

**Pembroke Planning Board
Minutes of Meeting
(DRAFT)
December 6, 2016**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Kathy Cruson, Brent Edmonds, Richard Bean; Selectmen's Rep. Robert Samson

ALTERNATES PRESENT:

EXCUSED: Larry Young, Sr., Alternate Member Robert Bourque; Selectmen's Rep Vincent Greco

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; Attorney Gary Lane

Chairman Topliff called the meeting to order at 7:00 p.m. There was no alternate member to appoint for Member Young.

MOTION: Member Bean moved to go into non meeting at 7:02 p.m. under RSA 91-A:2 Ib to discuss pending litigation. Vice Chairman Seaworth seconded.

VOTE:	A. Topliff - Y	B. Seaworth - Y	R. Bean - Y
	B. Edmonds - Y	K. Cruson - Y	R. Samson - Y

MOTION TO GO INTO NON MEETING UNDER RSA 91-A:2IB APPROVED ON A 6-0 VOTE.

MOTION: Member Bean moved to come out of non-meeting and reconvene the meeting at 7:25 under RSA 91-A:2 Ib. Selectmen's Rep. Samson seconded.

VOTE:	A. Topliff - Y	B. Seaworth - Y	R. Bean - Y
	B. Edmonds - Y	K. Cruson - Y	R. Samson - Y

MOTION TO RECONVENE MEETING UNDER RSA 91-A:2IB APPROVED ON A 6-0 VOTE.

New Business - none

Old Business—Town Attorney Discussion, 2017 Sign Ordinance amendments

Chairman Topliff expressed Board appreciation for Steven Whitley, Esq.'s efforts to narrow down the proposed revisions to the sign ordinance and the focus on the specific concerns identified at the November 15, 2016 meeting. The goal this evening is to get the sign ordinance revision into a document that can be sent to public hearing on January 10, 2017.

Steven Whitley, Esq., spoke of the five topical areas the Planning Board identified as areas that require further work:

1. Non-official signs mimicking highway signs.
2. Possible exemption for political signs before and after elections.
3. Possible exemption for temporary signs, like yard sales or for sale/rent.
4. Possible exemption for signs otherwise allowed or required by state/federal law such as hunting/trespassing.
5. Possible exemption for adult entertainment uses.

Steven Whitley, Esq., stated that for non-official signs mimicking highway signs, NH RSA 236:6 and RSA 265:14 address this issue. Given these statutes, Steven does not see that additional local regulation is necessary. By adding a reference to State law as amended, the Code Enforcement Officer of the Town of Pembroke is authorized to enforce State law regarding non-official highway signs. Member Edmonds suggested the place to insert this reference is in "purpose" of sign ordinance and the language should say "including but not limited to RSA xxx amended."

Steven Whitley, Esq., stated that State law allows political signs before and after an election or vote on private property, outside of town right-of-way. The Town could choose to allow extra temporary signage during an election. An alternative is to also incorporate political signs under "purpose" of the sign ordinance by referencing State RSA as amended relating to political signs. A second option is the town could allow additional temporary signage, restricted by number of signs or square footage, within a certain number of days before and after an election.

Chairman Topliff stated that option "C" is not address temporary signs at all in the sign ordinance. Status quo would be maintained by State RSA.

Steven Whitley, Esq., noted that any person can say town law is “unconstitutional”

1. As written or
2. As enforced.

Attorney Whitley confirmed that the town has the authority to say no signs are allowed in its right-of-way. Steven summarized that Planning Board consensus is that temporary signage would not be addressed in the sign ordinance. Selectmen’s Rep. Samson stated this makes sense. We could see what kind of decisions come from the Reed v. Gilbert decision.

Steven Whitley, Esq., stated that if the town is regulating commercial speech, it is not subject to the recent strict scrutiny review required by Reed v. Gilbert. Commercial business is used to working with the town regulations to do whatever it is they want to do. Chairman Topliff stated that if after Steven’s research, not addressing temporary signs in the sign ordinance is feasible, the Planning Board would like to leave out all temporary signs including yard sale and rent/lease.

Vice Chairman Seaworth noted that the Town of Pembroke sign ordinance was enacted mainly to restrict commercial signage. Years from now, when case law is settled, we can refocus on commercial signage. It would be worthwhile for the Town Planner to make a note to bring this topic back up at a future Planning Board meeting.

Regarding signs allowed or required by Federal or State law, Steven Whitley, Esq., stated that these signs should be exempt from the sign ordinance and not count against any sign limits for the property.

Mr. Hodge noted that if the ordinance revision is eliminating off premise signs, then signs for adult entertainment would have to be located on the property of the business. Ricker Road is the only area zoned for adult entertainment use. Chairman Topliff asked what is there to prevent someone from erecting a morally offensive sign. Steven Whitley, Esq., stated that threat of a lawsuit would prevent an offensive sign. Vice Chairman Seaworth asked in what way the proposed changes restrict signs to the use of the lot. Mr. Hodge stated that Section 143-63(l) addresses off premise signs. He further stated that under permissive zoning, which Pembroke has, if the use is not in the zoning ordinance both the use and signage are not permitted.

Vice Chairman Seaworth asked if the strikethrough removes the reference to off premise signs.

Steven Whitley, Esq., noted that on premise versus off premise signs is likely defensible in court. Steven asked if Board members have seen off premise signs in town. Mr. Hodge stated off premise signs are allowed in the commercial zoning district only. An example of an off premise sign is the existing sign for a storage business which is located on a completely different property. The definition of off premise may or may not be in the ordinance, but means “not on your property.”

Steven Whitley, Esq., stated it is safer to allow permanent off-premise signs in the commercial zone. Vice Chairman Seaworth stated that right now, in the existing sign ordinance, off premise signs are allowed in the C1 zone. Mr. Hodge confirmed that off premise signs count toward the total square footage allowed per lot. So there would be a trade off if a property owner agrees to host an off premise sign. Member Cruson noted that Next Level Church has temporary signs all over Pembroke.

Chairman Topliff summarize that the Board position on off premise signs is that

1. Off premise signs are only allowed in the C1 zoning district.
2. The area of the off premise sign counts toward the square footage allowed on the host property.

Chairman Topliff took a poll on whether members would be in favor of removing adult entertainment restrictions from the sign ordinance.

Member Edmonds stated that if adult entertainment were only allowed on Ricker Road off Route 4, he does not expect a pervasive sign problem.

Member Bean stated he is not in favor of removing adult entertainment from the ordinance personally. However, he would be in favor of removing the section to avoid a potential court case.

Selectmen’s Rep. Samson is in agreement to strike the language to avoid a potential court case.

Vice Chairman Seaworth stated that his biggest concern is getting an amended sign ordinance passed by the voters at this March Town Meeting. By restricting adult

entertainment use to the C1 zone, people tend to be less emotional about a potential problem. Vice Chairman Seaworth is in favor of striking the section now and reworking it later.

Ms. Verdile read the specifications in the zoning ordinance where adult entertainment use is allowed. A small area near Rout 106 is zoned for adult entertainment with a Special Exception. Steven Whitley, Esq., stated that in that particular zone the ordinance can prohibit off premise signage. Member Cruson stated that off premise signage is a concern because it could be in any location.

Chairman Topliff summarized the priorities he heard.

1. Only allow off premise signs in the commercial area.
2. Stipulate that adult entertainment cannot have off premise signs.
3. Restrict signage based on zoning.
4. Signs are allowed only where the use is permitted.

David Jodoin agreed that this was the cleanest way to go.

Ms. Verdile stated that adult passive use is allowed by right on Ricker Road and with a Special Exception at Route 106. Ms. Verdile suggested eliminating that Special Exception in C1 and Table of Uses. Vice Chairman Seaworth asked why a Special Exception was put in for Route 106 at the time. Mr. Hodge responded that there was an existing business, a lingerie store, on Route 106.

Chairman Topliff asked if members had any additional concerns about the sign ordinance. Steven Whitley, Esq. stated he understood the direction the Planning Board wants to go with temporary signs. Attorney Whitley described an idea he observed. A town required people to come in and apply for a temporary sign. A sticker was placed on the back of the sign indicating its expiration date after a set number of days. That would help enforcement know when the approval for the sign expires. Vice Chairman Seaworth would like to save this suggestion for future. He would suggest that it only apply in the commercial area if adopted.

Steven Whitley, Esq., definitely recommends that a severability clause be added to the sign ordinance specifying that if any section is deemed null/void, the remaining language is to remain in full force and effect. The Planning Board members unanimously support the severability clause revision.

Steven Whitley, Esq., also recommends that if a property owner has a permanent commercial content sign, he can change it to a noncommercial sign without coming in to Town Hall. It was discussed that the change could be to a permanent political sign, and that language is not in the sign ordinance now.

Member Bean asked if what we have discussed will put us on track to having a document ready for public hearing on January 10, 2017. Chairman Topliff stated that Steven Whitley, Esq. will take all the input we have provided, prepare another revision, and have it reviewed by another attorney. Member Bean asked if Attorney Whitley would do anything different from discussions tonight. Steven Whitley, Esq., stated that his perspective is different from the board. He would remove all content based material in the sign ordinance based on an abundance of caution.

Ms. Verdile and Steven Whitley, Esq. discussed that the timing would be tight but could be doable. Steven Whitley, Esq., will get the revision to Ms. Verdile for publishing in the newspaper December 21. A copy of the revised document will be sent to Planning Board members and a public hearing will likely be scheduled for January 10, 2017.

MOTION: Vice Chairman Seaworth moved to go into non meeting at 8:58 p.m. under RSA 91-A:2 Ib to consult with attorney. Member Edmonds seconded.

VOTE:	A. Topliff - Y	B. Seaworth - Y	R. Bean - Y
	B. Edmonds - Y	K. Cruson - Y	R. Samson - Y

MOTION TO GO INTO NON MEETING UNDER RSA 91-A:2IB APPROVED ON A 6-0 VOTE.

MOTION: Member Bean moved to come out of non-meeting and reconvene the meeting at 9:28 p.m. under RSA 91-A:2 Ib. Selectmen's Rep. Samson seconded.

VOTE:	A. Topliff - Y	B. Seaworth - Y	R. Bean - Y
	B. Edmonds - Y	K. Cruson - Y	R. Samson - Y

MOTION TO RECONVENE MEETING UNDER RSA 91-A:2IB APPROVED ON A 6-0 VOTE.

Minutes- November 15 and November 22, 2016 Meetings

MOTION: Vice Chairman Seaworth moved to approve the November 15, 2016 Meeting Minutes as amended. Seconded by Selectmen's Rep Samson. Unanimously approved.

MOTION: Member Edmonds moved to approve the November 22, 2016 Meeting Minutes as amended. Seconded by Member Bean. Approved on a 5-0-1 Abstain vote, with Vice Chairman Seaworth abstaining.

Miscellaneous

Correspondence – Ms. Verdile reported she received Business NH magazine.

1. **Committee Reports-** none at this time

2. **Planner Items-**

Loop road update - Planner Verdile explained that a status meeting was held this morning. The paving of Cooperative Way and Kline Way is on schedule. Contractor will gravel Kline Way 150 feet from the Route 3 traffic light. The entire project will be stabilized and work stopped for winter by December 20, 2016. A slight price break was realized on winter binder.

December 13, 2016 Business meeting – Ms. Verdile reported that Pembroke Meadows proposed subdivision, John's Wrecking Service/MBI Trucking, National Guard presentation, and the second public hearing for Accessory Dwelling Units are on the agenda for the 12/13/16 business meeting.

3. Board Member Items-none at this time

4. Audience member Items- none at this time

MOTION: Selectmen's Rep. Samson moved to adjourn the meeting. Seconded by Vice Chairman Seaworth. Unanimously approved.

The meeting was adjourned at 9:52 p.m.

Respectfully submitted,
Susan Gifford, Recording Secretary