

**Pembroke Planning Board
(ADOPTED)
Minutes of Meeting
August 9, 2016**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Larry Young, Sr.; Robert Bourque; Brent Edmonds

ALTERNATES PRESENT:

EXCUSED: Richard Bean; Kathy Cruson; Fred Kline, Selectmen's Rep.

STAFF PRESENT: Stephanie Verdile, Town Planner; David Jodoin, Town Administrator; Everett Hodge, Code Enforcement Officer; Jocelyn Carlucci, Recording Secretary

GUEST: Town Attorney Steven Whitley of Mitchell Municipal Group, LLC and Attorney Garry Lane of Ransmeier & Spellman PC, representing the Town through Primex.

Chairman Topliff began the meeting at 7:00 p.m.

New Business – Town Attorney discussion-Planning Board waiver procedures and 2017 Sign Ordinance amendments

Ms. Verdile reported that Attorney Whitley and Attorney Lane would be discussing the Town's sign ordinance and how to adjust the Town's ordinance to comply with new Supreme Court decision - Reed vs. Town of Gilbert.

Chairman Topliff said that his understanding was that the Town could not discriminate on how signs were regulated based upon the context. Attorney Lane agreed. Chairman Topliff asked what the procedure would be to modify the sign ordinance.

Ms. Verdile said that it would be treated like any other ordinance. It would be noticed as a public hearing and would be a zoning amendment process and the amendments would be voted on at Town Meeting. She said that the Planning Board could begin working on the ordinance at their first work session in November in preparation for the March Town Meeting.

Chairman Topliff asked if the Code Enforcement Officer could enforce an ordinance prior to Town Meeting approval.

Attorney Whitley said that it does not make sense to enforce a portion of the ordinance that the Town had, on good authority, was no longer valid.

Vice Chairman Seaworth was concerned that some residents may not be aware of the new revised ordinance and begin applying the sign ordinance as it was originally written. Attorney Whitley said that it is difficult to manufacture a notice or process that informs every person of a recent change. The Town can only do the best that it can. Eventually, the resident would be in contact with Mr. Hodge.

Mr. Whitley said that he recommended the removal of the last paragraph on Page 84, X (7) which read: "Electronic changing signs displaying the time and temperature are exempt from this restriction." The reason why he suggested removing that phrase is because it related to the content

of what the sign is displaying. He said that the Supreme Court case says that any time someone has to look at the content of the sign to figure out where it fits in the Town's ordinance, it is considered a content-based restriction.

Attorney Lane said that, his understanding is that the Town created an exception for the purpose of time and temperature.

Mr. Hodge said that the content of an electronic sign cannot change but once every 24 hours.

Member Bourque asked if the provision for time and temperature had to change given that it might fluctuate more than once every 24 hours.

Attorney Lane said that perhaps the Planning Board could write the ordinance in such a way that it would include language which specified that an event notification could not change but once every 24 hours.

Attorney Whitley said that he understood Member Bourque's concern and he would have to research that question more thoroughly. He said that he would think that the law would allow something like that to be permissible but that the new Supreme Court decision turned the law on its head, so he does not know the exact confines of its reach.

Chairman Topliff asked Mr. Hodge and Mr. Jodoin if they would be willing to work with Attorney Whitley in order to revise the ordinance.

Mr. Hodge said yes and that he would feel comfortable calling Attorney Whitley with any questions.

Mr. Hodge said that he would be happy to work with the Planning Board at their sign ordinance work session.

Attorney Whitley said that, even if Mr. Hodge only enforced certain provisions of the sign ordinance, the ordinance would still be in existence. The fact that Mr. Hodge would not be enforcing certain portions of it does not nullify or void the valid portions of the ordinance.

Attorney Lane suggested that it may be easier for Mr. Hodge to have a list to work from rather than a marked up copy of the ordinance which could become challenging to decipher. Mr. Hodge said that it would be very helpful to have a "cheat sheet".

Attorney Whitley said that he would prepare one for Mr. Hodge.

Ms. Verdile asked Attorney Whitley to clarify what would occur if Mr. Hodge issued a permit that fell under the section that the Town was no longer enforcing?

Mr. Whitley said that it would depend on the situation. In some situations, it could mean that a permit would not be required. In other situations, it could mean that a permit is still required but the limitation of the type and nature of the signage restrictions no longer apply.

Ms. Verdile asked if a business received a sign permit during the time that the Town was not enforcing a specific portion of the sign ordinance prior to Town Meeting, would that business sign have to be changed after Town Meeting?

Mr. Whitley said that as a general matter, the Town has discretion over when and how it chooses to enforce the ordinance. Under the circumstances of a Supreme Court decision saying that portions of the sign ordinance are not legal, he thought that the permit issued now would be just as good as one that was issued after Town Meeting. Mr. Hodge will not be enforcing only those provisions that the Town thinks violates the Supreme Court decision. When Town Meeting approves the amendments in March, it would not make someone who received a permit before Town Meeting nonconforming.

Mr. Whitley said that he did not think that the Town would be creating nonconformities by making ordinance changes. He said that the ordinance would be fixed in March at Town Meeting otherwise the various businesses would have to be compliant with the portions of the sign ordinance not called into question.

Attorney Lane said that, with regard to electronic signs, he did not think that anything needed to change in terms of their allowed location (the C1 District and on Pembroke Street - South of Main Street).

Attorney Whitley said that with his understanding of the Court Case and the sign ordinance, the proposed changes to the voters would not open the flood gates for businesses to put up electronic signs where the Town did not want them to be. He said that the Town can still regulate the zones where electronic signs can and cannot be located.

Attorney Lane said that if a permit was not required for a sign and the ordinance was adjusted, Mr. Hodge could not require that a permit be required prior to Town Meeting. That would be imposing a greater obligation and adding an enforcement position which is not allowed except at Town Meeting.

MOTION: Member Bourque moved that the Planning Board, based upon guidance from Town Counsel, is committed to modifying the sign ordinance to the best of its ability in concert with the Supreme Court Case (Reed vs. Town of Gilbert). Seconded by Vice Chairman Seaworth.

VOTE: A. Topliff – Y B. Seaworth – Y R. Bourque – Y
 L. Young – Y B. Edmonds – Y

MOTION MADE THAT THE PLANNING BOARD, BASED UPON GUIDANCE FROM TOWN COUNSEL, IS COMMITTED TO MODIFYING THE SIGN ORDINANCE TO THE BEST OF ITS ABILITY IN CONCERT WITH THE SUPREME COURT CASE (REED VS. TOWN OF GILBERT) PASSED ON A 5-0 VOTE.

MOTION: Member Bourque moved that the Planning Board has no objection to the Code Enforcement Officer declining to enforce portions of the sign ordinance that the Code Enforcement

Officer has a good faith belief (in conjunction with advice of Town Legal Counsel) may violate the REED Supreme Court case pending the amendment of the sign ordinance at the 2017 Town Meeting. Seconded by Vice Chairman Seaworth.

VOTE: A. Topliff – Y B. Seaworth – Y R. Bourque – Y
 L. Young – Y B. Edmonds – Y

MOTION MADE THAT THE PLANNING BOARD HAS NO OBJECTION TO THE CODE ENFORCEMENT OFFICER DECLINING TO ENFORCE PORTIONS OF THE SIGN ORDINANCE THAT THE CODE ENFORCEMENT OFFICER HAS A GOOD FAITH BELIEF (IN CONJUNCTION WITH ADVICE OF TOWN LEGAL COUNSEL) MAY VIOLATE THE REED SUPREME COURT CASE PENDING THE AMENDMENT OF THE SIGN ORDINANCE AT THE 2017 TOWN MEETING PASSED ON A 5-0 VOTE.

The Board agreed that the Board of Selectmen, being the governing body of the Code Enforcement Officer, should authorize Mr. Hodge to follow the revised ordinances as discussed.

Chairman Topliff asked Ms. Verdile to write a letter to the Board of Selectmen to authorize Mr. Hodge to enforce the vote recently taken by the Planning Board.

Chairman Topliff said that since Mr. Hodge was the most knowledgeable person with regard to the sign ordinance, he would like him to revise said ordinance for review by the Planning Board.

Attorney Whitley said that other municipalities are also trying to edit their sign ordinances in order to make it compliant. He said that very basically, the Town cannot regulate on content – they can regulate location, size, dimension, and height.

The Board had no further questions.

Old Business– Simplified Site Plan Process/Minor Site Plan Process
 Brief Master Plan discussion

Chairman Topliff said that an LGC (Legal Government Council) workshop recommended that the Planning Board not allow applicants to speak except in public hearing. He said that a recent applicant had not had the required soil scientist stamp on the site plan and since the applicant did not request a waiver the Board had to rule it incomplete. The Board felt bad to make the applicant return the following month.

Mr. Whitley said that the Board could add to the regulations a timeframe that would allow for the applicants to submit enough information to be deemed complete or not. With regard to the wetland stamp, one option would be to say that the Board needed the stamp and allow a few weeks to submit it to the Board. If they complied, then the completeness evaluation would be done at that time and the applicant could move on.

He said that the Board should be mindful of a time limit, such as 90 days, for the applicant to submit enough information or the Board would deem the application as incomplete.

Member Bourque said that if an applicant does not request a waiver for something that is missing, the Board cannot accept the application as complete. He also said that if the Board is in agreement that all the waivers are acceptable except one, the Board still cannot accept the application as complete.

Mr. Whitley said that the Board can deem it complete based on certain conditions being fulfilled such as submission of an MSDS sheet or an administrative formality that is easy to get to the Planning Department.

Ms. Verdile asked if she would have to change the regulations or the checklist. Attorney Whitley said he would have to review the regulations and the checklist first.

Member Bourque asked if the Board had the authority to grant the waivers that they feel comfortable with and not a waiver that they do not or if the Board was required to only accept all the waivers at once without differentiating between any of them.

Vice Chairman Seaworth suggested that the Board make a motion to accept an application as complete contingent on the applicant providing the missing information.

Attorney Whitley said that the Board could rule that the application be complete pending the Board's decision on the waiver request. If the waiver request is denied, it would be pending the submission of the missing information. That way the applicant would not have to submit a whole new application.

Chairman Topliff asked Attorney Whitley to work with Ms. Verdile in reviewing the submittal list for any necessary changes and to submit a policy statement that the Board can refer to in the future along with a suggested motion.

Attorney Whitley agreed and suggested that the Board amend the Planning Board procedure regulations to coincide with what had been discussed.

Attorney Whitley also said that the Board could accept an application as complete, pending submission of an MSDS sheet, for example, and move to the public hearing phase of the application and allow the applicant to start their presentation. He suggested always giving the applicant a deadline to submit the MSDS sheet so that it is not open ended.

He also pointed out that there are certain circumstances where it would not be possible to proceed to the public hearing.

State law allows the Board rule an application as incomplete if it needs a variance or special exception from the Zoning Board of Adjustment (§676:4, I, B).

Chairman Topliff said that he would not be comfortable exercising the change unless there was a specific policy to follow. Attorney Whitley agreed and said that once it is in writing, the Board could vote to adopt it as the Board's operating procedure.

Ms. Verdile asked if the Board could modify their lot line application process so it could be done at the Technical Review Committee (TRC), or administratively. Attorney Whitley said no, it could not be done administratively. State law says that the Board can do site plans via the TRC but that there is no comparable grant of authority for lot line adjustments or subdivisions. If it is a lot line adjustment or boundary line agreement, the best that could be done was not to require a public hearing. It requires the Planning Board to take action at a meeting but not a fully noticed public hearing where the Board would hear from the applicant and abutters.

Attorney Whitley said that the Board has to do a full notice but does not have to open a public hearing to hear from everyone unless an abutter requests to be heard. The Board can engage an abutter but not in full public hearing. He said that, mechanically, the Board would have it on the agenda to deal with the lot line adjustment and send out the notice. When it came up on the agenda, the Chairman would ask if an abutter wanted to be heard on the request and, if nothing is said, then the Board could go to the staff report, consider the application, and vote. It is acceptable to take public comment without being in public hearing. This is the only time that Attorney Whitley was aware of that input could be taken from someone not in a public hearing because it is a minor lot line adjustment and not creating another buildable lot.

The Board agreed to table Old Business until the next time.

Minutes- July 12, 2016 and July 26, 2016 Meetings

MOTION: Member Bourque moved to accept the July 12 2016 Minutes of Meeting as presented. Seconded by Vice Chairman Seaworth. Unanimously approved.

MOTION: Member Young moved to accept the July 26, 2016 Minutes of Meeting as amended. Seconded by Member Bourque. Approved with one abstention – Chairman Topliff.

Chairman Topliff said that he was in agreement that the C1 area should be increased. Member Young said that the last master plan eluded to the fact that there is not enough commercial space. He pointed out that that was 10 years ago and the Board should begin to move forward on it.

Vice Chairman Seaworth said that if the sand pit areas were rezoned as C1, opportunities may arise that could possibly make it more favorable for the area to be built on commercially rather than continuing to be mined. It may be more urgent to work on the zoning issue than we can speculate now.

The meeting recessed at 8:53 p.m.

Chairman Topliff continued the meeting at 9:00 p.m.

Miscellaneous

1. Planner Items- John's Wrecker, Green Valley School occupancy of 385 Pembroke St.

Ms. Verdile said that John's Wrecker seems to be operating illegally (without a permit) because he has not completed a number of conditions of approval, the Board has not received updates on the monitoring well situation and there are still administrative issues pending. She also said that the applicant has leased out the back building of the property and is running a tractor trailer repair business. There are trucks and tires being stored outside.

Ms. Verdile said that there are zoning and site plan violations. A cease and desist order may be in order and the Planning Board may consider revoking the site plan.

Ms. Verdile called the applicant today and told him that he would be receiving a letter regarding his operation. She told him that the Town believes that he is operating his business without a Certificate of Occupancy and that he leased out the back building and is operating a business without approval.

Mr. Hodge said that he is not certain what the applicant is doing in his main building. He knows that he has leased the back building to MBI and is doing service work on the tractors. To the best of his knowledge, Mr. Hodge said that there is nothing in the office or basement. There is a fire truck and a small wrecker on site. He has not done anything in the front building. Mr. Hodge does not know if he is storing equipment or operating his business there. He said that the applicant is definitely running a business in the back.

Chairman Topliff asked if the applicant was servicing trailers. Mr. Hodge said that there were no trailers there when he visited. He was servicing tractors.

Chairman Topliff said that he thought that the conditions of approval were to service trailers and not tractors. He also said that the applicant cannot rent out space without meeting all of his conditions of approval.

Ms. Verdile said that the applicant would be coming into the Planning Department on August 10, 2016.

Ms. Verdile said that Matt of the Pembroke Water Works has made attempts to receive updates on the monitoring well issues.

Chairman Topliff said that he would like Ms. Verdile to inform the applicant that there will be a public hearing for the revocation of his site plan approval.

Member Young said that although the Board wants John's Wrecker to be successful and would like to work with him, it is important that he follow the Town regulations.

Mr. Jodoin said that when Ms. Verdile sits down with him, she should have a list of the items that are required so that he would have a list to work from.

MOTION: Vice Chairman Seaworth moved to schedule a public hearing for revocation of the site plan approval for John's Wrecker Service on August 23, 2016. Seconded by Member Bourque.

The Board agreed that the applicant should not have started his business without a Certificate of Occupancy.

Mr. Hodge said that the applicant must talk with him about the business in the back building.

Chairman Topliff said that he is concerned about the protection of the aquifer.

VOTE: A. Topliff – Y B. Seaworth – Y R. Bourque – Y
 L. Young – N B. Edmonds – Y

Mr. Jodoin suggested that the applicant, the surveyor, Matt of Pembroke Water Works, Ms. Verdile, and Mr. Hodge all meet to discuss how the Planning Board is prepared to move along with the site plan revocation if progress is not made.

MOTION TO SCHEDULE A PUBLIC HEARING FOR REVOCATION OF THE SITE PLAN APPROVAL FOR JOHN'S WRECKER SERVICE ON AUGUST 23, 2016 PASSED ON A 4-1 VOTE.

The Green Valley School would like to rent a building near their present site as a classroom for 12 children. Mr. Hodge asked if the Board would consider this a Change of Use. There is adequate parking.

Member Bourque said that the change should be easy. The Board agreed that the owner should go through the regular process. Since the property owner is uncomfortable with the Town's process, Member Edmonds said that perhaps the school would be willing to act as the owner's agent and provide the resources for the owner to go through the process. It could always be adjusted by the rent.

2. Additional Planner Items

Continental Paving's zoning approvals have expired. They were approved for 3 taller permanent silos which were never erected. They have continued to work with shorter portable silos but would now like to have a fourth silo.

Member Bourque said that since the fourth silo constitutes no more than 10% of the site, a minor site plan would be required.

Member Young asked if the Board would accept a revised plan.

Ms. Verdile suggested that an as-built plan be submitted which would give the Town insight on any other features that are on site.

Chairman Topliff suggested asking the applicant to apply for a minor site plan for the September meeting and, in the interim, ask the applicant to come in and give more detail at the business meeting (August 23, 2016) which may result in not requiring a site plan.

Mr. Hodge will review the zoning regulations to see if Continental Paving will have to meet with the ZBA.

Mr. Hodge said that the liquor store would like a large free-standing sign. Paperwork was submitted. The sign meets the sign ordinance. The Planning Board had no problems with the sign.

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

The meeting was adjourned at 10:20 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary