

**Pembroke Planning Board
Meeting Minutes
(ADOPTED)
July 9, 2019**

MEMBERS PRESENT: Brian Seaworth, Chairman; Robert Bourque; Clint Hanson;
Selectman's Rep. Ann Bond; Kathy Cruson

ALTERNATES PRESENT: Dan Crean

EXCUSED: Alan Topliff, Vice Chairman; Brent Edmonds

STAFF PRESENT: David Jodoin, Town Administrator; Carolyn Cronin, Town Planner;
Jocelyn Carlucci, Recording Secretary

GUEST: Joanne Cassulo, Central NH Regional Planning Commission (CNHRPC)

Non Public Consultation with Legal Counsel

In accordance with RSA 91-A:2.I.(b)

Chairman Seaworth called the meeting to order at 7:00 pm. Alternate Member Crean agreed to vote in place of Vice Chairman Topliff.

Appointments:

1. Master Plan Discussion with Joanne Cassulo from CNHRPC
 - a. Natural Resources Chapter Maps

Ms. Cassulo said that she made the changes to the Natural Resources Chapter based on input from the Board. She reviewed the maps which are data layers from the State's GRANIT System. The Conservation Lands map required the most work because it has the most up-to-date parcels. Parcels 29 and 30 have yet to be renamed by the Conservation Commission.

She said that the Scenic View Map was based on Rick Van de Poll's work. The NRI was incorporated into the chapter. It is his identification of the scenic views that he surveyed in town. All of his work will be an appendix to the Master Plan.

- b. Energy

Ms. Cassulo said that a subcommittee was created and Mr. Crean was the only person that attended the Energy Committee. Ms. Cassulo was asked to write the Chapter based on information that she could find on the website and the Town reports. She included recommendations that many towns tend to use when they have an active Energy Committee.

It was suggested that a photo of an LED streetlight, Pembroke's new substation by the sewer treatment plant, or the wood-chip boiler at Pembroke Academy be used as the Energy Chapter photo.

Alternate Member Crean pointed out the following:

Page 10.2, second paragraph which reads: “One example of this is Pembroke’s efforts to replace existing street lights with LED technology through an Eversource grant” is incorrect. He said that a portion of the costs were offset by renewable energy credits by State law.

Referring to Page 10.4, he said that the streetlight conversion project is very close to completion and should be reflected in the chapter.

Mr. Jodoin said that 95% of the Town’s streetlights have been converted.

Alternate Member Crean recommended that the Master Plan encourage the Planning Board to adopt regulations furthering energy efficient development.

He said that he was referring to building a residential development or a commercial facility using Energy Star standards and energy efficient design.

He also said that the Town should be pursuing renewable energy sources and should enhance residents’ ability to obtain and use renewable energy. He suggested more forceful language be included on Page 10.7, Objective 2.

Ms. Cronin said that she would work on appropriate language.

Ms. Cassulo said that she added general information to the chapter pertaining to energy in New Hampshire because Pembroke had so little energy data.

Chairman Seaworth said that sometimes less is more. He said that to simply add generic information to a chapter because the Town has nothing else to add to the chapter merely pads the Master Plan without adding value. He said that less important information detracts from the more important information. He recommended that if the data is not serving the purpose of the Master Plan, to allow the chapter to remain short.

Ms. Cassulo asked if the 1-1/2 pages of information on energy in NH should be eliminated.

Chairman Seaworth said yes.

Mr. Hanson said that the school had facility energy audits in the past. He suggested contacting Josh Coughlin to acquire the audit information which will show a change from the past in comparison the present.

c. Community Facilities

Ms. Cronin said that Katie Nelson worked on the chapter and that most of the information came from Town Departments. All Departments received an email asking them to state what their needs will be in the next 10 years with regard to expansion, facilities, equipment, staffing, etc. The chapter is the result of the culmination of those responses.

Ms. Cassulo said that a subcommittee for the chapter met twice. The CIP Committee was also used to gather information.

Alternate Member Crean said that the last sentence on Page 5.6 should be eliminated since the Village School will be sold soon.

Ms. Cronin said that she will review the remaining chapters and eliminate any other references to the Village School.

Alternate Member Crean said that a business looks at community facilities and programs when deciding whether to move to a new location. He felt that a community center may be a good point to emphasize.

Member Cruson pointed out that the Allenstown Senior Center has a multitude of already established activities for all ages.

Alternate Member Crean said that he would like to see presentations by pre-election candidates.

Selectmen's Rep. Bond said the data on Page 5.7 on public parking at the Perry Eaton Building should be eliminated since the building is in the process of being sold.

Alternate Member Crean also said that he would like the Planning Board to look into regulations that would require new residential developments to provide facilities to the residents such as hiking trails, internal recreational facilities, etc.

He also recommended that the Planning Board prioritize items listed in the Master Plan to be discussed and acted upon either through the regulatory process or the budgetary process.

It was suggested that Rose Galligan and Ammy Heiser be asked to speak with the Planning Board about park facilities and land use.

Ms. Cronin suggested that these topics be included in the Land Use Chapter which focuses on land use regulations.

Ms. Cassulo ended her presentation at 8:03 pm.

Ms. Cronin said that she and Ms. Cassulo will work on incorporating tonight's comments into the revised chapters.

Member Bourque said that developers should include something that is beneficial to the people living in the development and other parts of town.

Member Hanson pointed out that, although the developers will initially pay for those recreational facilities, it will ultimately fall back to the Town to maintain those facilities.

Selectmen's Rep. Bond asked who would pay the taxes and incur the liability on land that is left as an open field for kids to play on.

Old Business

2. Discussion of Delayed Zoning Amendments

a. Corner Clearance

Ms. Cronin said that she collected corner clearance zoning regulations from other towns.

It was noted that before the Public Works Director issues a driveway permit, the sight distances are checked. Alternate Member Crean said that the Town needs something, in the regulatory sense, on corner clearances. A standard should be set and the regulation should state, "when reviewing an application" or "in the interest of public safety" . . .

Member Bourque said that if the regulations say that nothing can be placed 20' back from a corner, the Public Works Director can change it as he sees fit. He said that the Planning Board cannot make the determination based on a site plan. The Director or the Code Enforcement Officer should make that determination in the field.

Ms. Cronin said that the intent is not to make Mr. Pendergast the "corner police". He merely wants a regulation that will give him the teeth and backing to address the issue, if necessary.

Alternate Member Crean said that there is a statute pertaining to roadside vegetation and the town has a lot of authority on clearing trees within the right-of-way. He suggested that the Board set a standard for new development and, within that regulation, note existing conditions. The general standard should state that it can be increased based on appropriate factors. For existing conditions (not new developments), place a provision that says that "where there is vegetation, other obstructions that interfere with appropriate sight lines, the Town may, with an appropriate process, require the landowner to take appropriate action to remove the hazard."

Chairman Seaworth said that the consensus of the Board was to adopt 15 ft.

Alternate Member Crean recommended that Ms. Cronin come up with appropriate language and then the Board decide.

b. Unsafe Structures

Ms. Cronin gave the Board language from other towns. She said that RSA 155-B was discussed with Mr. Pendergast. She asked him if RSA 155-B would meet his purposes. She said that the difference is that RSA 155-B is a process for the Board of Selectmen to go through for getting a court order on a property that they deem to be a hazard. She said that Mr. Pendergast is looking to have the authority to make that judgment call and to determine that the structure is a hazard so he could then write that person a letter and begin the process.

Alternate Member Crean said that he has used RSA 155-B successfully. It relates to hazardous and dilapidated buildings. He said that there is a process and that the Board cannot just have anybody say “do that” and expect it to be done. RSA 155-B provides protections and standards. There is no requirement to go to court. If the owner does not comply, it may be necessary to go to court. He suggested that, rather than creating a new bureaucracy, if a situation arises, the Code Enforcement Officer should ask the Board of Selectmen to issue an order based on RSA 155-B.

Ms. Cronin said that there is nothing in zoning that empowers the Code Enforcement Officer to enact this process. Only the Fire Chief can do so. He would like the same authority.

Alternate Member Crean said that nothing prevents the Code Enforcement Officer from going to the Board of Selectmen and presenting the case as a dilapidated and hazardous building. There is no need for another regulation.

The consensus of the Board was to eliminate the unsafe structure language.

c. Commercial Greenhouse

Ms. Cronin said that there is no standard definition for greenhouse or commercial greenhouse as far as zoning is concerned. She said that if the Board feels that focusing on size and scale of greenhouses is appropriate, she would ask Legal Counsel how it would stand up to the agricultural RSAs.

The largest greenhouses in town that come under “commercial greenhouses” belong to N. E. Flower Farms. Their existing size is 306,000 sq. ft. and they are returning to the Board with a proposal for another 100,000 sq. ft.

The next largest commercial greenhouse example is Nicole’s on Route 106. Each of their 3 greenhouses is 3,300 sq. ft. for a total of 10,000 sq. ft.

When asked if the Board would like 10,000 sq. ft. as the standard size for a commercial greenhouse, Member Cruson said that it would depend on where it was located. If it was in a residential area, it would be distinctly different from being in a commercial zone.

Chairman Seaworth said that, at the present time, a commercial greenhouse is only allowed in a residential zone by a special exception. A commercial greenhouse in a commercial zone is allowed and would go through as a site plan.

Ms. Cronin said that commercial agriculture is permitted everywhere but commercial greenhouses are only allowed in certain zones with a special exception. The question is: What is the difference between commercial agriculture and a commercial greenhouse if they are both, essentially, growing plants and the State’s statutes do not see them as a different use. What is the threshold that the Town is going to differentiate it by?

She said that commercial horticulture is permitted everywhere but a commercial greenhouse is only permitted in the R3 and C1 zones, although it can receive a special exception in other zones.

Is the only difference the building? If so, the State of NH Right to Farm laws do not see the structure as the difference between a farm and a commercial greenhouse.

Member Bourque said that the Board must differentiate between an agricultural retail outlet and a commercial greenhouse.

Chairman Seaworth said that the retail outlet is not the key factor. There can be an agricultural use with or without retail. For example, if someone had an acre of land on Pembroke Street and grew plants and sold them to a distributor, that would be considered a commercial operation and would be allowed. If glass was placed over the plantings and then sold to a distributor, it is not allowed because it is a commercial greenhouse.

Last meeting, the Board seemed to be gravitating toward a size which would be the threshold of what could be done without a special exception in a residential zone. If the Board comes up with a size, Ms. Cronin would then approach the attorney and see if the lawyer thought that it improved the situation.

If a business goes into a commercial zone, they are required to go through a site plan process which allows the Board control over what goes on rather than just the open space on the lot. Major and Minor home businesses would apply to someone putting a business in an R3 zone and would be subject to the process to get the home business approved.

Likewise, if someone putting in an operation where they were either growing plants to sell commercially or it was a retail, where they were growing flowers in their backyard and selling them out of their yard, would be subject to the home business regulations such as parking and traffic. All that should be reviewed under the review of the home business and not the zoning that says whether they can use it as a place to grow flowers.

Member Hanson said that no matter what is being produced, the Town has it restricted by size. Size is a defining principal. Retail would be a separate issue. If the issue is that it is 100,000 sq. ft. then it is not a home business. He said that his point is that if the Board has a comparable business, whether it is widgets or flowers, and the Town has a regulation that is comparable between the two, then the Town has an ability to defend its decision.

Ms. Cronin said that there are two uses that are the same thing when looking at the use: commercial horticulture and floriculture, which is commercial growing of plants, and there is a commercial greenhouse which is the use of commercial growing of plants. The only difference is the structure. The structure is treated as something that has different impacts.

She clarified that someone wanted to build a greenhouse and came to the Town. The Code Enforcement reviewed the zoning and saw that it was a greenhouse that was selling items which would classify it as commercial. The zone that the greenhouse was going to

be in required a special exception. The applicant said that zoning considers it “commercial agriculture” even though there is a structure and, therefore, is a permitted use.

Town Counsel recommended striking the use for commercial greenhouse so that all commercial agriculture would fall under the Town’s commercial agriculture use which would permit it in all districts as opposed to the commercial greenhouse which is only permitted in some districts with a special exception.

Member Bourque said that someone can have their whole backyard as a garden and it is okay, but as soon as there is a building around the garden, the amount of impervious ground is affected, and it may have taken up the majority of the property.

He said that the only difference between the two definitions is that one includes a greenhouse and one does not. If someone puts up a greenhouse then it’s a commercial greenhouse.

Chairman Seaworth agreed.

Member Hanson said that his argument is that if someone has another type of business with the same square footage, it is only allowed in certain designated zones but because it is agriculture, it can be placed in any zone. He concluded that, if the Town has regulations that control what is done with commercial entities based on square footages, why not have a similar square footage for agriculture. If someone wishes to go beyond that, they can go to the ZBA.

Chairman Seaworth said that Mr. Pendergast gave an example of using a shed and replacing the roof with glass which then transforms the structure into a greenhouse. This would require the person to go to the ZBA. Yet, if the shed is kept as a shed but grow lights were added to grow the plants indoors until it’s warm enough to transplant them outside, the person would have the exact same building footprint, but it would be a greenhouse. It would not require ZBA approval. That distinction is the one that the lawyer says that the Town does not want to be in court for.

Member Cruson asked if, perhaps, the Town should require anyone who has an extraneous structure and is selling things from that structure to be treated the same whether it is a greenhouse, warehouse, or a shed.

Member Hanson said that that was his point exactly.

Chairman Seaworth said that commercial greenhouses need to be approved as a home business. The issue is in the use of a residential property -- if the plants are in an open field it is permitted. If they are under glass, it involves the ZBA. He said that the conversations continue to go back to sales because of its impact on the neighborhood. It is not retail sale that triggers special use. It could be nonretail sales. Someone could be putting the product in their pickup truck and delivering it to someone. It is still a permitted commercial use of the property as long as there is no glass structure on the property.

Alternate Member Crean asked if there was a detrimental impact from any use that requires it to be treated one way or another. If talking about a commercial greenhouse, what is the impact that needs to be regulated? Is it traffic, is it volume? A standard needs to be set that says: If someone has a structure of a determined size, the Board would expect traffic, deliveries, truck traffic.

Member Cruson said that lighting is important. The NEFF commercial greenhouses on Route 106 in Loudon have lighting that would be disturbing in a neighborhood.

Chairman Seaworth said that the Board should initially focus on the issue identified by Town Counsel which was that the zoning of the greenhouse requires a trip to ZBA if it is in certain zones. He said that he would like to restrict it to that scope -- if greenhouses require special exceptions, why and where.

He said that if the Board approved another NE Flower Farm in the C1 District, the Town does not lack the regulations to review site plans. The issue is that by treating greenhouses in a special way, it conflicts with State law.

Alternate Member Crean said that the issue is adverse effects on neighboring properties. Rather than getting caught up in the commercial greenhouse/agriculture topic, perhaps the Town should not allow an operation that adversely affects neighboring properties.

Chairman Seaworth said that the Town also has the regulations at the adverse effect level.

Alternate Member Crean said that the Board should focus on what they are trying to prevent or do.

Selectmen's Rep. Bond asked if the issue is the word "commercial."

Ms. Cronin said that you could say commercial greenhouse or commercial agriculture, but by state definition agriculture includes any type of structure or equipment that is needed for this use. If the Board wanted to keep the definition of commercial greenhouse, the Board would need to come up with something that defines it as substantially different than commercial agriculture. If the Board struck the definition of commercial greenhouse, it would fall under the definition of commercial agriculture which is allowed in all zones. This is what Town Counsel advised.

Chairman Seaworth asked if the Board wanted to continue to pursue forcing anyone who builds a commercial greenhouse, by the existing definition or a new definition, to go to ZBA if outside of R3 and C1. He said that the Board should define what will trigger the applicant to go to the ZBA.

Alternate Member Crean said that he thought that the Board was looking at a way to restrict whatever is going to be allowed so it does not have adverse effects. The regulation should say that the commercial use may include commercial greenhouses but are subject to being reviewed for adverse effects including but not limited to noise, light pollution, and sound vibrations.

Chairman Seaworth said that the Board started out wanting Ms. Cronin to look at a size restriction and see if Town Counsel thought that that would get the Town in a better place. Now the Board seems to want to keep a commercial greenhouse definition, but define it in terms of adverse effects such as lighting and noise.

Alternate Member Crean suggested keeping the definition of commercial greenhouse and say "Commercial agriculture, including commercial greenhouses, are permitted except that the commercial greenhouse can be reviewed for adverse effects."

Ms. Cronin clarified that the Board wants the commercial greenhouse, by special exception, and to have special criteria for the special exception.

Member Cruson mentioned the importance of size. For example, if all of the farm at the top of Pembroke Hill (R3) was taken and made into a huge greenhouse, it would change the residential tone.

Ms. Cronin said that she would look and see if other towns do it by special exception and if they have special criteria. She and Mr. Pendergast will come up with a list of appropriate special exception criteria.

Member Cruson said that Loudon has huge greenhouses, so they may have some examples for Ms. Cronin to work from.

Ms. Cronin said that she will share the list of zoning changes in the next packet.

Ms. Cronin will place the other agenda items onto the next agenda.

3. Meeting time – Discuss possibility of 6:30pm start time

The Board agreed that the new start time of 6:30 pm for future meetings will begin in September 2019. The 9:30 pm cut-off will then become 9:00 pm.

Ms. Cronin will review the forms, and the website to adjust the meeting times.

MOTION: Alternate Member Crean moved to change the start time of all Planning Board meetings to 6:30 pm as of September 2019. Seconded by Member Hanson. Unanimously approved.

New Business

6. Administrative discussion of review time limit for San Ken Homes, 4th Range Road/Robinson Road subdivision.

Chairman Seaworth said that the original time to review the San Ken Homes application expired but, with the applicant, the Board extended it to July 11, 2019. He said that the time will come and go before the meeting on July 23, 2019. At the last meeting the Applicant made a conditional request to extend it. They have not sent in a letter that

corresponded to the Board's offer to extend the time. He said that a few things could happen: (1) The applicant could ask the Board of Selectmen to require the Planning Board to take a vote, which the Planning Board would have 30 days to comply with; (2) The Planning Board could ask the Board of Selectmen to extend the Planning Board's time limit (up to 90 days) before completing the review; or (3) Neither one of the presented choices could happen and the Planning Board could go to the July 23, 2019 meeting and continue discussions without anyone making a request to the Board of Selectmen.

Chairman Seaworth recommended that the certain members remain in their seat but recuse themselves from the discussion and vote.

Member Bourque, Member Cruson, Selectmen's Rep. Bond recused themselves from the discussion and the vote.

Alternate Member Crean said that he did not think that it was up to the Planning Board. He clarified that the Board has an application before them which has a deadline. He said that the applicant should be requesting the extension. If the Board receives a request or does not receive a request on July 23, 2019, it should decide, at that time, what is to be done.

Member Hanson agreed with Alternate Member Crean. He said that the Board also needs more information and hopefully it will come along in a reasonable timeframe.

Chairman Seaworth also agreed.

He said that the Board will proceed to the next agenda items and that the recused members could continue with the Board meeting.

Minutes:

June 11, 2019

MOTION: SELECTMEN'S REP. BOND MOVED TO ACCEPT THE JUNE 11, 2019 MINUTES AS AMENDED. SECONDED BY MEMBER BOURQUE. APPROVED WITH ONE ABSTENTION - CHAIRMAN SEAWORTH.

June 25, 2019

MOTION: ALTERNATE MEMBER CREAN MOVED TO ACCEPT THE JUNE 25, 2019 MINUTES AS PRESENTED. SECONDED BY SELECTMEN'S REP. BOND. APPROVED WITH ONE ABSTENTION – MEMBER BOURQUE.

Miscellaneous

1. Correspondence

Ms. Cronin received a letter indicating that the FEMA maps are being updated. There will be workshops held to review the community maps. They will be in Manchester, NH on Wednesday July 17, 2019 at 9:00 a.m. and in Concord, NH on July 17, 2019 at 1:00 pm.

2. Committee Reports

Board of Selectmen: Selectmen's Rep. Bond said that the Selectmen approved the streetlight standards. A copy will be given to Chairman Seaworth.

A public hearing was held for 4 Union Street.

There will be a public hearing on July 15, 2019 on Fourth Range Road and Flagg Robinson Road.

The Energy Committee will meet July 11, 2019 at 6:30 p.m. at Town Hall.

Technical Review Committee: Member Bourque said that there were two applications at the last TRC meeting – NE Flower Farms and Michel's who is moving into the Fairfield property.

Member Hanson said that Pace Academy will be operating in their new facility as of this week. They are in negotiation with another nonprofit to accept a lease agreement with Pace Academy which will cover more than a half of their mortgage payment.

3. Planner Items

Ms. Cronin said that, in compliance with the EPA requirements, the MS4 Permit and stormwater management plan for Pembroke has been posted for public comment and review.

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

The meeting was adjourned at 9:50 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary