Pembroke Planning Board
Minutes of Meeting
(APPROVED 12/6/16)
November 15, 2016

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Larry Young, Sr.; Brent Edmonds, Selectmen's Rep Vincent Greco
ALTERNATES PRESENT: Robert Bourque, Richard Bean
EXCUSED: Kathy Cruson
STAFF PRESENT: David Jodoin, Town Administrator; Stephanie Verdile, Town Planner; Everett Hodge, Code Enforcement Officer; Susan Gifford, Recording Secretary
Guest: Steven Whitley, Esq., Mitchell Municipal Group, P.A., Laconia NH, Town Counsel

Chairman Topliff called the meeting to order at 7:00 p.m. Alternate Member Bourque was designated to vote for Member Cruson.

New Business – Public Hearing #1 for 2017 Zoning Amendment #1 for proposed changes to Section 143-18.1 Accessory Dwelling Units, of the Town of Pembroke Zoning Ordinance.

Planner Verdile explained the governor signed a new bill that takes effect June of 2017. It affects section 143-18.1 Accessory Dwelling Units (ADU). Pembroke does have an existing ordinance and does require a Special Exception to add an ADU. One of the main changes is that Pembroke previously allowed accessory dwelling units in three zoning districts. The RSA says that all zones shall allow an ADU, and that the town cannot dictate whether the unit can be a rental unit. Mr. Hodge added that an ADU cannot be restricted to one bedroom either, except size may be a factor on how many bedrooms an ADU could accommodate. The RSA states that the ADU must be a minimum of 750 square feet.

Vice Chairman Seaworth suggested that Pembroke revise its zoning ordinance for ADU to move the maximum size of 675 square feet to the State minimum size of 750 square feet in the ordinance. Steven Whitley, Esq., suggested that the figure of 750 square feet maximum for the town, and 750 square feet minimum for the State boxes the property owner into one size accessory dwelling unit. Chairman Topliff disagreed. Chairman Topliff clarified that State law regulates Planning Boards and

town ordinance regulates homeowners. A property owner can ask for approval of a 500 or 650 square foot accessory dwelling unit in Pembroke up to a new maximum of 750 square feet.

Stipulation D. requires the property owner to obtain a current septic design for the new capacity in case the existing septic system fails. If the existing septic system were to fail, property owner must have a current septic design for the appropriate capacity ready to implement. The design expires every so many years, and must be renewed with NH DES to remain current. If septic fails, owner must install the larger capacity septic system.

Chairman Topliff opened the public hearing on 2017 Zoning Amendment #1 to Section 143-18.1 Accessory Dwelling Units, of the Town of Pembroke Zoning Ordinance at 7:12 p.m.

Albert Muir, Thompson Road, stated he has had an in-law apartment (accessory dwelling unit at his residence for 34 years. It has one bedroom and a walkthrough. Is there any problem with my unit based on this new State law? Chairman Topliff stated there is no problem with any existing unit as they are grandfathered. The new law applies to new applications for accessory dwelling units only.

Paulette Malo, Pembroke Sewer Commission Operations Manager, stated the stipulations do not address water and sewer service. The stipulation "H" that there shall be only one electric, water, and sewer service for both units gives applicants the impression they do not have to check with the Sewer Commission about connection fees. There are sewer connection fees to add an Accessory Dwelling Unit to a single-family home. Paulette can only address sewer. Pembroke Water Works representative is not present at this meeting. Paulette would like a written stipulation added that "applicant must comply with Pembroke sewer and water regulations".

In fact, for anything over a 3-bedroom home, Pembroke Sewer Commission has connection fees for a 4th bedroom. Lower fees apply for an accessory dwelling unit (ADU) with a second kitchen.

Member Bourque asked if an Accessory Dwelling unit is built onto the single-family home, does sewer still have fees. Paulette Malo confirmed connection fees for an ADU are used to expand the sewer system when larger pipes or more capacity is necessary.

Mr. Hodge stated that adding a bedroom, bath, and sitting room is not an Accessory Dwelling Unit. The definition in State law is a unit with sleeping, living and cooking for an individual or individuals use. Steven Whitley, Esq., stated that the town definition of Accessory Dwelling Unit should be consistent with the state definition. It was confirmed that the town definition is consistent and does include "cooking".

Member Bean asked Paulette Malo, Sewer Operations Manager, how the department sets sewer fees. Paulette Malo stated that Pembroke Sewer Commission uses projected water flow/gallons used per actual water intake usage to set fees.

Vice Chairman Seaworth stated that language should be added that this section does not preclude the applicant from having to comply with any applicable water and sewer connection fees. Existing item H was moved to G, and new item H was added. Attorney Whitley asked if the unit were to be rented out, does the electric or heating bill cover both units. Any apartment building only has one meter. A property owner would include an estimate of water and sewer, heat and electric to the rental fee.

Code Enforcement Officer Hodge noted that in Durham, NH, the town had to limit the number of people that can live in an Accessory Dwelling Unit, as this is a college town. Attorney Whitley stated that adequate provisions for water and sewer must be provided per RSA 485A (38). Private septic falls under this RSA and would follow NH DES rules.

Selectmen's Rep Greco stated it appears there must be a number selected that an accessory dwelling unit (ADU) cannot be more than, or less than.

Steven Whitley, Esq., will research whether under the new state law taking effect June of 2017, a municipality may determine a minimum and maximum square footage for an accessory dwelling unit. Attorney Whitley will read the legislative

history to see if it sheds light on the true intent. Attorney Whitley interprets the law as providing a minimum of 750 square feet for an ADU.

There being no further input, Chairman Topliff closed the public hearing at 7:30 p.m.

Ms. Verdile noted that since we have made a change, this proposed amendment must be renoticed and sent to another public hearing.

MOTION: Vice Chairman Seaworth moved to approve the proposed language changes as read, and to send 2017 Zoning Amendment #1 for proposed changes to Section 143-18.1 Accessory Dwelling Units, of the Town of Pembroke Zoning Ordinance to a second public hearing on December 13, 2016. Seconded by Member Young.

VOTE:	A. Topliff - Y	B. Seaworth - Y	R. Bean - Y
	B. Edmonds - Y	L. Young - Y	V. Greco - Y

MOTION TO APPROVE THE PROPOSED LANGUAGE AS READ AND TO SEND 2017 ZONING AMENDMENT #1 SECTION 143-18.1 ACCESSORY DWELLING UNITS TO SECOND PUBLIC HEARING PASSED ON A 6-0 VOTE.

Conceptual Consultations- Charwit A & S Reality conceptual plans for commercial proposals for 39 Sheep Davis Rd. and 55 Sheep Davis Rd.

Chairman Topliff stated there would be a change in the order of business. Agenda item #3, a conceptual consultation for 39 and 55 Sheep Davis Road would be taken up next. A conceptual is purely a discussion. No comments made are binding on either party. The proposal is for a Major Site Plan Review Conceptual.

A notarized letter dated October 31, 2016 was provided from Rob Whitten, Charwit A&S Realty, authorizing representatives of Richard D. Bartlett & Associates, LLC to represent Charwit A&S Realty before the Planning Board regarding property located at 39 and 55 Sheep Davis Road,

Mark Sargent, Richard D. Bartlett and Associates, stated that Pitco currently occupies the building at 39 Sheep Davis Road and received approvals for distribution

and manufacturing last year. The existing building is 143,000 square feet with associated parking. The Whitney family just purchased 55 Sheep Davis Road property. The dilapidated red house has been torn down. The garage is used for storage. The proposal is for a 200,000 square foot addition with loading docks and associated parking. A 40,000 square foot office building with parking is also proposed at 55 Sheep Davis Road. The existing entrance will be used, and a second access point will be requested. A potential road may be added to reach the remainder of the property.

Mark Sargent stated wetlands and State and Federal site specific permits are needed for the proposed project. Greg Moyer, Vice President and General Manager of Pitco in Bow, NH stated that Pitco has no imminent plans to move from Bow in the future. However, Pitco is a growing company, and if they moved, it would need to be to a facility that could fit the growth. Member Young asked how many employees would be added in the new addition. Mr. Moyer stated 380-400 employees would be hired over 3 shifts if Pitco were the occupant.

Chairman Topliff stated an impact report on traffic on Route 106 and the intersections, including tractor trailers, would be needed with an application. The intersection to Commerce Way is being widened now. This lot is in the Commercial zoning district over the aquifer, and any spills of grease and oil or potential contaminants would need to be addressed. Chairman Topliff stated that in the past, heavy construction equipment was parked year round over the aquifer with potential hydraulic diesel leaks a concern. Vice Chairman Seaworth stated the parking would also have to be able to contain spills of oil or grease.

Member Bean stated that he was a Selectman in Bow, and Pitco keeps a clean facility in Bow. Mark Sargent stated that chemical uses would be similar to those used in Bow. Member Edmonds noted that drainage calculations would be needed and a statement of impact on the municipal drainage system. Mark Sargent stated that detention basins would be part of the plan.

Member Bourque stated he is familiar with, and has provided Ms. Verdile with a sample of a product called “Barrier Boom” that allows water to flow through but beads up and stops the flow of oil products. This material is sold in Concord NH and

used on utility substation floors. Ms. Verdile can provide the applicant with more information on the product.

Planner Verdile stated that a NH DOT permit or letter addressing the increase in truck traffic will most likely be a proposed condition of approval when the time comes. She explained all businesses and uses locating on Route 106 are required to submit information from NHDOT. Mark Sargent stated that the applicant's first priority is the expansion at the existing warehouse. The addition would be built to suit tenant, most likely in increments.

Ms. Verdile noted that any Planning Board approval would allow the applicant 12 months to complete the applicable conditions of approval. The applicant can request an extension of approval with extenuating circumstances.

Steven Whitney, property owner, stated he purchased the property at auction. It was formerly used by Precision Finishing which had 150-175 employees working two shifts. Mark Sargent stated that the proposed application is close to impacting greater than 10,000 square feet of wetlands and would likely be required to give a mitigation contribution. Ms. Verdile stated applicant should make contact with Pembroke Water Works and Pembroke Sewer Commission. Mark Sargent confirmed that applicant has already installed 2 sewer connections. Mark Sargent and the applicant thanked the Planning Board for their time.

Old Business–Discussion on 2017 Zoning Amendment #2 Revisions to the Sign Ordinance.
At 8:05 p.m Chairman Topliff stated this is not a public hearing but only a discussion on Draft #1 of Signs 143-57 through 143-66. Planner Verdile stated that she, Code Enforcement Officer Hodge and Town Counsel Steven Whitley, Esq. went through a process where all language that required a judgment call on the content of a sign was marked with strikethrough. After taking out the struck through material, the ordinance was disjointed. Points were brought up and the U. S. Supreme Court case, *Reed v Gilbert,* that signs cannot be content based, meaning that the reviewer must avoid reading the sign to determine if the sign is for a lawful use.

Steven Whitley, Esq., stated a town can regulate the size, location, dimensions and number of signs on a lot. A town cannot use content based regulations. To survive

strict scrutiny, the town must change the sign ordinance language without leaving the Building Inspector powerless to enforce the ordinance.

Planner Verdile stated that the Town of Pembroke represented to a U.S. 9th District judge that the town would work on its sign ordinance to comply with the recent *Reed v Gilbert* decision. Chairman Topliff started that as a Planning Board, we have ordinances in place to protect the character of Pembroke. Flashing signs and billboards are not allowed along Pembroke Street. We need to balance opposing intentions. Obtrusive, large flashing signs are not allowed on Pembroke Street. Member Bean stated that if we really want to meet the intent of the Supreme Court, flashing signs are a safety issue. David Jodoin stated that argument was put forward and there were no statistics to point to showing flashing signs are a distraction. There is also no difference on driver safety between a static message board and a painted sign. Vice Chairman Seaworth stated that some of the proposed strikethroughs reflect negatively on the property owner in a more restrictive sign ordinance. Vice Chairman Seaworth stated he worries about impacting property owners.

Ms. Verdile stated that display of state warning signs is mandated by state law. Chairman Topliff stated that having a sign ordinance is a balancing act. We can't avoid everything that could go wrong by not putting it in the ordinance. Steven Whitley, Esq., stated some subcategories in the existing ordinance are problematic and must go. Some other proposed changes could damage the town character if amended in that fashion. I hope there is a way to protect town character and still insulate the town from legal challenges. A town can highly regulate square feet of signage and placement per lot. Type and size of signs can be limited by aggressively regulating based on zoning district. Board members and Attorney Whitely began a side-by-side comparison of the November 15, 2016 version and the October 25, 2016 version.

Planner Verdile confirmed that opposing counsel (for the Hillside Baptist Church sign court case) has a copy of the first draft amendment to sign ordinance because the subject was noticed in a public meeting. Steven Whitley, Esq., gave a broad explanation on how he, Ms. Verdile and Mr. Hodge looked at any content based restrictions in the existing sign ordinance, and struck through them. General requirements were left in the ordinance. Placement standards and content neutral

restrictions were left in the ordinance. Exceptions for signs erected by other governmental units or agencies deemed essential for public welfare and safety were kept in. Chairman Topliff clarified that the sign ordinance regulates property owners.

Member Bourque described a situation he witnessed where a tool sale company comes into town and places "sale" signs that mimic a Stop sign and other traffic signs for marketing purposes. Chairman Topliff stated that is a public safety consideration. Steven Whitley, Esq., asked 'how do you address that without being content based?' Member Bourque stated that a business sign cannot mimic state signs. A federal or state law may exist that prevents this use. Vice Chairman Seaworth stated that lawyers are always trying to eliminate entire sign ordinances. If we never put the language in there, there is nothing the town can do. The town has to prove it is a safety hazard. Steven Whitley, Esq., stated a town has limited immunity for staff acting in their capacity. The town can create some language to give Everett Hodge some enforcement discretion.

Steven Whitley, Esq., stated section 143-59A (8), exemption to permits, was taken out in his revision.

Vice Chairman Seaworth stated that State law regulates political signs. Signs can be put up within a time frame before elections and must be removed in a certain number of days, possibly 30 days. Too many signs create clutter. Could we regulate event signs by allowing an additional 10 square feet signage before and after the event the same way political signs are regulated by a time frame before and after elections? Member Greco asked what the penalty is if political or temporary signs are not removed in the appropriate time frame. Steven Whitley, Esq., stated that based on timing, to put in an exempt status, one would need to read the content of the sign.

Chairman Topliff stated that Pembroke does not limit political signs now. Permit applications are not expected for temporary signs. Steven Whitley, Esq., stated that under revision, "portable signs" do require a permit. A balance must exist on the increased demand on administrative staff time and time and effort needed to enforce regulations. Chairman Topliff agreed that a solution must be found for temporary signs. Vice Chairman Seaworth stated if the Town starts requiring a

permit for things that previously did not need a permit or authorization letter, the reaction will be that people will not apply for a permit. Fights could occur between neighbors about signs.

Vice Chairman Seaworth stated that putting in an unenforceable ordinance is just as bad as not having an ordinance. Chairman Topliff stated that this issue is about risk management.

Steven Whitley, Esq., stated that my job is to give my perspective on proposed amendments. The Planning Board is welcome to disregard some of the advice I give on temporary and political signs. Attorney Whitley will research how the State describes political signs in RSA 64:17. Vice Chairman Seaworth stated that to post land for "no hunting" or "no trespassing", the State requires a minimum amount of signage spaced appropriately. Chairman Topliff stated that the Planning Board does not regulate any sign addressed by State law.

Member Bean asked how real estate signs are treated. Steven Whitley stated that sale/lease/rent signs can be regulated by size, quantity and location. Mr. Hodge noted that no signs can be regulated as commercial and non-commercial. Steven Whitley, Esq., stated that the philosophical approach that he, Ms. Verdile and Mr. Hodge took in their review of the sign ordinance table was to make minimal changes to the table and take out categories. For example, free standing signs are regulated by square footage and number of signs per lot. Multiple signs are restricted by square footage and quantity per lot by district. The signage restriction relates to the overlay district and is not limited by content. Vice Chairman Seaworth stated that if a business use is not allowed in a district, then it would follow that signage is not allowed. Steven Whitley, Esq., stated that misleading or false advertising signs may still appear. Code Enforcement Officer Hodge noted that the Town of Pembroke has permissive zoning. If the sign is not in the general section Table of Uses, the sign cannot be put up. Code Enforcement Officer Hodge noted that per Section 143-15 Use Regulations, any use not listed in the ordinance can be construed as not permitted, and therefore prohibited. Steven Whitley, Esq. noted that argument may not carry in court.

Member Bean discussed window signs. The existing ordinance prohibits more than 50% coverage of the window area. Pickup trucks are an example of window signs where the operator can see out, but people cannot see into the vehicle.

The Board thanked Steven for his time and guidance tonight. Steven Whitley stated he sees the sign ordinance from a different perspective and appreciates discussion of real world application. Steven Whitley will provide updated information as discussed at this meeting by November 29, 2016. A Planning Board meeting will be held on December 6, 2016 to discuss amendments to the sign ordinance. The regular Planning Board business meeting will be on December 13, 2016 due to holidays.

Minutes- October 11 and October 25, 2016 Meetings

MOTION: Member Bourque moved to approve the October 11, 2016 Meeting Minutes as presented. Seconded by Vice Chairman Seaworth. Unanimously approved.

MOTION: Member Bourque moved to approve the October 25, 2016 Meeting Minutes as amended. Seconded by Member Young. Unanimously approved.

Miscellaneous

1. **Committee Reports**-

Roads Committee: Vice Chairman Seaworth said that the Roads Committee met this month.

Conservation Commission – Member Edmonds stated that town concerns regarding Northern Pass were duly noted in the formal response sent to the State site evaluation committee.

2. Planner Items-

2017 Schedule - Planner Verdile explained that the 2017 Planning Board meeting schedule was drafted to include the deadline for TRC review of minor site plans. Therefore, a column was added along the left to show deadlines 20 days before regular TRC meeting. Because TRC is held on the first Wednesday of the month,

these dates vary. Planner Verdile also changed the time of the deadline to be 12 noon instead of 3:00 p.m. to allow her time to process paperwork submitted on that day.

2016 Planning Board homework – Planner Verdile noted that the sign ordinance, finalizing simple site plans, and procedures for waivers remain open. Chairman Topliff would like to focus on sign ordinance review because the last opportunity to have a first public hearing on an amended ordinance is January 10, 2017. A Planning Board meeting is scheduled for December 6, 2016 specifically to discuss the sign ordinance.

Dennison Cabinets request – Planner Verdile stated that on November 9, 2016, George Dennison submitted a request for approval to pave the existing and new gravel driveway around the new storage building. Mike Vignale submitted comments and confirmed that gravel is considered impervious area. The Board is in favor of this request. It was noted that the attached plan indicated a dumpster pad was moved to support propane tank. Ms. Verdile will have Everett Hodge confirm all needed permits have been obtained.

3. Board Member Items-

Alternate Member Bourque asked if the Board wished to schedule a Planning Board meeting for December 27, 2016. Chairman Topliff preferred to wait until after the December 6, 2016 Planning Board meeting to assess the progress on the sign ordinance before scheduling another meeting. Planner Verdile noted that the first public hearing for an amended sign ordinance must be held by January 10, 2017 to take the item to be acted on at March 2017 Town Meeting. Chairman Topliff stated that the Planning Board is making an honest effort to comply with the Supreme Court decision.

Chairman Topliff noted that the November 22, 2016 Planning Business meeting will be held at Three Rivers School cafeteria. The public hearing for Major Site Plan application #16-06 Pembroke Meadows and related Special Use Permit requests will be held and the focus will be to gather input on the proposal.

4. Audience member Items-

David Jodoin reported that $25,000 for the new Master Plan was included in the proposed 2017 Town Budget.

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

The meeting was adjourned at 10:12 p.m.

Respectfully submitted,
Susan Gifford, Recording Secretary