

**Pembroke Planning Board
Minutes of Meeting
September 27, 2016**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Larry Young, Sr.; Kathy Cruson; Brent Edmonds

ALTERNATES PRESENT: Richard Bean

EXCUSED: Fred Kline, Selectmen's Rep.; Robert Bourque

STAFF PRESENT: Stephanie Verdile, Town Planner; Jocelyn Carlucci, Recording Secretary

Chairman Topliff called the meeting to order at 7:00 p.m. and asked Alternate Member Bean to vote in place of Member Bourque.

Ms. Verdile said the Board of Selectmen will be discussing the Planning Board membership at their next meeting because she heard that Member Bourque may return to the Board.

New Business-

1. **Special Use Permit Application SUP-AC #16-307, Mark Sargent, Richard Bartlett & Associates, LLC, for D'Pergo Realty Investment LLC, owner of Tax Map 561, Lot 35, located at 107 Sheep Davis Road, in the Commercial Industrial (C1) Zone and the Aquifer Conservation (AC) District.** The applicant Mark Sargent, on behalf of property owner D'Pergo Realty Investment LLC, requests a Special Use Permit from Article 143-68.E, Aquifer Conservation District for the operation of tractor trailer/commercial vehicle repair business, outside storage of dry trailers, and parking for tractors and commercial vehicles. A Special Use Permit is required for any activity taking place within the Aquifer Conservation (AC) District.

Chairman Topliff said the applicant asked for a continuance to the October 25, 2016 Planning Board meeting. He also submitted a Major Site Plan Application which will also be heard on October 25, 2016.

With regard to the cease and desist, Ms. Verdile said the letter from the Planning Board to the Board of Selectmen, requesting the Selectmen move forward with the Cease and Desist order, was reviewed by the Town Attorney. The attorney said the

legally correct process is for Mr. Hodge to ask the Board of Selectmen to issue a Notice of Violation letter. He said the applicant must be put on notice of what he is in violation of and given a timeframe of when to come into compliance. The Notice of Violation was sent certified mail and hand delivered to Mr. Dapergolas on September 23, 2016, because he was in the office. Her understanding was the applicant had until the end of the day on September 30, 2016 to have Mr. Hodge inspect the site and building to see what was completed. If the inspection does not occur, the Town will move forward with the cease and desist on Monday, October 3, 2016.

Ms. Verdile also reported that Mr. Dapergolas applied for similar Special Exceptions for the MBI use as he had applied for, for his business in February. The Zoning Board of Adjustment (ZBA) heard the application on September 26, 2016, and continued it to October 24, 2016. The ZBA will make a decision the night before the site plan is scheduled to appear before the Planning Board. The ZBA gave Mr. Dapergolas time to come into compliance with the Special Exception Conditions of Approval and the Site Plan Conditions of Approval.

Chairman Topliff recapped that, at the last meeting, the Board discussed revoking the site plan and the hearing to determine that was set for October 25, 2016. He asked if the Board should take the vote after the Board considers the Major Site Plan Application. Ms. Verdile said she would look into that.

Vice Chairman Seaworth said the result of the Site Plan Revocation Hearing would be merely to schedule another public hearing at which time the Board would take the vote to revoke. If the Board approved a new site plan, than the plan that the Board may revoke would not be the last one that the Board approved.

Chairman Topliff said the Board should have that hearing and make the decision before the Board hears them.

Ms. Verdile said Mr. Dapergolas has submitted a Major Site Plan and Change of Use for the back building in addition to the Special Use Permit.

Chairman Topliff asked if it was an amended Site Plan and Ms. Verdile said it was a new Major Site Plan based on the Board's interpretation from the September 20, 2016 meeting. She said there are two brand new applications for the back building.

Vice Chairman Seaworth said that that would be normal if there was an approved site plan and the applicant wanted to work on just a portion of it. But if the Board said that the whole site plan was a problem and said "forget it", then the new application would not make sense.

Ms. Verdile agreed because the main issue for the Planning Board is that the applicant is in violation of the site plan. The site plan approval had a condition that said that the applicant could not open up something without a Special Use Permit.

Chairman Topliff said that the applicant did not meet any of his Conditions of Approval and does not have a Certificate of Occupancy.

Ms. Verdile said that, technically, the Town allows a year to complete the Conditions of Approval before an applicant can get final approval and receive a Certificate of Occupancy.

She continued to say that the easiest thing is for the Planning Board to consider revocation of the site plan since he violated one of the Conditions of Approval. The applicant applied for a Special Use Permit which was a Condition of Approval. He also submitted a site plan for the back building.

Vice Chairman Seaworth suggested that the Board review the RSA which describes under what authority the Board can revoke a site plan. He suggested that Ms. Verdile send the appropriate RSA to the Board to review prior to the hearing. He said that the Board could not discuss why the Board should or should not revoke the plan because that would be inappropriate, but it would certainly help the Board to know the legal grounds to which a site plan can be revoked.

Member Young said that it would be fairer to the developer for the Board to deal with the revocation first before he spends a few hours describing what he wants to do with the back building because it may not be relevant depending on the outcome of the vote.

Ms. Verdile said that she would include RSA 674:A in the upcoming packet and the planner notes. Chairman Topliff asked if she would also include, in the packet, a copy of the meeting minutes pertaining to the application.

In a general discussion on monitoring wells, Member Edmonds said that typically the goal is to get into the static ground water level. Many times it is below the ledge strata. Bedrock wells are perfect examples. He said that the whole point is to get below the static level and, depending on what the usage will be, typically drill below that to achieve capacity. Anyone who has to drill a well knows that that is the normal course of action. Member Edmonds wondered if there already was a well on the site before it was converted to Town water.

Vice Chairman Seaworth recalled that Ms. Verdile asked the applicant to come back to the Planning Board to address the well situation but Mr. Dapergolas did not take that opportunity.

Ms. Verdile recapped the events at the site. She said in November 2015 she was approached by Mr. Dapergolas who said he was in the process of buying the building and asked if he could: (1) Store his vehicles in the big building to get them out of the weather; and (2) Move some of his office staff to the model home and dispatch from there since the model home was already office space and there would be no change of use. The Planning Board allowed him to move office people and equipment to the model home and set it up without approval and allowed him to have vehicles there out of the weather until he got his approvals. She believes the Board's kindness and considerations granted to Mr. Dapergolas as a business owner trying to transition from Concord to Pembroke may have "muddied" the water. Ms. Verdile said the applicant received his conditional approval and then allowed MBI to move in which was a violation of his site plan approval.

Chairman Topliff said this conversation would be helpful at the October 25th meeting in order to refresh everyone's memories -- not only the Boards but also the applicant.

Old Business-

1. Simple Site Plan Process.

Chairman Topliff reviewed the Simple Site Plan Application and discussed how it was designed with the downtown in mind. He gave the following example: If a building that housed a restaurant wanted to be a store, by the Town's ordinance it would be a Change of Use which would require a Major Site Plan Application. Typically that rule has not been followed for the downtown area for valid reasons but the Board decided that it would be more appropriate to have a process in place that would be a simplified review process. A subcommittee was appointed and came up with a framework of a process and how it might be used. There was consensus in the subcommittee that it should apply only to the B1 and B2 zones (the downtown area) because the buildings are not likely to change, the parking is already established, etc. and it did not make sense to have someone prepare landscaping and head-in parking plans, which is normal to Major Site Plan Applications, when it would be physically impossible to accommodate in those zones. Chairman Topliff then read through the August 2014 Recommendations and Criteria for Simple Process.

He noted the initial review would be conducted by the Technical Review Committee (TRC). If anyone reviewing the application felt uncomfortable with the application, it would then be reviewed by the Planning Board. If TRC denied the application, the applicant could appeal to the Planning Board.

Because the downtown area is in the Aquifer Conservation District, Chairman Topliff suggested asking the Planning Department and the Code Enforcement Officer to look at the proposed use and make a determination as to whether they felt that there was a risk to the aquifer protection area. Typically a Special Use Permit (SUP) would be required. He said that the Board could require an SUP and perhaps ask TRC and the Planning Department to review it.

Vice Chairman Seaworth agreed with Chairman Topliff that it would be best to streamline the SUP process.

Chairman Topliff said that if an SUP was not submitted and TRC felt that it should have been, they could require it or send the applicant to the Planning Board.

The Site Plan Regulation Inserts for TRC, Version 1, October 20, 2014 was drafted with the help of Matt Monahan of Central NH Regional Planning Commission with the intent of having it become part of the site plan regulations.

Since Town meeting gave the Planning Board the power to delegate authority to TRC, Vice Chairman Seaworth pointed out that the next course of action is for the Planning Board to update the site plan regulations to include the August 2014 Simple Site Plan Application and its criteria.

Chairman Topliff and Vice Chairman Seaworth were not sure if the Town Attorney had reviewed the criteria.

It was suggested that Ms. Verdile review past minutes to see why a representative of the Police Department was not included as a member of the TRC.

The following additional changes were made to the Site Plan Regulations for Technical Review Committee, Version 1, October 20, 2014:

203-13. B. (6) to be removed.

203-13. B. (9) to read: "(9) The proposed use is a permitted use by right."

Since the TRC relies on the Planning Department deciding completeness of an application, the consensus of the Board was that the Simple Site Plan Application completeness should also be determined by the Planning Department.

203-13. B. (10) will be added: The Town Planner shall be required to deem the application as complete.

(The paragraphs of 203-13 B to be renumbered as appropriate.)

203-16. E. will be changed as follows: "E. Minor site plans eligible for TRC shall also submit a change of use form, a project narrative, and a certified notice for all abutters in addition to the plans and materials mentioned above."

203-18. E. (3) shall read: "A majority vote of the Technical Review Committee present will be required to approve or reject the application."

203-18. E. (6) to be removed.

203-18. E. (7) shall read: "All provisions of RSA 676:4 shall apply to applications of the TRC, except that such a committee shall act to approve or disapprove within 60 days after submittal of applications, subject to extension or waivers as provided in RSA 676:4.1(f).

203-18. F. Ms. Verdile will research why the Police Department was not included and the list will be revised accordingly.

(The paragraphs of 203-18 E to be renumbered as appropriate.)

Ms. Verdile will create an Application Section which will include that the abutters will be notified 20 days in advance of the application review.

All other portions of the Site Plan Regulation Inserts for Technical Review Committee Version 1, October 20, 2014 will remain as presented.

Chairman Topliff asked Ms. Verdile to review the Business Location/Change Of Use/Expansion Of Use form with Mr. Hodge for any further thoughts.

With regard to fees for the Simplified Site Plan, Ms. Verdile suggested the following:

Engineering fee: \$100 returned if not used.

Application fee: \$25

Abutter notification fee: To be determined by Ms. Verdile once she reviews Certified Mail costs.

2. Prepare for October 11, 2016 Worksession- Preparing 2017 Zoning Amendments and Master Plan discussion with CNHRPC.

Chairman Topliff asked the Master Plan be postponed until Member Bourque returned to the Board.

Ms. Verdile suggested working on the Accessory Dwelling Unit zoning amendment at the next meeting. She also said that the Sign Ordinance must be worked on.

Vice Chairman Seaworth said the square footage is the only thing that does not comply with the State's Accessory Dwelling Use ordinance, so he suggested that the Board not make it a priority to change any part other than the square footage.

Ms. Verdile said she would send out what was presently written on the books along with suggested language.

Ms. Verdile said Mr. Hodge will work on the sign ordinance with the Town Attorney as soon as the Board decides when they would like to review it. Given the length of the sign ordinance, Chairman Topliff suggested the proposed changes be sent to the Board well in advance of their meeting.

If the Attorney removed some of the ordinance language, Vice Chairman Seaworth asked: (1) What problems would that have created; (2) What does it change from the intent of the original ordinance; (3) What kind of things can be still regulated in the new environment; and (4) Should the Board craft new regulations in that process. He also would like suggestions of what should be included in order to have a functional ordinance.

Member Cruson said the Attorney should be able to tell the Board what was left exposed once he deleted certain language.

Ms. Verdile will ask Town Attorney these questions.

After a brief discussion of the Planning Board calendar, the Board decided to have a work session on November 15, 2016 because of the November 8th election.

The consensus of the Board was to review the sign ordinance changes at the November 15, 2016 Worksession.

Ms. Verdile will place the Accessory Dwelling Unit ordinance language in the October packet and set a public hearing for November 15, 2016.

Miscellaneous

1. Correspondence-

Ms. Verdile received the Planning Magazine.

2. Committee Reports-

No reports were given.

Ms. Verdile said the October 25, 2016 meeting will consist of Pembroke Meadows (110 lot subdivision), the Continental Paving silos, and MBI. The meeting is scheduled to be held at Pembroke Academy.

3. Planner Items- Voluntary Lot Merger and Law Lecture Series No November 8, 2016 Worksession (Presidential/NH Elections)

MOTION: Vice Chairman Seaworth moved to allow the Planning Board Chairman to sign the Voluntary Lot Merger Application as presented. Seconded by Member Young. Unanimously approved.

Ms. Verdile said the law lecture series by LGC will be held on October 15, 2016. Anyone interested in attending, contact Ms. Verdile. Member Cruson and Alternate Member Bean wish to attend.

MOTION: Member Cruson moved to adjourn the meeting. Seconded by Member Young. Unanimously approved.

The meeting was adjourned at 9:05 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary