

**Pembroke Planning Board
Minutes of Meeting
(Adopted)
September 22, 2015**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Larry Young, Sr.; Kathy Cruson; Robert Bourque; Fred Kline, Selectmen's Rep.

ALTERNATES PRESENT: Brent Edmonds

EXCUSED: Kevin Krebs

STAFF PRESENT: David Jodoin, Town Administrator (approximately 8:30 p.m.); Stephanie Verdile, Town Planner; 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 stated both applicants were before the Zoning Board of Adjustment at the present time and was not sure how long that would take. He said he would skip over Old Business and New Business and proceed to other Agenda items.

Minutes- September 8, 2015

MOTION: Vice Chairman Seaworth moved to approve the meeting minutes of September 8, 2015 as amended. Seconded by Member Young. Approved with two abstentions – Selectmen's Rep. Kline and Member Bourque.

Miscellaneous

1. Committee Reports-

Central NH Regional Planning Commission (CNHRPC) – Member Cruson reported nothing impacting Pembroke was discussed at the last meeting.

Hazard Mitigation Committee – Vice Chairman Seaworth said the purpose of the last meeting was to redo Pembroke's Hazard Mitigation Plan originally prepared in 2009. He understood the plan was required in order to be eligible for certain FEMA grants. Stephanie Alexander of CNHRPC is guiding the Committee through the Plan process. Vice Chairman Seaworth said there are federal grants available to create the Mitigation Plan but it requires the town to fund "in-kind" resources.

As an introduction to the program, the members were given a spreadsheet of natural and other hazards to be ranked in terms of frequency of occurrence, location of occurrence (isolated or widespread) or magnitude and severity of the occurrence. The resulting spreadsheet was passed around to the Board members.

Ms. Verdile said the meeting gave examples of a few natural events that qualified for FEMA relief. Last year's ice storm at Thanksgiving, when many residents were without electricity, did not qualify. She said that it was good to learn what storms would qualify.

Member Cruson noted radon and arsenic was classified under earth hazards on the spreadsheet. She asked for clarification.

Vice Chairman Seaworth said some of the hazards could not be compared i.e. apples to oranges, (such as a bomb threat to a windstorm). It pointed out the risk of radon or arsenic affecting the population in a way that would require a public response.

Member Young said the meeting also discussed the drug problem. Vice Chairman Seaworth said the committee rated it as very likely to occur and is widespread but was ranked low on severity because it is not as much a health issue as a financial issue which could be mitigated by homeowners. He said the idea of the exercise was to prioritize using a systematical method.

The target is to submit the Hazard Mitigation Plan to Homeland Security on March 31, 2016.

Technical Review Committee: Member Young met and discussed the Next Level Church. Their intent is not to do much to the existing building on Route 106. They will gut the inside of the building. The parking lot and the building size will stay the same. They will not be a taxable entity.

CIP: Member Young said the Committee is done and the results were given to David Jodoin.

Tri-Town Ambulance Service: Member Bourque said they will meet October 8, 2015.

Board of Selectmen: The traffic light at Pembroke Hill is working and is being fine-tuned.

The secondary project, which was a Town project, was to redo a few roads on Pembroke Hill Road such as Perley and Rowe, has concluded.

The third project was to be funded by a federal grant through the Safe Routes to Schools Program. The bids for construction of the sidewalks were higher than the grant. The Town applied to the State for assistance to fill in the gap and was approved.

Selectmen's Rep. Kline said at the last Board of Selectmen's meeting, the federal government said no. The Selectmen voted (a) to spend an additional \$12,000 to extend driveways and do the edging along the roads while waiting for the sidewalks to be done. The work will be done in such a manner that it could be permanent. Next spring, the Town will rebid the sidewalk portion and hope that it can be done for the amount of the federal grant. If not, the project will stay the way it is without sidewalks.

