

**Pembroke Planning Board
Minutes of Meeting
(ADOPTED)
November 10, 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 Administrator; Everett Hodge, Code Enforcement Officer; Jocelyn Carlucci, Recording Secretary

GUEST: Carol Ogilive of Central NH Regional Planning Commission

Chairman Topliff called the meeting to order at 7:00 p.m. Alternate Member Edmonds agreed to vote in place of Member Bourque. Vice Chairman Seaworth would be arriving late.

Old Business – Minor Site Plan/TRC Committee Review, Excavation Regulation Amendments Update

Ms. Ogilive said she received a call from Mr. Monahan asking her to review the Town's excavation regulations. She said nothing in the regulations "set off any alarms". She asked if the Board found any issues that they found challenging.

Chairman Topliff said in 2011 the Board, with help from Stephanie Alexander of CNHRPC, made changes to the excavation regulations in an effort to bring them in line with the new State RSA. Since that time, there has been one application for a new excavation permit. Two key concerns became evident: (1) how to measure the noise caused by equipment and blasting, and (2) the Fire Chief was concerned about issuing blasting permits because he felt that it was a Fire Department issue and not a Planning Board issue.

Member Young said getting clarification on grandfathering and what would happen if an active pit crossed the town line into another community would be helpful.

Ms. Ogilive said it was easy to put noise language into a regulation but problematic if the Town had no easy way to enforce it. She said there is language that will give the Board some place to go if there is a real problem but the Town needs to be able to enforce it.

Chairman Topliff said the Town does not have noise-measuring equipment.

Mr. Hodge said the only complaint has been houses shaking or vibrating from the blast.

Ms. Verdile said she would review the regulations regarding the noise parameters and her notes on past Planning Board concerns. One thing she recalled was that the Board struggled with what provision would qualify for a waiver or an exemption from the regulations.

Ms. Ogilive said CNHRPC found grandfathering to be a difficult issue. For many years, there was no pit activity because people were not busy. This resulted in Planning Boards focusing on other regulations. Once the economy picked up, the question of grandfathering arose. She said it is not reasonable to say that if owners had not worked their pit for 20 years, that they should not be able to work it again. They are working with a few other towns with that issue and are helping Boards and property owners come to a resolution depending on the circumstances.

Mr. Monahan referred to a case where a person received an approved plan but only dug a portion of the pit. The town asked the town engineer to walk the site and, because nothing else in the pit had changed, no new plan was necessary. The maximum life of a pit permit is 5 years but can be as low as 1 year requiring an applicant to annually come before the Board for its renewal.

Mr. Hodges said that 2 neighbors of an existing pit have told him they have walked through the woods toward Merrill Construction's quarry, behind Eley Lane, and there is a 100 ft. cliff.

Chairman Topliff asked Ms. Verdile to make copies for Ms. Ogilive of the pertinent Ladd pit documents for review.

Ms. Ogilive will return next week to discuss the excavation regulations with Ms. Verdile and Mr. Monahan.

New Business – Discussion for 2016 Zoning Amendments

Zoning Amendment #1:

Article II, Section 143-8 Definitions.
Add a definition of "Flea Market"

FLEA MARKET- A commercial location that rents space to people who want to sell or barter 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.

Chairman Topliff said the Board decided not to define yard sale but to define flea markets in the zoning regulations.

Ms. Verdile said the meeting counted as the first public hearing for the zoning amendments. The public hearing is noticed exactly as the definition is written above. She said if there were any substantial changes made to the definition, the Board could hold a second public hearing.

Mr. Monahan said he liked the proposed definition because it included language such as renting space, selling and bartering, locations, and frequency. It was not overly specific.

Chairman Topliff asked how the definition would satisfy Mr. Hodge's concerns.

Ms. Verdile said she and Mr. Hodge discussed qualification for a flea market such as treating it like a farmers market (§143:44 of the zoning ordinance) which would address parking. She suggested defining flea markets and then, in the supplementary provisions, outlining

the criteria such as requiring a minor site plan if it was to be held for more than 3 consecutive days or more than 12 times in a calendar year.

Mr. Hodge said one a flea market is considered a commercial business and a yard sale is a family-run sale in a residential zone. He would like something that would outline when a planning board permit would be necessary along with parking, pedestrian safety, and traffic.

Mr. Hodge said if someone had an ongoing yard sale (4 consecutive days), he needed an ordinance that would make it clear that they are no longer considered a "yard sale" but rather a "flea market".

Ms. Verdile said the Police Chief was also concerned with the resale of stolen merchandise, traffic, and pedestrian safety. Since the Town offices are closed on weekends, the responsibility lies with the Police Department for enforcement.

Mr. Hodge said a yard sale could run for up to 3 consecutive days or less than 12 consecutive weekends. Anything over that would be considered a flea market.

Mr. Hodge said that "rents space" is the key words necessary in a definition to determine between a yard sale and a flea market.

Chairman Topliff said the definition would not apply if a person, who regularly cleaned people's basements and garages and sold the items, but does not rent space, because the sale took place at his home in an R3 zone (not a commercial location).

Mr. Hodge thought that placing a time limit on the yard sale would turn the sale into a flea market regardless of whether the person is renting a space or not.

Chairman Topliff argued the definition says that a flea market must be held in a commercial location. If Chairman Topliff was running a yard sale in his yard it would not be a commercial location. If he was having a yard sale for 50 consecutive weekends but not renting a space, based on the definition it would still not be considered a flea market. In his opinion, the definition is what stipulates between a yard sale and a flea market, not the parameters.

He suggested concentrating on the definition rather than the parameters.

Chairman Topliff also said it would be difficult to prove that someone was renting space. The other vendors at the yard sale could be considered friends.

Chairman Topliff pointed out that: (1) the Board did not want to limit yard sales; (2) It would be difficult to distinguish between a person renting space and a homeowner having multiple friends selling items in his yard; and (3) It would be difficult to determine whether the items sold were stolen merchandise.

Ms. Verdile said they were trying to control flea markets that have multiple vendors selling “baseball cards” for example and obvious commercial items rather than personal, household items. They also wanted to distinguish it from a homeowner yard sales.

Chairman Topliff said he did not think that the proposed flea market definition would address all of Mr. Hodge’s concerns.

Mr. Hodge said the continuous yard sale that was held near Dandy Automotive was: (1) In a residential neighborhood, (2) Created traffic problems; (3) Blocked the sidewalk, (3) Caused the Town to receive numerous complaints; and (4) Merchandise was being unloading from trucks. He said it was clearly a business and outside of the parameters of a yard sale.

Ms. Verdile said it was remedied because the Board of Selectmen agreed with the interpretation that it was a “retail operation” which was not allowed in a residential zone.

Alternate Member Edmonds said no one wants to shut down a yard sale, but how do you differentiate between a friendly neighborhood retail operation and what Mr. Hodge calls a commercial operation. Mr. Hodge said the number of days that it runs and its frequency.

By having a homeowner pull a permit would begin to create a paper trail in case a yard sale grew into a flea market. It would give Mr. Hodge “teeth” to enforce the Town ordinance.

Vice Chairman Seaworth arrived at 7:50 pm.

It was suggested that defining “retail” may be more helpful.

Ms. Verdile said the Table of Permitted Uses indicates that retail establishments are not allowed in R1, R3, and LO districts.

Mr. Monahan defined retail as a process of selling consumer goods and/or services to customers through multiple channels of distribution to earn a profit.

The following definition was suggested: **A retail operation that provides space to others for the purposes of selling or bartering merchandise.**

After further discussion, Chairman Topliff said it comes down to complaints from someone who has a sale in their yard on a repetitive basis. He asked if the Board would feel that this was a Board of Selectmen issue.

Chairman Topliff recapped: (1) The Board does not want to regulate the typical-homeowner yard sale; (2) It appeared that creating a definition of a flea market would not achieve Mr. Hodge's goals; and (3) Mr. Hodge receives complaints when someone has repetitive yard sales.

He said if someone was going to have more than a dozen flea markets on his property in a given year, the person should come to the Town and get a permit which gives the Town an opportunity to talk about parking and where the merchandise comes from. The Police Chief and Mr. Hodge could review the permit application. If a complaint came in, the Police or Mr. Hodge could approach the person and explain the problem.

Mr. Hodge suggested placing it under the Board of Selectmen ordinance for any yard sale over 3 consecutive days.

Chairman Topliff suggested placing it under the town regulations rather than the zoning ordinance so that the police could deal with the complaints on the weekends. The Board unanimously agreed.

Chairman Topliff instructed Ms. Verdile to send a memo to the Board of Selectmen Chairman describing Mr. Hodge's concerns with noise, traffic safety, and parking issues because of frequent yard sales and to explain that the Board felt that it would be more appropriately handled by the Board of Selectmen and the Police Department rather than the Planning Board.

Member Young agreed to represent the Planning Board at the Board of Selectmen meeting that discusses the flea market topic.

Zoning Amendment #2 (now known as Zoning Amendment #1):

The consensus of the Board was to strike Article IXA, Soucook River Development (SR) District. Section 143-72-21.A.1-5 Environmental performance standards and replace with "Reserved".

Chairman Topliff opened the public hearing at 8:18 p.m.

There being no comments from the Board or public, Chairman Topliff closed the public hearing at 8:20 p.m.

MOTION: Vice Chairman Seaworth moved to accept proposed language and send Zoning Amendment #1 as presented for voting on at the March 2016 Town Meeting. Seconded by Member Cruson. Unanimously approved.

Zoning Amendment #3 (now known as Zoning Amendment #2):

Ms. Verdile said a public hearing on this amendment could not be held tonight because the RSA was changed last year which required the Town to notice individual property owners in a zone where a change in a permitted use or zoning boundary was being proposed.

Zoning Amendment #3 was posted to remove crematory from the B1 and LO Districts. Ms. Verdile asked the Assessing Department and the Town Attorney about this issue for the B1 zone. Since there are over 100 properties in the B1 zone, the Town was not required to notice all property owners in the zone. Because there are less than 100 properties in the LO Zoning District, the Town was required to notice every property owner in that zone.

Ms. Verdile said she sent an e-mail to Tom Petit of Petit Funeral Home, which is located in the B1 District, explaining what the Board was proposing and invited him to tonight's meeting but he did not reply.

She said they will have the first public hearing on that amendment on November 24, 2015.

Recreational Vehicle Amendment.

Ms. Verdile read the proposed language:

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

Mr. Hodge said the change would allow him to refer the complaints to the health officer. He said that the Health Officer's laws are very concise.

Ms. Verdile will add the proposed language as Zoning Amendment #3.

The meeting recessed at 8:34 p.m.

Chairman Topliff reconvened the meeting at 8:38 p.m

Minutes- October 27, 2015

MOTION: Alternate Member Edmonds moved to accept the October 27, 2015 Minutes of Meeting as amended. Seconded by Vice Chairman Seaworth. Approved with 1 abstention – Chairman Topliff.

Miscellaneous

1. Correspondence-

Ms. Verdile said that after the October meeting, the Board asked her to write a letter to Sabo regarding the complaints about the crematorium smoke and odor. The letter was

reviewed by Chairman Topliff and Vice Chairman Seaworth prior to being sent. She read aloud the reply from Mr. Scott.

Chairman Topliff suggested sending a copy of Mr. Scott's letter to the crematorium abutters and anyone that may have been affected by the smoke and odor.

Ms. Verdile received the NH Business Magazine.

2. Committee Reports-

Roads Committee: Vice Chairman Seaworth reported the Committee reviewed this year's projects.

Chairman Topliff suggested using the December work session as a business meeting. The Board agreed.

Mr. Jodoin announced that "Doc" Greco may be appearing in a film written and directed by Ben Affleck because of a Chronicle television piece that was aired on antique cars. The film is taking place in Massachusetts.

Mr. Jodoin said on November 2, 2015 the Board of Selectmen had a meeting regarding the Northern Pass. Approximately 100 people attended.

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

The meeting was adjourned at 9:08 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary