

**Pembroke Planning Board
Minutes of Meeting
September 8, 2015
(Adopted)**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Kevin Krebs; Larry Young, Sr. (arrived 7:15 p.m.)

ALTERNATES PRESENT: Brent Edmonds

EXCUSED: Kathy Cruson; Robert Bourque; Fred Kline, Selectmen's Rep.

STAFF PRESENT: Stephanie Verdile, Town Planner; Matt Monahan, Interim Town Planner; Susan Gifford, Recording Secretary

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

New Business –Discussion for 2016 Zoning Amendments

2016 Zoning Amendments so far

1. Definition of "Yard Sale"

Ms. Verdile noted she is in the process of organizing a meeting with the Police Chief, Everett, David, and herself to discuss the "Yard Sale" and "Recreational Vehicle" issues. Some discussions around these two amendments center on lack of good definitions and enforcement. Ms. Verdile stated when she worked in Gilford NH, residents who are planning to have a yard sale are required to register with the Police Department prior to having the sale so the police department would be aware of potential traffic issues involving pedestrians.

Chairman Topliff took a poll of Planning Board members on whether members felt yard sale issues were a Board of Selectmen issue, rather than a Planning Board issue. It does not involve an application or land use. Mr. Monahan noted that in Allenstown NH, there was a definition for "flea market" which was a sale of items on an allotted basis, on a repetitive basis, and could be held both inside and outside a building. Member Krebs recalled the short lived attempt by the Planning Board to regulate "Items on Display with Intent to Sell" and the fact that it was rescinded about a year later. Member Krebs considers a yard sale as one person selling their household items in

their yard on an occasional basis. More than one family could participate and it still would be a yard sale.

Mr. Monihan noted that Allenstown limits "flea markets" to Saturday, Sunday and legal holidays from 7:00 a.m. to 7:00 p.m., they cannot be held before April 15 or after October 15, organizer must provide sufficient off street parking and adequate refuse collection among other requirements.

Vice Chairman Seaworth suggested that the Planning Board focus on the commercial equivalent, or define what is NOT a yard sale. Chairman Topliff and Brent Edmonds agreed a definition of "flea market" addresses the differences. Money is exchanged for space to sell goods, multiple sellers participate, the source of goods is unknown and flea markets are held on a repetitive basis.

Ms. Verdile will bring discussion points from the Board to bring to the meeting.

2. Revise definition of "Recreational Vehicle" 143-31

Ms. Verdile noted she is in the process of organizing a meeting with the Police Chief, Everett, David, and herself to discuss the "Yard Sale" and "Recreational Vehicle" issues. Some discussions around these two amendments center on lack of good definitions and enforcement.

Chairman Topliff noted that several years ago, perhaps 4-5 years, the Planning Board entertained extensive discussion on revising the definition of Recreational Vehicle Section 143-31 with the intent of preventing persons living in a recreational vehicle for over 60 days. Many issues surfaced, like what if the resident moved out for a time and returned to the same recreational vehicle. Board consensus was that adequate State regulations exist to allow the Code Enforcement Officer, or if needed, the Health Officer to provide enforcement for the existing ordinance. The Planning Board does not see value in renewing this discussion at this time. Ms. Verdile will bring discussion points from the Board to the meeting with the Police Chief, Everett Hodge and David Jodoin.

3. Add Noise regulations/limitations to Section 143-73.21 Soucook River District

Ms. Verdile noted in the approval process for Clean Energy, 2 years ago, it was discovered that the "Table noted in section B..." does not exist....so the options are 1) to take out Section 143-72.21 (a) (4) or 2) move it to another section where it would apply town wide to all districts and would reference the existing Town Noise Ordinance. The Board of Selectmen and Planning Board

subcommittee are in the process of modifying the existing Town Noise ordinance. Another option is to wait until the revised ordinance is complete and voted in before taking action.

Chairman Topliff noted the Planning Board does currently review applications in the context of the existing Town Noise Ordinance and has notified applicants of potential impact of the proposed modifications, should the ordinance be updated and voted in. Member Krebs asked why this requirement only applies to the Soucook River District, and noted it would make sense to wait for the Board of Selectmen to adopt a noise ordinance that may have residential and commercial provisions, or decibel levels, included. Chairman Topliff stated new applicants must be aware of the possible changes to the Pembroke Noise Ordinance.

One way to ensure potential noise is addressed is to include a Planning Board checklist item that “if ambient noise exceeds that permitted in the Town Noise Ordinance, additional noise information may be required, as applicable, for a complete application.” Member Young agrees that any noise regulation should be town wide and would apply to all districts. Member Krebs agrees a checklist item should be added. Under certain circumstances – hours of operation, overnight processing, character of surrounding uses, such as a commercial use near residential use, additional noise information must be provided by the applicant. Any revised Town Noise Ordinance will be applicable to all existing and new residential or commercial activity. No one is grandfathered from the noise ordinance. Member Edmonds stated that type of noise may be more offensive to some people.

Vice Chairman Seaworth noted Member Bourque talked to the Chief of Police, who is satisfied with the existing noise ordinance for residential noise issues and enforcement. New sections may be proposed for commercial uses. The townspeople may or may not vote in the proposed updates. Either way, the consensus of the Planning Board is to move this requirement where it applies universally and reference the Town Noise Ordinance as a checklist item or a Planning Board regulation.

Chairman Topliff summarized the Planning Board would like to take Section 143-72.21 (a) 1 through 5 out of ENVIRONMENTAL STANDARDS Soucook River District and make it a checklist item. The Planning Board would like to leave this section marked as “reserved” for future use.

4. Back Lot provision Section 143-23 and Back Lot Definition- Section 143-8

Ms. Verdile noted recent applications have brought up some discussion and differences of interpretation over a "back lot". It may be worthwhile to review and clarify this language. The intent of the section is that lots with less than the required frontage on a Class V road cannot be built upon. Member Young would like to see "wood lot" defined as a lot with no frontage used by owner for selective wood cutting." Member Young stated wood lots are common in remote sections of town.

Ms. Verdile explained a change in the ordinance a year ago allows in some specific cases, an existing non-conforming lot of record to apply for a building permit if it meets 2 of 4 setbacks. Many of these lots of record have been receiving a reduction in taxes because they could not meet current setbacks for building. Ms. Verdile noted that she and Everett Hodge, Code Enforcement Officer, disagree on whether the other two setbacks remain in place as requirements. Everett interprets this section as allowing a house to be sited in a corner of a lot. Member Krebs asked what would prevent an owner of a lot of record from locating the house in a corner near two property lines. The section reads if the owner "can" meet two setbacks they can build on the lot. The language does not require them to meet two setbacks and also meet the other two setbacks to the greatest extent possible.

Chairman Topliff noted many sections of the ordinance tell property owners what they can and cannot do on a lot. If the lot lacks frontage, you can't get a building permit but you can apply for a Variance through the Zoning Board of Adjustment. Vice Chairman Seaworth noted there are apparent conflicts in the regulations. If you can't get a building permit the lot is non buildable. However, the Planning Board cannot create a lot that is incapable of getting a Certificate of Occupancy. Other approved subdivisions have divided off lots with a 60 foot right-of-way left for a future access road to a subdivision NOT IN the current subdivision.

Chairman Topliff stated if contradictions exist in subdivision and zoning regulations, and they are proven to be in conflict with State of NH RSA the Board will change them to comply. The intent of regulations is to try not to restrict the owner's ability to use the land. Member Krebs added many lots are unbuildable unless a variance is obtained. The Town has taken off reference to "lot cannot be built upon" noted on many assessing cards because under the right circumstances, lots can be built upon.

5. Revise Section 143-103 B & C

Ms. Verdile noted we amended this section a few years ago but it has come to our attention from Legal Counsel the language needs to be clarified in both

B & C. This refers only to an existing non-conforming “lot of record” with deed recorded at Merrimack County. The language reads any “lot of record” can be built upon if at least 2 of 4 setbacks can be met. This could be one front and one side, one rear and one side, or front and rear setbacks. The intent is to lessen the setback requirements so a properly sized house can be sited on a lot of record. Everett Hodge maintains this allows owner to build all the way over on one side. Member Krebs and Chairman Topliff agree that is exactly what the language allows.

Mr. Monahan noted the word ‘can’ does not require the owner to even meet the setbacks, only to **demonstrate** they can meet 2 of 4 setbacks. Does the owner need a variance for the other two setbacks? Ms. Verdile maintains the other two setbacks do not go away. The Code Enforcement Officer needs to work with owner to site the proposed building on the lot to meet two setbacks, and meet the other two to the extent possible. A building permit for the size of a building that meets two setbacks limits the size of the structure. The language should say the proposed building shall be sited to meet two setbacks and realize maximum setback on the other two. The setbacks remain on the plans. Mr. Monihan and Ms. Verdile asked for suggestions to keep the integrity of the setbacks. Mr. Monihan asked if Fire Code & Life Safety has any setbacks that must be complied with. Staff will research if any requirements exist in Fire Code & Life Safety.

For Item C, Ms. Verdile will advise Legal Counsel the intent of “as applicable” was to emphasize that frontage requirements for building differ in every zoning district.

Ms. Verdile will meet with the Police Chief, Everett, David, and herself to discuss the “Yard Sale” and “Recreational Vehicle” issues. Everett Hodge, Code Enforcement Officer will be attending the October 13, 2015 Planning Board Work Session to discuss these proposed zoning amendments with the Board.

Minutes- August 25, 2015

MOTION: Vice Chairman Seaworth moved to accept the August 25, 2015 minutes as amended. Seconded by Member Krebs. Approved with one abstention – Member Young.

Miscellaneous

1. Correspondence- none
2. Committee Reports-

Roads Committee – Vice Chairman Seaworth reported the Roads Commission reviewed two plans at the last meeting, and meets again

3. Other Business– none

4. Planner Items-

a) Sabbow Complaint by Ms. Lewis as reported in August 25, 2015 minutes Board of Selectmen report. Ms. Verdile noted air pollution is an area not regulated by the Planning Board or the Board of Selectmen. This concern should be directed to the agency at the State level that regulates this, State of NH Department of Environmental Services.

b) Next meeting – Continuation of Larry Wurster application and new church application. Ms. Verdile will move forward the two discussion items on tonight's agenda to the 9/22/2015 Planning Board regular meeting.

5. Construction Escrow- none

6. Board Member Items- none

7. Audience Items- none

8. Board Member Items- none

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

The meeting was adjourned at 9:05 p.m.

Respectfully submitted,
Susan Gifford, Recording Secretary