He also noted along the Route 3 light project district, there was sidewalk work done with mailboxes mounted sideways. Wooden posts were used in such a way that would allow for snow removal access along the sidewalks to Route 106. Because of the previous mailbox situations, the Town used to stop removing sidewalk snow at Pembroke Hill because the equipment would not fit between the mailboxes and the edge of the sidewalk. This change should remedy the situation and allow for wheelchairs to fit on the sidewalk.

The Town will pay for the initial install of the new “breakaway” design of the mailpost. If they break, the homeowner would pay for the replacement which should install easily.

Selectmen’s Rep. Kline agreed that he erred at the last meeting when he stated that there were only 2 Pembroke Hill children that walked to the Pembroke Hill School every day. Member Cruson pointed out that there are approximately 22 children.

Selectmen’s Rep. Kline will represent Pembroke on the transportation initiative for the Southern NH Regional Planning Commission, which due to restructuring, Pembroke is now a part of.

Tax Increment Financing District (TIF) - Selectmen’s Rep. Kline said that the Town applied for a 60-day extension on the All Terrain Permit. Round 1 of the federal grant the TIF applied for was denied on one factor – the TIF did not qualify in the desperation factor per Section 303.15 of CFR. With help from CNHRPC, the factor should be remedied and the grant will be reapplied for.

Roads Committee – Vice Chairman Seaworth said the Town engineer created designs for East View Drive and Beacon Hill Road including the jog that goes to Third Range Road. Both roads are in bad shape and have drainage problems. The Roads Committee decided that the roads needed to be engineered and reconstructed in order to make them last. The committee asked that the new design use closed drainage because open drainage has become a large problem in Town and EPA is beginning to regulate exposed water. He said that the example most often used is the easements along the lots on Donna Drive that were created to move the storm water. Residents have filled-in those ditches in order to expand their lawns and, the result has been problematic.

Closed drainage will be used on East View Drive. Beacon Hill Road is very lengthy and the cost of using closed drainage was a substantial addition to the cost of the project. Since it is such a rural area, the engineer felt that open drainage was appropriate for that project except for one area where they will be a culvert under the road.

2. Other Business– Reviewing Planning Board process re: Sabbow Crematory application.

Chairman Topliff said at a recent meeting, Sabbow Crematory came before the Planning Board to put a granite cutting operation in one of the on-site buildings. At that time an abutter spoke to the Board about the on-site crematorium but since it was not a topic of discussion for the application, the Board could not discuss it.

Since then, Selectmen’s Rep. Kline performed a site visit.

Chairman Topliff said he asked Ms. Verdile to give the Board copies of the crematorium approval, the Conditions of Approval, and copies of the meeting minutes in order to see if there were statements in the documents made by the applicant that would give the Board cause to approach them about the discrepancies. He said the discussion tonight is solely to see if the Board has recourse in this situation or if the Board should leave it to others.

Member Bourque said when Sabbow initially came before the Board, the impression was the crematorium was to be operated by Sabbow. Since then the operation is handled by someone else. Chairman Topliff said that Sabbow may have sold the business but still owns the property.

Chairman Topliff said the Conditions of Approval follow with the land. It does not matter who owns the land.

Ms. Verdile said she discussed the topic with Mr. Jodoin and determined it was a DES Air Pollution approval matter.

Ms. Verdile said crematoriums are exempt from certain federal regulations but the State does get involved with enforcement. The Town did not give the applicant any site plan conditions of approval that dealt specifically with smoke and odor. At the present time, the applicant is not in violation with the Town's site plan approval. Ms. Verdile said unless there is a Condition of Approval that they are in violation of, there is very little the Town can do.

Selectmen's Rep. Kline said he drove to Cindy Lewis' work site on Route 106 on Friday at 5:15 p.m. and found the smell was awful. He said he could almost taste it. He said his dog was going crazy with the smell.

Ms. Lewis' garage bays face the crematorium were filled with the smell. There were numerous puffs of smoke and there was no doubt that a problem exists. He said that DES Air Quality is the right division to deal with the problem.

Selectmen's Rep. Kline reminded the Board when Ms. Lewis made the comment about the odor at the last meeting, Mr. Scott said that the burner had recently been rehabbed. Selectmen's Rep. Kline shared an observation – he said the Derry crematorium near his former employer had something on top of the stack. The Pembroke facility does not have the same stack topper. He said he never experienced any foul odor or smoke coming from the Derry facility.

Chairman Topliff said he reviewed the Conditions of Approval and there was nothing that dealt with smell or smoke.

Member Bourque pointed out that the June 24, 2014 meeting minutes (Page 6 of 12) says:

“They are hoping to move the “retort” a/k/a burning unit to Pembroke because they are in the process of selling that division and will no longer be able to continue their operation. He said that most of their present neighbors would never know that they have a crematorium on site. He said that if a person knew what they were looking for, they could see the stack but otherwise the crematory is not obvious to the area.

Mr. Scott said that the retort itself has different chambers that burn and reburn gases. There is very little chance of any smell being released.”

Vice Chairman Seaworth said that the meeting minutes of June 22, 2014 (Page 5 of 10) in the third paragraph says:

“Mr. Scott clarified that a capacity monitor measures the amount of smoke coming from the stack.”

Vice Chairman Seaworth noted the minutes do not include Mr. Scott’s comments that there was a problem in Concord, once they installed the capacity meter, everything was fine. Vice Chairman Seaworth recalled Mr. Scott making the statement because he considered making it a condition of approval but never followed through. Vice Chairman Seaworth recalls asking Mr. Scott if he would be installing a similar meter in Pembroke. The end of the fourth paragraph on Page 5 of 10 says:

“The intent is to move the Concord system to the Pembroke facility.”

He said Mr. Scott represented to the Board that their intent was to move that system to Pembroke.

Chairman Topliff asked Selectmen’s Rep. Kline if there was dark smoke coming from the stack on his recent visit. Selectmen’s Rep. Kline replied that the smoke was gray and the smell was “absolutely horrendous”.

Chairman Topliff pointed out Page 7 of 12 on the Minutes of June 24, 2014:

“Mr. Heath said that the crematory process takes approximately 4-5-1/2 hours. The temperature of the retort is maintained at approximately 1200° degrees which produces clear emission from the stack.”

It is clear that they represented to the Board that there would not be smoke or an odor.

Member Bourque recalled Mr. Scott made a comment that once it was fixed, all that would be seen is a wavy heat rising from the stack but no smoke. That is not the case.

Chairman Topliff said it was unclear to him whether an applicant’s comments that made it into the meeting minutes are a basis for going back to the property owner and implying that they misrepresented the facts. He asked Ms. Verdile to confer with Town Counsel.

Selectmen’s Rep. Kline asked if it would be in the Town’s best interest to notify DES Air Quality Division when complaints are received. He said he suggested that Ms. Lewis and the neighbors contact DES Air Quality Division. He also asked the Board if they should contact DES Air Quality Division and the property owner and make him aware that the Town has received complaints. Perhaps that would encourage him to fix the problems.

Alternate Member Edmonds pointed out, in Meeting Minutes of June 24, 2014, Page 7 of 12:

“Mr. Scott said that crematories are regulated under the Board of Funeral Directors and Embalmers.”

He said it would be perceived that the State Board would have regulatory authority over their membership and the industry. He felt they might be a logical contact.

Member Bourque noted the Zoning Board of Adjustment includes a paragraph in all their decisions that states that if the applicant misrepresents something or that a portion of the application was misrepresented, the ZBA has the ability to reassess the application and change their decision. Ms. Verdile said she would discuss with Town Counsel the possibility of including that option with all Planning Board decisions.

3. Planner Items-

Ms. Verdile said she was arranging a meeting with Mr. Jodoin, Mr. Hodge, and the Police Chief regarding the potential for definitions and enforcement of zoning issues and will report back to the Planning Board on October 13, 2015.

4. Board Member Items-

Member Bourque asked if the Selectmen had reviewed the noise ordinance. Selectmen's Rep. Kline answered no.

Ms. Verdile went downstairs to see how the Old Business and New Business applications were coming along.

Chairman Topliff recessed the meeting at 7:50 p.m.

Chairman Topliff reconvened the meeting at 8:23 p.m.

Old Business

1. ***Subdivision Application #15-03, LDW Enterprises Development LLC Subdivision, on Tax Map 939 Lot 63, located at 210 Fifth Range Road in the Rural Residential Zone. The applicant, Eric C. Mitchell of Eric C. Mitchell and Associates Inc., on behalf of the owner LDW Enterprise Development, LLC, is proposing a three-lot residential subdivision. Continued from August 25, 2015.***

Present: Larry Wurster and Ashley B. Scott, of Cronin, Bison & Zalinsky P.C. representing abutters at 217 Fifth Range Road.

Ms. Verdile said the Board should review the waivers, decide whether to grant or deny the waiver requests, and if the waiver requests are granted, the application could be accepted as complete, and the application discussed.

Ms. Verdile stated the applicant is asking for the following waiver requests:

Part A, Item C for proposed road name; name would not change if extension is required. (Inapplicable because no streets are being proposed.)

Part A, Item K for existing sewer and water. (Inapplicable to this subdivision.)

Part I, Item R for legal descriptions.

Chairman Topliff said since the plan has changed, the Board could continue the public hearing and agenda item. The revised plan would have to be reviewed by the Planning Department and Town Engineer.

Ms. Scott, representing the abutters at 217 Fifth Range Road. She said they will reserve their comments until the revised plan has been submitted. For the record, Ms. Scott stated a two-lot subdivision was approved by the Planning Board in 2001. Because the applicant did not develop the site, the application expired and an extension for Minor Subdivision Application 01-5 was denied on May 5, 2003.

Mike Caraway, 165 Dudley Hill Road, asked if the abutters would be notified of the new plan and sent drawings?

Chairman Topliff said if the application was continued, no notices would be sent out to abutters. They would have to contact the Planning Department, watch the Planning Board agendas on the Town website, or check for the notice in the paper. The only way that the abutters would receive notification is if the Board voted to deny the application. At that time, the applicant would have to reapply which is tedious and costly so the preference would be to keep the application open.

Mr. Wurster explained the two-lot concept was approved by the Board approximately 12 years ago. Unfortunately, at the same meeting he discovered his surveyor had passed away and he had no stamped plan. He eventually did not follow through with the project because he had to resurvey the whole parcel and the buyer, for the single-family house lot, changed his mind.

Chairman Topliff said past history is not pertinent to the present application.

Member Bourque asked if the two-lot subdivision would still require a hammerhead.

Chairman Topliff said it would depend on how it was proposed on the plan. As long as there is 200 ft. of frontage on both lots on a town road, it may not be required but the Board would have to consider the application at the time and see if it is reasonable to not include one.

Mark McAlpine, 217 Fourth Range Road, requested that (1) a new plan be required for the two-lot subdivision without the hammerhead or (2) all abutting neighbors be notified because of the projects impact to the area, and the difficulty of constantly checking the website for an agenda notification.

Mr. McAlpine asked if the new plan would include a hammerhead.

Chairman Topliff pointed out the requirement for a hammerhead is typically driven by the Planning Board process. He said just because it may or may not be shown on the plan, does not mean that the Planning Board would not require one.

Chairman Topliff also said it is unfair to try to pin down the applicant on a new plan before he has had a chance to meet with his engineer and discuss potential alternatives.

Chairman Topliff reconvened the meeting at 8:50 p.m.

New Business

1. **Special Use Permit Application, SUP-AC #15-309, Next Level Church, 79 Sheep Davis Road, LLC, on Tax Map 561, Lot 6, located at 79 Sheep Davis Road, in the Commercial/Industrial (C1) Zone and the Aquifer Conservation (AC) District.** The applicant, Tony Fallon of Tony Fallon Architects, on behalf of Next Level Church and 79 Sheep David Road, LLC, requests a Special Use Permit from Article 143-68.E, Aquifer Conservation District, which is required for any activity taking place within the District. This permit is associated with the Major Site Plan Application Site #15-111.
2. **Major Site Plan Application #15-111, Next Level Church, 79 Sheep Davis Road, LLC, on Tax Map 561, Lot 6, located at 79 Sheep Davis Road, in the Commercial/Industrial (C1) Zone and the Aquifer Conservation (AC) District.** The applicant, Tony Fallon of Tony Fallon Architects, on behalf of Next Level Church and 79 Sheep David Road, LLC, proposes to remodel an existing commercial building and associated parking areas to locate a church.

Present: Daniel King-Next Level Church; Tony Fallon-Tony Fallon Architecture; and Dave Garvey-Managing Director KW Commercial.

Ms. Verdile reported there were waiver requests. She advised the Board to consider the waivers, decide if the application is complete, open the public hearing, and then make a decision on the application.

Chairman Topliff said the applicant made a request to the ZBA to use a property in the C-1 zone for a use that is not a "permitted use". The ZBA denied the request. On the basis of the denial, the application before the Board is no longer valid because they are proposing to place a church in a zone that is not a "permitted use" and they did not receive a variance. Chairman Topliff said in his view, it constituted an incomplete plan because the Board has been presented with a plan that is in violation with the zoning ordinance and, after going through the zoning process, was denied. He asked for discussion from the Board.

Vice Chairman Seaworth said he thought the Board ruled the other way with the previous application. As submitted, the previous case was a subdivision with insufficient road frontage which did not meet zoning and the Board accepted it as complete but denied it on that basis. With the Next Level Church application, the Board has not discussed whether they have met all the checklist requirements. He said meeting the zoning requirements was not one of the checklist requirements, it was a feature of the plan. To be consistent, Vice Chairman Seaworth asked that the Board consider the completeness of the application.

Chairman Topliff agreed the Board should discuss the application's completeness. The difference with the previous application, was that the Board previously found it incomplete solely based upon the lack of a soil scientist stamp that has subsequently been corrected and applied. He said that that was the only reason why the Board found it incomplete at a

past meeting. The present application is different in many ways and he asked that the Board discuss the completeness of the application.

Vice Chairman Seaworth said that, to be analogous to the previous application, the Board should not consider the applicable zone as part of this.

Member Cruson said she felt that since there is a construct about what can be instituted in that zone and this proposal is outside of that construct, that the Board could not consider it as complete.

Chairman Topliff said state law says the Planning Board cannot turn down consideration of an application because it is before the ZBA. In this case, the applicant has been before the ZBA and was denied.

Selectmen's Rep. Kline said the applicant could appeal to the ZBA decision.

Ms. Verdile said the law says that just because an applicant has not received their variance or special exception, the Planning Board cannot refuse to hear the application. The Board could approve an application based on the applicant receiving the variance. If the variance is not obtained the site plan approval would not be finalized because the Planning Board cannot approve anything that is in direct conflict with the zoning ordinance.

The completeness of this application is based on whether or not the information submitted to the Planning Board by the applicant is adequate for the Board to make a decision based on the Board's checklist. Zoning requirements are not addressed in whether the application is complete or not.

She continued to say if the Board granted the waiver requests, accepted the application as complete, and held the public hearing, the next move for the Planning Board to consider would be to say that the Board cannot approve an application that does not meet zoning.

Chairman Topliff asked if the Board felt that, procedurally, it would be best to go through the process even though the application would be denied because it does not meet the zoning regulations.

Member Bourque said the Board should follow procedure for granting the waivers, accepting the application as complete, going to public hearing and, if they cannot meet zoning, take a vote.

The consensus of the Board was to follow the procedure.

Ms. Verdile said many of the checklist requirements are not applicable to the application because the applicant is proposing to move into an existing building. She said Part A – Items B, C, D, I, K, L, are not applicable to the application. She supported the waiver requests as submitted by the applicant.

Part B - Items 11, 16, 18, 19, 20, and 21 are not applicable and she supported the applicant's waiver requests.

Part C – Items A, B, C, D, E, and F are not applicable and she supported the applicant's waiver requests.

Ms. Verdile said if the Board grants or doesn't grant the waiver requests as submitted, then the next action would be to accept the application as complete or determine it is incomplete.

Member Bourque said he read in the packet information that the applicant plans to change the sign, rip out the driveway, and install a concrete apron. In his opinion, those tasks constitute external site improvements. He asked how the applicant can ask for a waiver from external improvements when they are replacing the pavement from the round driveway, putting in a concrete apron at the entry door, and changing the sign.

Member Bourque pointed to the Application narrative:

“Waivers from Major Site Plan Review Requirements:

B. “A site plan as detailed in Part B.

B. Owing to the fact that no exterior or site work is being done .
..”

Ms. Verdile said she thought the applicant meant there is no new expansion of site work. They are not making the site larger. There are making improvements to the site.

Member Bourque said in his opinion, the applicant is making external changes even though the applicant is saying that they are not. He said if they are not making external changes then the pavement would stay and they would not be installing concrete.

Chairman Topliff said that Member Bourque was referring to the Technical Review Committee minutes and an e-mail from Anthony Fallon addressed to Ms. Verdile (page 1) dated September 14, 2015. Chairman Topliff read aloud:

“Based on the information which I have from the previous Architect, Burnell-Johnson, there is currently 46, 641 sf of impervious and we are proposing to reduce that by a net of 756 sf with the removal of the turnaround and some additional Accessible Walkway . . .”

Chairman Topliff said Member Bourque's point was well-taken. The architect is pointing out the applicant will be making changes and the application for the Special Use Permit say that they are not making external changes. With regard to the checklist items that the applicant is seeking relief from in terms of waivers, Chairman Topliff asked Ms. Verdile if any of those would need to be complied with in order to do the proposed work. Ms. Verdile said that she did not know, but said that the Board could chose not to grant that particular waiver request.

Chairman Topliff said that if the Board decided not to allow that particular waiver request, then the Board could not take the application any further.

Ms. Verdile said that it would probably be a minor site plan. The trigger for a major site plan is 10% or more of change. Chairman Topliff said that they are talking about approximately 750 sf. out of 46,000 sf. and is less than 10%.

VOTE: B. Edmonds – N L. Young – N R. Bourque – N
F. Kline – N B. Seaworth – Y A. Topliff – N
K. Cruson – N

Chairman Topliff said no. Once the Board has granted a waiver for a particular checklist item, the Board cannot go back and require them to do it.

Chairman Topliff stated the waiver requests have been denied and, therefore, the application was incomplete. The Board could not take the application any further.

Alternate Member Edmonds asked where the applicant presently stands with the ZBA. Chairman Topliff said in this particular case, because the ZBA denied the application, the Planning Board had no alternative but to deny the application. If the Planning Board had found it complete, they could have opened the public hearing and had a discussion. Based upon the denial from the ZBA, the Planning Board had no option but to deny the application.

Ms. Verdile clarified the Planning Board's job is to find out if the applicant has completed all the checklist items and if they are requesting any waivers. If they have waivers, the Planning Board must consider them. If waivers are granted by the Board the Board can

consider whether the application is complete. If waivers are not granted than the application is considered incomplete.

Chairman Topliff said the Planning Board is purely concerned about whether the applicant fulfilled the checklist items. They either meet all the checklist items or ask for waivers.

Ms. Verdile said whether or not the application meets zoning regulations is not a Planning Board completeness issue. The Planning Board is primarily concerned with the checklist and waivers when determining completeness.

Ms. Verdile said since the Board denied the waivers, it automatically rendered the application incomplete.

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

The meeting was adjourned at 9:19 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary