Private Sales with Outdoor Display ordinance to public hearing.

**VOTE:** B. Seaworth – N      A. Topliff – Y      C. Lewis – Abstained      K. Cruson - N  
K. Krebs – Y      R. Nowe – Y      L. Young – Y

**THE MOTION TO BRING THE PRIVATE SALES WITH OUTDOOR DISPLAY ORDINANCE TO PUBLIC HEARING PASSED ON A 4-2 VOTE.**

Chairman Topliff asked Mr. Gaeta to provide the Board at the next meeting with any information or complaints from the public that the Town has on this issue.

Mr. Gaeta sent a letter to Robert Cavanaugh of Kimball’s Cav’ern stating that if he planned to sell anything other than beer and wine, he would be required to return to the Planning Board. Mr. Gaeta received no response after numerous phone calls and a visit to the establishment. The Code Enforcement Officer spoke with Mr. Cavanaugh and he acknowledged receiving Mr. Gaeta’s letter. He also told Mr. Hodge that he has no intention of serving anything other than beer or wine.

Mr. Gaeta said that he postponed the Open Space Ordinance presentation until after Town meeting due to the Board’s extensive workload.

**C. Board Member Items**

Member Krebs stated that he remembered at one of the Planning Board meetings that the Town officials were being “drilled” about the “for sale” problem along Pembroke Street. It gave the impression that the Board was willing to take the word of town developers over that of Town Officials.

Member Nowe says that he does not take the word of town officials lightly but does not remember Mr. Jodoin saying that the issue was a big problem. Member Cruson agreed.

Mr. Young said that the Board clearly looks to the Code Enforcement Officer for facts. He remembers the Code Enforcement Officer saying that there were a "couple of instances" associated with the private sale issue. He did not indicate that it was a major problem. A "couple of instances" does not warrant a regulation.

Chairman Topliff said that asking questions or requesting information pertaining to the subject that is being discussed is a way to ensure that the Board makes informed decisions and is not intended as disbelieving Town Officials. He and Member Nowe said that it was not their intention to give the impression that they did not believe Town Officials.

**MOTION:** Chairman Topliff moved to adjourn. Seconded by Member Krebs.

The vote was unanimous in favor of the Motion.

The meeting adjourned at 10:27 p.m.

Respectfully submitted,  
Jocelyn Carlucci, Recording Secretary