

**Pembroke Planning Board
Minutes of Meeting
(ADOPTED)
October 13, 2015**

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

ALTERNATES PRESENT: Brent Edmonds

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

STAFF PRESENT: Stephanie Verdile, Town Planner; Matt Monahan, CNHRPC Circuit Rider; David Jodoin, Town Planner; Everett Hodge, Code Enforcement Officer; Jocelyn Carlucci, Recording Secretary

Chairman Topliff called the meeting to order at 7:00 p.m. Alternate Member Edmonds agreed to vote in place of Member Krebs.

Chairman Topliff decided to change the order of business so that Mr. Hodge would not be forced to sit through the entire meeting awaiting his turn.

Old Business –Discussion for 2016 Zoning Amendments, Minor Site Plan/TRC Committee Review,

Ms. Verdile said that she was not prepared to speak on Agenda Items 4 and 5 because she was not able to obtain legal advice in advance of the meeting.

She met with Mr. Jodoin and Police Chief Gilman to discuss the following issues: flea markets, yard sales and recreational vehicles.

Flea Market/Yard Sales

Ms. Verdile reported that Mr. Jodoin and Chief Gilman were in favor of the new flea market definition:

“A commercial location that rents space to people who want to sell merchandise. Renters of the flea market space are called vendors. It may be indoors, as in a warehouse or school gymnasium; or outdoors, as in a field or parking lot or under a tent. Flea markets can be held annually or semiannually, others may be conducted monthly, on weekends, or daily.

Mr. Hodge said that there are people in town that set up for yard sales that go on for days, weeks, and even months. One was near Tandy Automotive and one was on Glass Street. He felt that it was important to determine the difference between a Yard Sale and a Flea Market.

Mr. Jodoin said that the Police Department wanted to find a way to control the purchase and sale of stolen goods. They have established second hand dealer licensing which require store owners keep track of where items were purchased and sold in hopes of curbing the sale of stolen property.

Mr. Jodoin said that no one originally wanted a permitting process but, since the Code Enforcement Officer is not on duty on the weekends, the Police Department have to deal with the issues. He said that there was someone who had created an outdoor shop on Glass Street. When the police approached the owner, the shop quickly disappeared. A person near Tandy's Automotive would set tables up on Thursday and run their market throughout the weekend and, at times, during the week. It became a flea market doing business in a residential zone. The Police were concerned about traffic and the lack of accounting for the purchase and sale of goods.

Chairman Topliff asked what would be needed in a definition in order to give the ordinance value.

Mr. Hodge said the establishment of allowable zones for the use would be a good starting point.

Chairman Topliff said a flea markets are typically in an open field or a large parking lot where the vendors rent table space and normally run for a few days.

Member Edmonds said that school fundraising flea markets sometimes set up in the Pembroke Academy parking lot.

Member Young said that yard sales would be in a residential zone.

Mr. Jodoin said that someone wanted to have a yard sale in a commercial business building. The person was going to purchase items at yard sales and resell them at their business. In Mr. Hodges' opinion, that business would be considered a consignment shop.

Mr. Monahan said that the term "rent" used in the definition would establish the difference between a yard sale and a flea market. He also said that bake sales should not be made for fundraising purposes.

Mr. Jodoin said that the spring and fall library fundraiser is a flea market because they rent table spaces.

Mr. Hodge said that the house near Dandy Automotive gave permission to another person to use the lawn.

Vice Chairman Seaworth suggested requiring a permit and approval process for a flea market. This would allow the Police to have more oversight on the business.

Mr. Jodoin said that a downtown consignment store is required to keep records of who is selling and buying her merchandise. She also has to periodically send reports to the Police. The requirement is an attempt to catch any stolen items.

Mr. Monahan said that that could be done with a flea market conditional use permit in the Zoning Ordinance. It would give the Police the information that they need for tracking.

Ms. Verdile said that flea markets in a commercial location (allowed in B1, B2 and C1 zones) would better handle parking and pedestrian and traffic safety.

Mr. Hodge said that a Table of Use would have to be established along with permitting regulations.

Chairman Topliff pointed out that a Flea Market Conditional Use Permit could specify: (1) Off-street parking, (2) Ways for pedestrians to safely get to the flea market, i.e. cross traffic (requiring police detail, etc.).

Member Young said that by restricting flea markets to commercial zones would, in essence, tell residences that they cannot have a flea market in a residential zone even if it is for a good cause (i.e. to raise money for a sick person).

Chairman Topliff pointed out that requiring flea markets in a commercial zone would limit it to the use of schools, parking lots, and other areas with flat surfaces.

Alternate Member Edmonds asked if there would be any value to limiting the frequency of a flea markets.

Ms. Verdile said that the proposed definition states that “. . . flea markets can be held annually, or semiannually, others may be conducted monthly, on weekends, or daily.” She also said that it can be “indoors, as in a warehouse or school gymnasium; or outdoors, as in a field or parking lot or under a tent.”

Mr. Hodges said that if a flea market is not limited to a commercial zone, Kimball’s Cav’ern could have a flea market all summer in their parking lot. The business has the parking space but it is a commercial business in a residential zone.

Mr. Jodoin said that in such a case as Kimball’s, they would need the parking for the flea market which would violate the conditions for the restaurant to function. Only one business at a time could run in that same location. Mr. Jodoin said that the purpose was not to limit flea markets in a residential zone but more to track it.

Chairman Topliff said that there are residential areas that have large fields or open space such as large front lawns.

Chairman Topliff suggested that Ms. Verdile investigate flea market definition/criteria held by other communities. Ms. Verdile confirmed that the Board presently felt that the proposed flea market definition was good but would like permitting language for adding parameters such as offstreet parking, pedestrian safety, and hours of operation.

Mr. Hodges said that the permit should expire annually and not be transferable.

Chairman Topliff also suggested that the ordinance be based on the number of square feet for display, sales, parking spaces, etc.

Mr. Hodge said that the permit, if it goes over a certain criteria, would need site plan approval by the Planning Board.

Mr. Hodges said that a flea market should go through the Police first and then to the Planning Department for review, similar to the Second-Hand Store process.

Mr. Hodges said that the Town's Second-Hand Dealer License was derived from the City of Concord's ordinance.

Recreational Vehicles ("RVs")

Ms. Verdile said that the meeting with Chief Gilman, Mr. Hodges and Mr. Jodoin concluded that the following language be added to Section 143-21 of the zoning ordinance.

D. Occupants of a recreational vehicle outside of a licensed campground must comply with applicable state health and sanitary disposal regulations.

Mr. Hodge said that there are recreational vehicles parked in front yards that are not properly disposing its sanitary waste.

Chairman Topliff said that recreational vehicles have bathroom facilities with holding tanks.

Mr. Hodges said that they had cases where sewage was dumped over bankings and into brooks.

Alternative Member Edmonds said that when he worked for the State Department of Resources, they built three RV campgrounds. He said that the State had very stringent regulations about disposal practices.

Mr. Monahan said that the MS 4 requirements (stormwater process) deal with illegal discharges. He said that the RV regulations could be written to tie into the MS 4 language and then be focused Town-wide. It would give the Town more teeth for enforcement.

Alternate Member Edmonds said that DES has very well crafted language.

Chairman Topliff said that when Everett gets a call that illegal dumping is occurring, he has no authority other than to notify DES, who, in turn, take action. The problem is that the State moves very slowly.

Mr. Jodoin said that the Town's revised language would tell Everett and others where to go to solve the problem.

Mr. Jodoin said that if the Code Enforcement Officer called the Health Officer, the Health Officer would be required to inspect the problem.

Mr. Jodoin suggested referencing the State DES regulation language to the Town's regulations.

Mr. Monahan said that part of the requirement is that there must be an ordinance in place which would indicate penalties (i.e. a daily fine) for illegal discharges so that the Town could enforce it.

Mr. Jodoin said that illegal discharges are not only for campers. It can be discharges from someone's home or business. He thought that a separate section in the zoning ordinance may be necessary to deal with the permitting process.

Mr. Monahan said that the MS4 regulation affects zoning, site plan, subdivision and the Elicit Discharge Ordinance. The Elicit Discharge Ordinance is not a land-use regulation but a very broad Board of Selectmen ordinance.

Chairman Topliff said that hopefully there are resources that would help put the regulations into affect because it is too difficult for each community to do it themselves.

Vice Chairman Seaworth said that the RSAs pertaining to private sewers are very broad. He said that the NH Clean Water Act may not cover the present discussion. He noted that the RSAs are very broad and merely says that the Departments have the authority to implement whatever clean water regulations are necessary to comply with what is done at the Federal level. He said that everything is done in rules which basically copies and enhances the Federal rules. He said that trying to get a direct reference for the Town's ordinance could be difficult, therefore, he suggested making the Town ordinance vague and, if a specific incident occurs requiring a referral to an RSA, a call to the State would be less time consuming.

Chairman Topliff suggested language such as: "waste shall be disposed of properly" which would leave it open ended.

Mr. Monahan said that the Town could enforce fines until the issue is resolved.

Mr. Hodge said that a Cease and Desist order along with a daily fine may be appropriate. The Board of Selectmen would have to approve the fines.

Vice Chairman Seaworth said that since the RV regulation would be appended to the permit approval for the RV, Mr. Hodge would probably have the authority to revoke the permit.

Chairman Topliff asked Mr. Hodge and Ms. Verdile to discuss the topic among themselves during normal business hours, research language from other communities, and work with Mr. Monahan to draft appropriate language based on this meeting discussion points.

Mr. Jodoin suggested term limits since this could become a housing issue. He said that if a family is residing in an RV and the child begins school, then there is a good chance that, come winter, they will expect the Town to find appropriate housing which would turn into a welfare system process. Member Young said that the limit should be no more than 60 days.

Noise Ordinance

Ms. Verdile said that at the September 8, 2015 meeting, the Planning Board proposed removing the noise section from the zoning ordinance and placing it as a checklist item. This would ensure that the applicants are aware of the noise ordinance.

The checklist items do not have to be approved at Town meeting but taking it out of the ordinance does. She proposed removing the noise section from the ordinance at the March Town meeting. Later in 2016, a public hearing could be held amending the site plan regulations, the application, the checklist list, and any other place that the Board would like the noise ordinance to be inserted. She proposed the following language be added to the Major Site Plan Review Checklist, Part A, R:

- R. Applicant shall submit documentation that the proposal meets the intent and requirements of the Town of Pembroke Noise Ordinance.

The Board was in agreement with the proposed language.

Ms. Verdile said that Zoning Amendment Section 143-73.21.A.1-5 Soucook River District will be removed and replaced with "Reserved" on the 2016 Town meeting ballot.

Mr. Jodoin said that a decision on whether the existing applications can be grandfathered from the new noise ordinance will have to be determined.

Ms. Verdile said that if the noise ordinance is a Board of Selectmen issue, there would be no grandfathering. However, she did point out that there is an appeal process within the noise ordinance.

The consensus of the Board was to remove Zoning Amendment Section 143-73.21.A.1-5 Soucook River District in preparation for the March 2016 Town meeting.

Car Sales Ordinance

Mr. Jodoin said that last year the Planning Board removed the car sales ordinance. Since that time, there have been a number of ways that people have been commercially selling vehicles. He said that if a person had a personal vehicle that he regularly used and wanted to sell it, placing a vehicle in front of their home would be acceptable.

A few years ago, the ZBA granted a home office business in the building across from the Mobile gas station on Route 3. The person wanted a used car sales business. The Town said that permission was only granted for a home office. The way that the person skirted the issue was to purchase a car, register it under their personal name, and then put it out for sale.

Mr. Hodge recently shut someone down that was running a used car lot in a residential zone. The person would bring the cars in on an auto hauler, jump over the town sidewalk, and park the vehicle in the State's Right of Way from Friday evening until Monday morning when Town Hall was closed. During the week, the vehicle was parked in the resident's driveway.

Mr. Jodoin said that the past ordinance was primarily a nuisance ordinance. It had become very difficult for Everett to determine between someone's personal vehicle or a vehicle that someone had merely registered as their own for the sake of selling it.

Mr. Jodoin also said that recently the Town was notified by a resident that the sidewalks must be passable under ADA requirements. The car sales are hindering that. He also said that the Public Works Department has begun the task of reinstalling some of the mailboxes along Pembroke Street in order to allow for sidewalk plowing and wheelchair accessibility. The point is to eliminate the potential hazards caused by a snowplow hitting cement blocks, bricks, granite, or other debris holding up the mailboxes which could end up on Route 3 and cause an accident.

Mr. Hodge said that the first year that the ordinance was in place, he issued about 60 permits for cars to be sold. The permitting process required so much of Mr. Hodges' time that the ordinance was repealed.

Crematorium

Ms. Verdile said that, at the last meeting, the Board asked her to contact the Town Attorney and ask them to review the language which appears at the end of all ZBA approvals. She submitted e-mails to the Board from Steven Whitley (dated Oct. 1, 2015) of Mitchell Municipal Group, PA. for their review.

Mr. Hodges said that he called the State and learned that crematoriums do not need a Clean Air Permit from the State but the State must inspect them. He said that there is one individual at the State that deals with crematoriums and he said that crematoriums are not supposed to be smoky. He said that the State representative was going to be speaking with Sabbow in the near future. He also said that the State received numerous complaints about Sabbow when they were in Concord.

Mr. Hodges also said that the State was going to contact the organization that runs crematoriums. That particular organization polices their own because they do not want crematoriums to develop a bad reputation. Mr. Hodges also said that he heard that a scrubber was missing from the crematorium chimney.

Vice Chairman Seaworth recalled that the applicant said, at a Planning Board meeting, that complaints were filed against the crematorium when it was in Concord but once the opacity meter was installed, there were no more problems.

Chairman Topliff asked the Board if they felt that a letter should be sent to the applicant indicating that the Town had received numerous complaints. He also suggested making reference to the meeting minutes, implying that there were potential misrepresentations made, and state that complaints were reported to the State.

Mr. Monahan said that the Board makes its decisions based on the applicant's presentation. If the applicant misrepresented the fact, perhaps a site plan revocation would be in order.

Member Young said that the Concord ZBA swears in their applicants to ensure truthful testimony. He wondered if the Pembroke should do the same.

Member Young also said that his research found that crematoriums were run all over the country without any problems and have been around for years.

Ms. Verdile said that the Attorney pointed out that the Board can only revisit a decision within 30 days. The Attorney also said that if the Board, in the future, feels strong enough about the representations of the applicant, they could make conditions of approval such as that smell and smoke will not be objectionable to abutters. This would tie it to the site plan for violations purposes.

Ms. Verdile said that if the Board is amending site plan regulations, she could add language to the application, checklist, or notice of decision which would be similar to the ZBA language about misrepresentation. Chairman Topliff asked Ms. Verdile to draft appropriate language for their review.

The consensus of the Board was to ask Ms. Verdile to draft a letter to the applicant to be reviewed by Chairman Topliff and Vice Chairman Seaworth regarding past complaints.

Chairman Topliff said that crematoriums are allowed in B1 and B2 zones. Now that the Board is better informed, the Board may want to consider not allowing them in those zones. The Board agreed that they would like to discuss it further.

Ms. Verdile said that she will create language to remove crematoriums from the B1 and B2 zones in the table of permitted uses.

Major Site Plan Review Checklist

Chairman Topliff said that Note 2 on Page 5 of 6 said that “the lack of any information under any item specified . . . may constitute grounds for the disapproval of the site plan.” He thought that if an applicant lacked information on a site plan, the Board would not get to the point of disapproval or approval. The application would be incomplete. He wondered if the Note was necessary.

Vice Chairman Seaworth said that his understanding of the statement was that if the Board accepted an application and thought that the applicant had satisfied all requirements but later realized that something was missing, it may be cause for disapproval. He thought that it was a way to make sure that the applicant took information-gathering seriously.

Chairman Topliff suggested that there be language saying that the applicant either provide everything on the checklist or ask for a waiver, otherwise the application would be considered incomplete.

Ms. Verdile said that there is language in the regulations that clearly says that either the applicant provide everything on the checklist or ask for a waiver, otherwise the application would be considered incomplete. Ms. Verdile will double-check for language that could be added to the application or regulation for clarification.

Design Review

Chairman Topliff said that the Design Review is simple and similar to a Conceptual Consultation.

Ms. Verdile said that she gave the Board the RSA defining Design Review phase.

One difference between a Conceptual Consultation and a Design Review is that all abutters are notified. Both nonbinding for the applicant and the Board.

Mr. Monahan said that the public is allowed to speak at a Design Review because it is not a public hearing. It is a way to get feedback from the public.

Ms. Verdile will ask the Town Attorney to clarify that the public (i.e. abutters) are allowed to speak.

Chairman Topliff said that the upcoming Design Review for the proposed project across from Pembroke Academy could potentially have 60 abutters at the public hearing. He said that it must be made very clear to the public that the meeting is nonbinding and purely a discussion for the Planning Board and the potential applicant. He also suggested that setting time-limits on how long

someone can speak should be considered. He asked Ms. Verdile to make sure that the Board is on solid legal ground for the meeting.

Chairman Topliff suggested that Ms. Verdile gain permission to use the Pembroke Academy auditorium for the October. 27th meeting.

Chairman Topliff suggested that it also be made very clear that there will be no responses to abutter questions since the Board knows very little about the project at this point. The abutters are free to ask questions and all questions will be noted but the meeting is strictly for the purpose of gathering information. Chairman Topliff also suggested that a time-limit be set for the entire meeting.

Ms. Verdile said that nothing else is on the agenda for that evening.

She said that the RSA indicates that the Board can decide when the Design Review Process of an application ends.

Mr. Monahan said that the RSA merely gives the Chairman of the Planning Board the opportunity to continue the meeting if necessary or to decide that the Design Review is done.

Member Young said that the Technical Review Committee gave the potential applicant some things to think about such as road issues, driveway permits, DOT permits.

Mr. Jodoin said that the Town may need to do a true impact study on the project.

Minutes- September 22, 2015

MOTION: Chairman Topliff moved to approve the September 22, 2015 minutes as presented. Seconded by Vice Chairman Seaworth. Unanimously approved.

1. Committee Reports-

Technical Review Committee: Member Young said that their last meeting was for the proposed large development across from Pembroke Academy. Accessibility to the development was discussed as being a few houselots north of the Academy Road/Pembroke Street light.

Roads Committee: Vice Chairman Seaworth said that the Committee discussed the problem with the road layout. The traffic will be coming into Broadway and Pembroke Street approximately 200 ft. from existing lights. The Roads Committee's opinion was that since both roads. It would be up to the State to resolve the issue.

Vice Chairman Seaworth said that there are two issues where the Town ordinance says one thing and the Town is of a different opinion. For example, the ordinance requires curbing and sidewalks on both sides of the street and the Town does not want to maintain that many sidewalks. The ordinance encourages cul-de-sacs but the Town is not in favor of them and would prefer through roads.

On another topic, the Town engineer reviewed the designs for East View Drive and Beacon Hill Road. Some improvements to the Beacon Hill drainage was proposed.

The Beacon Hill project is more expensive than is typically budgeted for one year's road work. The Public Works Superintendent suggested dividing the project into three years. The Roads Committee was of the opinion that that was not a good way to complete a road – potentially ending up with three different contractors that would blame the prior contractor for past problems which would result in a higher project cost.

The Committee preferred to wait to pay off the current bond and then try to complete the entire project in one year but pay for it in 3-4 years. One short section of Beacon Hill Road is really bad, so it would make sense to do some repaving to make it last a few years. The Committee recommended to the Board of Selectmen that the money that was targeted for work on Rosedale be given to the Beacon Hill Project before the end of the year.

The Committee also discussed the status of the Pembroke Hill Road project which should be completed before the contract is up.

Board of Selectmen: Mr. Jodoin said that the Board met on October 15, 2015 and took care of some paperwork with the TIF District. He also said that the upcoming October 19, 2015 Selectmen's meeting has many things on its agenda such as auditors reports, and how to finance the Bow Lane Pump Station repairs.

2. Planner Items- Legal follow up

Chairman Topliff asked that the Minor Site Plan review be tabled.

Ms. Verdile referred to Page 8 of 11 in the Staff Report regarding the MSDS requirements.

The Fire Chief brought up the point that recently there was an enormous amount of MSDS information submitted on one case. She reviewed the 2014 Zoning Ordinance and the checklist that was amended in January. She found that there was one sentence missing from a checklist item and that is the reason why the Planning Department and the Planning Board is receiving so much information.

The checklist item is missing the following sentence:

“This list shall be submitted to the Pembroke Water Works for review and opinion prior to site plan approval.”

Member Young said that Member Bourque originally wanted everyone to submit a complete MSDS list. He said that one cleaning agent such as Dawn Liquid Detergent has an MSDS sheet 15 pages long. People are not catching the point that the Board only wants MSDS sheets on those items that will be stored in one gallon or more sizes or if the yearly usage of an item is 5 gallons or more. Applicants are providing MSDS sheets for all quantities of chemicals that will be stored on site.

Mr. Monahan said that the missing sentence should also be placed in the Special Use Permit checklist.

Chairman Topliff said that Section 143-68.E.(1) of the Zoning Ordinance says to submit the list to the Pembroke Water Works but not the MSDS sheets.

It was decided to change Section 143-68.E.(1) as follows:

“(1) List each chemical, provide an MSDS . . . This info shall be submitted to the Pembroke Water Works . . . approval.”

The Board decided to table further discussion on the MSDS issue until Member Bourque returns to the Board.

Ms. Verdile said that the Town does not have a process on expanding a Special Use Permit. She asked the following question: If a business applied and was granted a Special Use Permit for a project and later wanted to expand that project, would it be necessary for the applicant to apply for a new Special Use permit.

Chairman Topliff said that if the Board does not require a new Special Use Permit every time a new application is proposed, there is no way for the Board to know if they have overlooked something that may be a new concern. In his opinion, a Special Use Permit in the Aquifer should be required for every case so that the Board can review the information on a case-by-case basis in order to be sure that the use will not be dangerous to the aquifer.

It was decided to continue the discussion once Member Bourque and Member Krebs return to the Board

MOTION: Member Young moved to adjourn the meeting. Seconded by Vice Chairman Seaworth. Unanimously approved.

The meeting was adjourned at 9:20 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary