

PEMBROKE PLANNING BOARD
Minutes of Meeting
(ADOPTED)
February 13, 2018

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

ALTERNATES PRESENT: Kellie Dyjak; Robert Bourque

EXCUSED: Richard Bean; Selectman's Rep. Sandy Goulet

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

GUEST: Steven Whitley, Town Counsel; and Stephanie Alexander of Central NH Regional Planning Commission (CNHRPC).

Chairman Topliff called the meeting to order at 7:00 pm and welcomed Bruce Kudrick, Chair and Tom Hebert, Vice Chair of the Zoning Board of Adjustment (ZBA). Alternate Member Bourque agreed to vote in place of Member Bean.

Master Plan Steering Committee

Ms. Alexander said that last fall the Committee held a Community Visioning Forum to discuss different topics that will appear in the Master Plan such as Transportation, Natural and Cultural Resources, Community and Recreational Facilities, Energy, Economic Development, Existing and Future Land Use and Housing.

She said that Mr. Tardiff of CNHRPC will form the following subcommittees: Economic Development, Transportation, Community and Recreational Facility, and Natural and Cultural Resource Committees.

People who signed up over the last few months to join a subcommittee will be contacted. There is an advertisement on the Master Plan website asking people to sign up for a subcommittee. Mr. Tardiff will contact each person on the subcommittees and set up a first meeting.

Ms. Alexander said the plan is to have three meetings for those subcommittees between now and May.

The Master Plan Steering Committee is aiming for a 10-page per chapter graphical issue-based Master Plan along with data-supported appendices and a list of recommendations.

The CNHRPC staff will be working with a two-person team from the Steering Committee along with volunteers of the subcommittees to create each chapter. In a few months the chapters will be brought to the Master Plan Steering Committee for review.

Ms. Alexander said that the four subcommittees will begin in one month. There will be an email update to the Master Plan Steering Committee with the progress of the four subcommittees and the next Master Plan Steering Committee will be held Tuesday, April 10, 2018.

New Business – Planning Board and ZBA procedures with the Town Attorney

Ms. Verdile said one of the questions to be discussed was whether applicants to the ZBA should have access to the Technical Review Committee (TRC) prior to meeting with the ZBA.

Chairman Topliff asked Mr. Kudrick and Mr. Hebert if they were aware of why this topic came up.

Mr. Kudrick said he read the minutes and was aware of the two cases that the Planning Board was complaining about.

Chairman Topliff thought that the word “complaining” was a little strong. He said there was nothing negative said to the Planning Board and nothing adversarial. He said they recognized there was a challenge that needed to be worked through and wanted to find a better way to do this in the future. He said no one is upset with the ZBA. The Board would like to find a better approach to future situations. Chairman Topliff said he wanted the discussion to be a collaborative process and they would like to hear from the ZBA what their struggles are.

With regard to the gate, Mr. Kudrick said the gate was on the plans that were given to the ZBA. He said the homeowners were concerned about traffic going in and out. The condition that was included was that, during construction, no trucks would go into Nadine Drive -- they had to use Whittemore Road. The road was going to be blocked, one way or the other during the construction period.

Mr. Kudrick continued to say that afterwards, since the gate was already installed and it was on the plans, the gate would be locked because people were concerned that if the property owner had keys to it, he could open it any time he wanted and allow people to use Donna Drive. That is why the ZBA made the stipulation that the Town would have the keys -- the Highway Department (for plowing etc.), Fire Department, and Police Department. That condition was made because 100+ residents were concerned that all the traffic from the 74 units would go through their development. The ZBA did not ask that the gate be added, it was already on the plans.

Chairman Topliff said that he did not realize that the gate was on the plans.

With regard to the lights, Mr. Kudrick said the homeowners across the street from the natural gas facility, were concerned about the lights always being on. The lights were going to be on 24 hours a day because it is a 24-hour business. The ZBA stipulated that no more trees be cut and that buffers be added. Also, upon further discussion, the gas company indicated that they were going to install motion lights. In order to help the people

that were complaining about the lights, the ZBA made it a condition so that the company could not revert to 24-hour continuous lighting.

Mr. Kudrick said that Mr. Carlucci pointed out that, in both of the cases, if the ZBA had been aware that the Fire Department and Police Department had concerns, the outcome may have been different. The ZBA did not hear from the Town on either case.

He said that Mr. Carlucci mentioned that it would be nice if the ZBA could hear from the Town on cases like this so that the ZBA could make an intelligent decision. The ZBA made decisions based on the facts that were on hand at the time of the meeting.

Chairman Topliff said the Planning Board did not have an issue with Clean Energy and the lights or with the gate at Pembroke Pines. It was the Town Department heads that spoke up at TRC and said that they did not like the gate. How the Planning Board should handle it at this point was the concern.

Mr. Kudrick said that that was exactly the point that Mr. Carlucci was trying to make. If the ZBA had that information beforehand, it might have made a different decision. By not meeting with the Fire Department or getting input from the Town departments, the ZBA could only go by what was presented at the time of the meeting. Mr. Kudrick said that the ZBA was only trying to help the homeowners by making sure that Clean Energy would put in motion sensor lights and it would remain that way. He restated that, if a condition had not been made, Clean Energy could have changed their minds and put in continuous lighting and the residents would have been complaining to Town Hall which then would become a Town problem. By making a condition, the ZBA made sure that Clean Energy would do exactly what was proposed and ensure that it would not change.

Chairman Topliff said that the Board's hope is, with Attorney Whitley present, to find a way for the ZBA to get the needed information ahead of time so they could make more informed decisions.

Mr. Kudrick said the ZBA is looking to get the information ahead of their meetings. He continued to say that Fire Chief Paulsen would like the lights on when he goes to the site, but the ZBA did not know that. Perhaps the ZBA would have made a different condition such as leaving half the lights on so when Chief Paulsen drove into the facility, he can see what is going on instead of being in the dark until the lights automatically come on. Again, the ZBA did not know that.

Mr. Hodge said that in both instances and in every ZBA case, all Department Heads get the public notice, including the Selectmen, Planning Board, Fire, Water, Sewer, etc. No one gave Mr. Hodge input.

Mr. Hodge said that the ZBA has a case that he thinks they will need input from Water, Sewer, and Highway. Each department will be sent a separate email saying that a particular case will be coming before the ZBA within the month and to please respond with any concerns. In the past, they have received input from Water and Sewer on other cases.

He continued to say that on a case coming before the ZBA on the 29th, Paulette Malo emailed information to him. He said that he does not want to burden the applicant with another TRC meeting.

Alternate Member Bourque said that the ZBA is not asking for another TRC meeting. They are asking that the information collected at one TRC meeting be shared with ZBA.

Mr. Hodge said that that would be through the Planning Department. It has nothing to do with the ZBA.

Alternate Member Bourque reiterated that the TRC information is being collected for the Planning Board and is not being shared with the ZBA.

Chairman Topliff asked if the TRC usually meets before the ZBA meeting.

Ms. Verdile said yes. The ZBA usually meets the fourth Monday of the month which is the Monday before the Planning Board business meeting. The TRC meets the first Wednesday of the month so there would be enough time for the ZBA to receive input from the TRC.

Member Young asked if it would be possible to have all applicants start with the TRC.

Attorney Whitley said that it is possible to require TRC first, but the catch is that some applications that come before the Planning Board do not need to go to TRC. Also, applicants cannot always show up for scheduled TRC or ZBA meetings. For practical reasons it may not work out.

He said that from what Mr. Hodge has told him, there is a process in place to get some of the same information from the Department Heads. The Department Heads may need to do a more thorough job but it sounds like there is a process in place that they can communicate that information to the Boards so this type of situation can be avoided.

Attorney Whitley also said that there is a way in the State law for the ZBA and Planning Board to have a joint meeting. He said that if the Boards were sitting in the same room to hear what the applicant was saying, perhaps the miscommunication would not take place. The Planning Board would have seen the plan that was presented to the ZBA and they would have heard the concerns that were made by the public to the ZBA. He also said that the ZBA has the ability to ask any Department Head to show up in person and speak to an issue that the ZBA is concerned about or that people in the community raised as a concern. He also suggested that if the ZBA does not feel that they have enough information to make a decision, they should postpone the meeting and ask the Department Heads to either show up or submit something in writing so the ZBA can get the information needed. Although the applicant may not be happy about the delay, it is more important to ensure that the process is correct.

Attorney Whitley said that another option is if it is the Planning Board's turn to consider the application, someone from ZBA could be at the Planning Board meeting and explain what happened before the ZBA.

Chairman Topliff said that this is not a common occurrence and it is difficult to predict what might come up at a meeting when the public is present. He suggested that, if something comes up that the ZBA is uncertain how it will be viewed by Department Heads, it would be best to continue the meeting until the next month.

Mr. Kudrick said that anything that goes on along Route 106, the ZBA has the Water Works present because it's vital to protect the aquifer. In the case of the gas company, it was the first time that they came before the ZBA. They talked about their lights and heard concerns from the neighbors. Mr. Kudrick said that it never occurred to him that there would be lighting concerns from the Fire Department. It was also assumed that the lights would come on when the Fire Department visited the site because it is motion detected. After the facility was built, that was when Mr. Kudrick heard that there was a problem. He asked how a person could foresee something like that.

Chairman Topliff said that no one could.

As with the gate, Mr. Kudrick reiterated that the gate was on the plan which is the same plan that he assumed would go before the Planning Board. The key was given to the Town for the protection of the neighborhood and everyone was satisfied with that.

Mr. Kudrick continued to say that there is a gate with a gravel road at Three Rivers School and there used to be one at Chickering Meadows. He said that during the construction process, the gate at Chickering Meadows was eliminated. He asked if the Planning Board had the authority to eliminate the gate because of concerns from Town Departments.

Chairman Topliff said that the Planning Board has no power to change a condition that the ZBA made with an approval.

Attorney Whitley agreed. If the ZBA imposes a condition and there is an issue that arises, the Planning Board cannot override the ZBA condition. It must be returned to the ZBA for revision or correction.

Mr. Kudrick asked if the Planning Board could not approve an application as presented and tell the applicant to return to the ZBA to get a particular issue changed.

Attorney Whitley said that in some circumstances that would be appropriate. Another way that the Planning Board could handle it is to place a condition that the plan is approved so long as this particular issue is addressed or revised by the ZBA.

Mr. Kudrick said that he does not mind the applicant returning to the ZBA as long as there is information from the Town Departments to show good reason to make a change.

Ms. Verdile said that when Pembroke Pines first came to a hearing held at the Pembroke Academy auditorium, the first application was for a variance. Many people were concerned about traffic, etc. and the one thing that the Board did well was to keep focused on the variance criteria. She suggested that the ZBA deflect any topic that is Planning Board related to the Planning Board. She said that Attorney Whitley's email explained that the ZBA can attach conditions but should focus only on the specific variance or special exception criteria where roads or lighting is not involved.

Mr. Kudrick said the ZBA does not want to cross over on Planning Board territory.

Chairman Topliff said he has no problem with the ZBA saying that a subject should be addressed with the Planning Board.

Attorney Whitley said the ZBA has power to place conditions on the approvals that they grant. Unfortunately, the ZBA does not have the ability to have its own TRC. He continued to say that it is very murky. Some of the special exception criteria and variance criteria, such as traffic, lighting, and noise could relate to the kind of findings that the ZBA has to make in order to give an approval. He said he understands the pull to impose conditions on those types of things but as a very general rule, it is probably better left for the Planning Board for a more site-specific review process. He said that he does not want to tell the ZBA that they should never do that again in the future because it is one of those things that there is no set rule that it is okay in one circumstance and not in another. It is very fact dependent. Attorney Whitley said that he hopes that the process that is in place for the Department Heads to give information to both Boards will prevent this topic to come up again for another 5 years.

Mr. Kudrick said that it would have been nice to have heard from the Department Heads about what concerns they would have. They must have received the plans. Chief Paulsen was at one of the ZBA meetings and addressed concerns about leakage but never commented about lighting.

Chairman Topliff said that the Planning Board frequently takes comments from the public but, unless it is something specific, he generally just thanks them for their input.

Attorney Whitley suggested that the ZBA should feel free to pass site-specific issues onto the Planning Board to the extent that they can because their process is more suited for site-specific issues. If the ZBA feels that they need to place a condition that is site-specific in nature and that they need additional input from the Department Heads, continue the meeting before going further.

Attorney Whitley said that he would prefer not adding another layer of bureaucracy that will only be needed for one case out of a hundred.

Mr. Kudrick said that, by the same token, if the Planning Board has an issue after they have met with the Department heads, they should have the applicant return to the ZBA. There should be a proper procedure to do so and to have the specific Department Heads either appear before the ZBA or write the ZBA with the information. New additional information is a reason to rehear a ZBA case.

Chairman Topliff said that if the ZBA does not reach a conclusion, it does not stop the applicant from coming before an already scheduled Planning Board meeting. He said that he did not want the ZBA to feel pressured to make a decision because they are afraid to hold up the process. The Planning Board can find an application complete and still consider it in the absence of a ZBA decision on their application to the ZBA.

Chairman Topliff said that if an applicant has to return to the ZBA, it is more expensive and a longer process than if the ZBA just waited a month to get input, and see what comes up at the Planning Board meeting which, at that point, they would have input from the Department Heads.

Attorney Whitley said that his concern is that the Planning Board has only limited ways that it can stop the process and tell the applicant to go back to the ZBA. If the applicant submitted enough information to the Planning Board that the Planning Board thinks that the application is complete, the Planning Board, at that point, probably needs to process the application on the merits. If an issue comes up, Attorney Whitley did not know if the Planning Board could not render a decision on the merits, not even a conditional approval, and give it back to the ZBA. He is afraid of an applicant making a due process argument that their Planning Board approval was being held up unreasonably because of an issue that they can take back to the ZBA after they get their approval from the Planning Board.

With regard to the Pembroke Pines Golf Course, Mr. Kudrick said that the ZBA approved a certain number of buildings according to the plan that was brought to them. It has come to Mr. Kudrick's attention that the plan has since changed – they are now proposing 3 single-family homes along Whittemore Road and 18 four-plexes rather than 19. In Mr. Kudrick's opinion, what is being proposed now is a different plan than what the ZBA approved.

Chairman Topliff said that single family homes are allowed, but the four-plexes are not so that is why they had to come before the ZBA for a special exception. Once they received the ZBA's approval for the special exception, they can change it.

Attorney Whitley said that the applicant can change it as long as it is an allowed use for less than what the ZBA approved.

Mr. Kudrick said that he thought that the approval was always based on the plan submitted to the ZBA. He gave the example of a house plan being approved by the ZBA and then later the Building Inspector discovers that the driveway and house have changed location on the lot. He said that they always approve based on the set of plans that are presented to the ZBA.

Attorney Whitley said that it is good that the ZBA have that type of information in front of them, but when he thinks of the ZBA process vs. the Planning Board process, he thinks of the level of detail needed for the ZBA as being less site specific. He was surprised that the ZBA had that level of detail, which he felt was more akin to going to the Planning Board.

Mr. Kudrick said that, with regard to the house scenario, the ZBA had a letter from the Highway Department that the driveway placement was a safety issue because of sight distance, therefore the ZBA ruled that the house and driveway had to remain where it was originally placed at the time that the ZBA granted their approval. Also, the permit given by the Highway Department matches the approval given based on the plans submitted to the ZBA. If the applicant changes anything from the submitted plans, the Building Inspector has the ability to pull the permit because it is not what the ZBA approved.

Attorney Whitley said that anytime the ZBA approves something with conditions or is based on representation made to the ZBA and the applicant violates that, it creates a

situation where Code Enforcement and the Town begin an enforcement process against the applicant. He said that the State law has teeth about enforcing those sorts of approvals and conditions.

Mr. Kudrick said that the ZBA always puts in their minutes that the approval is based on the facts that are presented at the time of the approval. If the Board finds that the plans are not being followed, the ZBA has the right to pull the approval. In that particular case, the Town kept the ZBA informed and provided them with all the information needed.

Mr. Hodge said that when someone comes in for a variance, he requires a certified plot plan, and then requires a certified "as built" once construction is done.

Vice Chairman Seaworth said that in one case there is a case where the ZBA may have looked at more than they needed to, yet on another application (the golf course) the ZBA looked at less. The ordinance says that the ZBA has to look at all the aquifer protection issues before issuing a variance which had to cycle back through because of it. Vice Chairman Seaworth continued to say that there is the case where the opposite can happen: A single family or duplex is not covered by the aquifer protection special exception. They are exempt. If the ZBA says that those two are allowed by right but are also allowing the four-plex, then they have also just exempted the four-plex from the aquifer protection special permit process which means that now nobody has gone through the process. The ZBA is in a tough position where the Planning Board is telling them not to go too far in one direction or another. The ZBA has to walk straight down the middle every time.

Mr. Kudrick said that no one brought it (RSA 143:68F) to the ZBA's attention. It was not until they read 40 pages into the Court's decision, that they realized the problem. The applicant is coming back for that one issue and all the information has been taken care of.

Attorney Whitley said that the process, in one sense, worked. It was cumbersome, long, and time-consuming for all involved but eventually it worked. Maybe that's the reason not to overreact and try to add layers of additional regulations that are not necessary.

Chairman Topliff asked if Attorney Whitley said that the Planning Board could not make the opening of the gate a condition of approval.

Attorney Whitley said no. He said that he did not know the specifics of that application enough to render an opinion, but in general terms, he thought that it was something that is within the Planning Board's purview if the board felt that it was appropriate.

To clarify, Member Cruson asked if the Planning Board could make opening the gate a condition of approval. Attorney Whitley said yes.

Member Young asked if the Town could gate a town-maintained road.

Attorney Whitley said that if it is a town-maintained road, there may be legal issues with gating it.

Ms. Verdile said the Board spoke about making the road private but it does not take away access concerns by the Police and Fire Chief's along with Highway's plowing. If it is a private road and is gated, the Departments still do not have access.

Alternate Member Bourque asked if it would be possible to share the TRC minutes with the ZBA. Attorney Whitley said yes.

Vice Chairman Seaworth said that in the case where the applicant goes to the ZBA for a variance and then spends a few months preparing for the Planning Board, which includes meeting with TRC, it then becomes an issue. Although all those plans may have gone to all the Departments ahead of time, the plans may or may not have changed by the time they met with the Planning Board once all the Departments are together something usually comes up. The issue being brought to everyone's attention is: Is there a way to make the applicant go to TRC before going to the ZBA.

Attorney Whitley said no because the applicant can go to the ZBA and finish the ZBA process in its entirety before they decide to start the Planning Board process. The Town does not have the ability to force anyone to go to TRC.

Alternate Member Bourque said that he is not trying to force the applicant to go to a TRC meeting, he only want to know if it is possible to provide the ZBA with a copy of the TRC minutes before the ZBA meeting.

Attorney Whitley said yes, but they may be draft minutes.

Alternate Member Bourque said that would be fine. At least if the ZBA is aware that one of the Departments has a concern, and they need them at their meeting, the ZBA can ask that Department Head to attend.

Mr. Kudrick asked, in a case where an applicant came to the ZBA and receives an approval but four months later the applicant goes to TRC and the Departments express a concern, does the ZBA have the authority to reopen the case because of issues discovered at the TRC.

Attorney Whitley said that he does not think that the ZBA has the authority to reopen it four months' later. It would have to be within the 30-day appeal period. If it is four months' later, it would have to be an enforcement action where the Planning Board or the Code Enforcement Officer says that they are violating the approval of the zoning ordinance and requires the applicant to return to the ZBA.

Old Business— Discussion Simple Site Plan process and regulations

Alternate Member Bourque said that there have been quite a few applications that have had a number of waiver requests. The Planning Board found that there was one waiver that the applicant should supply but because the Planning Board could not approve all the waivers, it could not accept the application in for review. If it is a minor waiver request-type item that could be provided easily by the next meeting, why wouldn't the Planning Board be able to accept the application, approve the waivers that were requested except for the one that the applicant needs to provide and return at the next meeting.

Chairman Topliff said that from his perspective, the wetland stamp was an administrative thing that was just an oversight by the scientist who prepared the report. The problem was that it was one of the criteria in terms of the checklist items that have to be submitted or they have to request a waiver.

Chairman Topliff said that Attorney Whitley said that that was a case where it could be handled the way Alternate Member Bourque suggested.

Chairman Topliff continued to say that if, of the 20 checklist items, the applicant asks for a waiver on two of them which the Planning Board approved and there is a third item that they should have provided but didn't, he said that he is not comfortable giving them until next week or next month to return with the information. In his opinion, it could be challenged in court after the fact.

He said that one thing he remembered was that Christine Filmore said that most Planning Board decisions are overturned on procedure. He said that State law says that the Planning Board has the authority to establish minimum requirements as a part of the checklist. Chairman Topliff said that he would not be comfortable with having a lot of flexibility because of the potential legal challenge. He preferred consistency.

Vice Chairman Seaworth said that if someone has a wetland survey from 5 years' ago that they believe is still good but it doesn't have a wetland stamp and the Board feels that the stamp is necessary, Member Bourque's opinion is that the Board should be able to grant all the waivers except the one pertaining to the missing wetland stamp and proceed toward an approval with the wetland stamp as a condition. Vice Chairman Seaworth said that his understanding is that Chairman Topliff's opinion is that once the Board waives something in order to look at the application, the Board cannot go back and require that the applicant get the stamp before receiving a certificate of occupancy. Yet, if the Board does not waive it, they cannot look at it.

Attorney Whitley said that they are talking about two different things: (1) the information that the Planning Board needs in order to say that the application is complete and the applicant can go to the merits; and (2) the Board has gone through the merits and has satisfied everything and needs an approval. Attorney Whitley said that it is his opinion that if the Board waives it for completeness' sake, it does not mean that, at some point during the Board's review of the merits that the Board cannot come back and request additional information. Waiving something as part of the completeness review does not preclude the Planning Board from saying that they need additional information on something because they cannot go forward with seeing if the applicant meets the conditions of the site plan regulations until they present the information. If the Board has already made the completeness decision, the Board has jurisdiction over the application and if the Board is trying to find out if the applicant has satisfied all the criteria, it is well within the Board's power to say that the Board needs more information from the applicant to prove that the applicant has satisfied all the criteria.

Ms. Verdile asked if the Board could grant a waiver with a condition and require something to be presented within 90 days.

Attorney Whitley said yes. The Board has a little flexibility but, to Chairman Topliff's point, not too much flexibility. He said that for situations that Alternate Member Bourque was talking about, which is that the Board has that one outstanding thing that seems administrative and minor, he said that if the Board enacts a policy that allows the Board to, the Board has the ability to say that the Board will accept this as complete in order to move to the merits provided that the applicant gives the Board the wetland's stamp within 14 days or the next meeting, for example. He said that it is correct to be concerned because it is a slippery slope and if the Board starts to go too far down that road, the Board will be trying to render decisions on applications and the Board would not have enough information to do so which can open the door to mistakes.

Attorney Whitley said that that was what he was trying to capture in the proposed language – giving the Board some flexibility without going too far.

Ms. Verdile said that the Board sees minor things pertaining to MSDS sheets.

Alternate Member Bourque agreed. They are usually very minor things that could be taken care of in a very short period of time but because the applicant asked for a waiver for the item, and the Board wanted that requested item, the whole application was rejected because the Board could not approve all the waivers. The applicant had to reapply and begin the entire process again which cost time and money.

Vice Chairman Seaworth said that in the Board's process, they do not allow the applicant to speak until the Board opens the public meeting. One applicant was adding modifications to a portion of an existing site. The site plan did not show the location of a dumpster. Without that, the application could not be considered complete. The issue was that the dumpster was on the property across the street on the portion of the site that was not on the plan but the applicant could not tell the Board that unless the application was accepted as complete. The Board always asks the applicant to write an explanation as to why they need the exceptions but sometimes they do not.

Chairman Topliff agreed that there are valid points on both sides, but the only way that he would feel comfortable with having some leeway is to have verbiage or criteria that defines the process. He would also feel more comfortable if Attorney Whitley drafted the language.

Attorney Whitley agreed that if the Board was going to go down this path, some process that spells it out should be a part of the Subdivision and Site Plan regulations.

Attorney Whitley said that he drafted language in his email dated February 9, 2018 at 11:09 am.

Attorney Whitley read the email aloud:

Applicants shall have no more than 90 days from the Board's initial meeting where the application was evaluated for completeness to provide all information requested by the Board to facilitate the completeness evaluation and/or any items for which the Board

previously denied a waiver request. Following expiration of the 90 day period, the Board shall find the application incomplete.

Attorney Whitley said that the clock for rendering a decision on the merits does not start until the Board has accepted it. The window is 90 days from the date that the Board receives it. It does not have to be 90 days. It can be whatever the Board feels comfortable with.

Alternate Member Bourque suggested 45 days in order to get around the December holiday schedule.

Attorney Whitley thought that it would be good to give the applicant more than one Planning Board meeting to get whatever information is necessary because some cases may be more complicated than others.

To make a further point, Attorney Whitley continued to read his February 9, 2018 email:

The Board may vote an application as complete pending receipt of information prior to the expiration of the 90 day period that is necessary to render the application as complete and: (a) minor and not involving the discretionary judgment of the Board; or (b) required to be submitted due to a failed waiver request.

Attorney Whitley said the above language speaks to the situation where the Board wants to get to the merits but for the isolated items that the Board does not have yet, this language as a policy would give the Board and the applicant guidance.

After a short discussion, the Board agreed with a 60-day period.

Attorney Whitley read the remainder of his email. He said that it speaks in general, to the issue that was discussed while the ZBA was present – how much information can the Board require the applicant to submit to it when the applicant has to go before other boards as well. He suggested that a new policy would say:

To render an application as complete, the Board may require proof of submission of an application to or the issuance of permits or approvals from other local governmental bodies.

Attorney Whitley explained that the language means that if someone needs a variance or special exception, before rendering the application as complete, the Board needs to see proof that they either applied for that permit or approval or that they have, in fact, obtained it from the other board.

He said that the Board cannot do it for State permits. For the completeness evaluation, the Board can only do it for local permits. He said that there was a recent change in the State law that gives the Planning Board the ability to require proof of submission or obtaining a permit from the ZBA or other local governmental body.

Attorney Whitley will work on language to add to the Site Plan and Subdivision regulations.

Simple Site Plan:

Chairman Topliff said that some of Attorney Whitley's suggestions place more responsibility on the TRC than he was comfortable with. TRC members are Department heads and may not be as familiar with the ordinances, how the Planning Board operates, or their criteria. They also may not have the information or the knowledge to make prudent decisions.

Attorney Whitley agreed with Chairman Topliff. He said that it is a lot for the TRC to deal with. Looking at the membership of the TRC, he said that hopefully, if those issues come up, someone would explain to them that these are the regulations and point out the things that they can or cannot do. The other safety item is that, if someone feels that TRC acted improperly, they could appeal it.

Chairman Topliff asked Member Young what his thoughts were about asking TRC to take an active decision-making role.

Member Young said that the Department heads would not feel comfortable with something that is outside of their expertise. They do not have the background or experience with zoning issues. He also said that it is sometimes difficult for TRC members to make the meetings and, to put additional responsibility on them may not be a good thing.

Attorney Whitley said that some of the changes that he made was because of the way that he interprets the law about the powers that the TRC can wield. He said that he did not think that the Town Planner had the authority to make a decision on whether an application was complete or not. In his opinion, if the Town is going to have a TRC process, that is the sort of decision that has to be made by the TRC and not the Town Planner.

He continued to say that given the makeup of the TRC, it could be asking a lot.

Ms. Verdile said that if they have a TRC meeting and only several of the Department heads show up, and the application is accepted as complete, isn't it another "slippery slope" where an applicant could complain that they did not receive comments from all members of TRC.

Ms. Verdile said that, with regard to the Planner recommending completeness, she said that she reviews the checklist, verifies that the application is complete based on the checklist and/or waivers and then recommends completeness to the Board. The Board then makes the motion.

Ms. Verdile asked if TRC could do that too.

Attorney Whitley said yes, it is what he envisioned. The Planner would review all material and would recommend that the application is complete but the ultimate decision would rest on the TRC.

Chairman Topliff suggested an alternative – that the Planning Board retain ownership of this potential process, yet find a way to make it simpler in terms of the application,

submittals, and the process so that the applicant would come before the Planning Board at a lower cost and lower level of aggravation for those applicants who want to do simple things.

Attorney Whitley said that he agreed that that was probably what the TRC was designed to do – straight-forward applications that do not need much discretionary judgment because it is an allowed use with minimal changes to the site which ought to be approved.

Attorney Whitley said that perhaps the easier solution is to amend the zoning ordinance rather than making a simple site plan review process.

Ms. Verdile said that the Suncook Village Commission which consists of Pembroke and Allenstown is working on trying to make some type of uniform zoning.

Chairman Topliff suggested that the Master Plan update take priority and then look at this after the update.

Alternate Member Bourque thought that Matt Monahan from CNHRPC was hinting on making the entire downtown area a historic district.

Chairman Topliff said that there are areas of Town that the Board has considered changing the zoning to change the allowed uses, particularly in an area that is presently residential that may be changed to allow commercial uses. He asked what obligation the Planning Board has to get input from the property owners on such a change.

Attorney Whitley said that he would not categorize it as having an obligation. Any zoning change that the Town would like to put before the voters has to go through a process before the Board. There must be a public hearing first for input. The process is designed so that the people in the affected areas can express how the change will affect their quality of life.

Member Young asked if the Town would have to notify all the abutters.

Attorney Whitley said that he would have to research it, but if a certain number of properties are affected, there must be individual notices sent.

Attorney Whitley said that: "If a proposed amendment to zoning ordinance would change the uses in a district that includes 100 or fewer properties, notice of a hearing on the amendment shall be sent by first class mail to the owner of each property in the district (RSA 675:7)."

He also said that an owner has some protection. If the zoning change and their use is no longer a permitted use, they can continue the use indefinitely and the Town's ordinance probably speaks to the extent to which they can enlarge/expand it with some limitations. They could always sue the Town saying that it is unconstitutional for some reason.

Attorney Whitley will work on the following issues: Language about waivers and completeness – change to the number of days. Making changes to the Site Plan and

Subdivision Regulations and, if the checklist and other documents are changing as a result of that, then those changes will also be made.

Minutes- January 23, 2018

MOTION: Vice Chairman Seaworth moved to approve the January 23, 2018 minutes as amended. Seconded by Alternate Member Bourque. Unanimously approved with one abstention – Chairman Topliff.

Miscellaneous

1. Correspondence-

Ms. Verdile received Business NH Magazine and Planning Magazine

2. Committee Reports-

Technical Review Committee (TRC): Member Young said that Matt Roan of Petit-Roan Funeral Home is coming before the TRC about a major addition to their building.

Ms. Verdile said that they will be at the Planning Board's February 27, 2018 meeting.

She also said that on February 27, 2018, the Planning Board will also have a continuation of the Village at Pembroke Pines. There will not be the anticipated lot line adjustment plan.

Conservation Commission: Member Edmonds said that the Commission made an offer on the the Poirier property on Center Hill Road (approx. 93 acres) for \$150,000. The offer was rejected. The Commission approved an offering \$180,000. It now has to go before the Board of Selectmen.

Vice Chairman Seaworth said that the Conservation Commission has a warrant article on the Town ballot about purchasing properties taken for taxes.

Member Edmonds said that the Commission approached the Board of Selectmen hoping to get that warrant article up for town meeting. It was deemed not appropriate so the Board of Selectmen voted not to include the warrant article in the way that it was presented. Ammy Heiser is attempting to come up with different language but similar in context.

3. Planner Items-

Ms. Verdile said she received a job offer with the State, which she has accepted. She will be the Principal Planner with the Office of Strategic Initiatives. She begins March 16, 2018.

The Board said that she would be missed.

MOTION: ALTERNATE MEMBER BOURQUE MOVED TO ADJOURN THE MEETING. SECONDED BY VICE CHAIRMAN SEAWORTH. UNANIMOUSLY APPROVED.

The meeting adjourned at 9:10 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary