

**Pembroke Planning Board
Minutes of Meeting
(Adopted)
Tuesday, June 22, 2010**

MEMBERS PRESENT: Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Cindy Lewis, Selectmen's Representative; Kevin Krebs; Larry Young, Sr.; Kathy Cruson

ALTERNATES PRESENT: Ron Nowe

EXCUSED: Robert Bourque; David Jodoin, Town Administrator

STAFF PRESENT: Jeffrey Gaeta, Town Planner; Jocelyn Carlucci, Recording Secretary

Chairman Topliff called the meeting to order at 7:00 p.m. and designated Member Nowe to vote in place of Member Bourque.

Planning Board Application Material Public Hearings

1. Proposed Planning Board Applications, Guidelines, Checklists, and Fees.

Rather than opening and closing the public hearing on each item listed, Chairman Topliff opened the public hearing at 7:02 p.m. for all the changes to all the items listed on Agenda Item #1.

- Subdivision and Site Plan Review Application – **No comments from the public or the Board.**
 - Major and Minor Site Plan Review Checklist and Fee Schedule – **No comments from the public or the Board.**
 - Major and Minor Subdivision Review Checklist and Fee Schedule – **No comments from the public or the Board.**
- Special Use Permit Application, Checklist, and Fee Schedule – **No comments from the public or the Board.**
- Design Review Application, Checklist, Fee Schedule, and Guidelines for Conceptual Consultation and Design Review – **No comments from the public or the Board.**
- Conceptual Consultation Checklist and Fee Schedule – **No comments from the public or the Board.**
- Voluntary Lot Merger Form – **No comments from the public or the Board.**

Selectmen's Rep. Lewis said that she recently registered documents at the Merrimack County Registry of Deeds and they required all signatures in blue ink in order to be certain that all signatures were original.

Member Young thanked Mr. Gaeta for organizing and simplifying the revisions of the above-mentioned documents.

There being no further comments from the Board or the public on Agenda Item #1, Chairman Topliff closed the public hearing at 7:09 p.m.

MOTION: Selectmen's Rep. Lewis moved to approve all Applications, Guidelines, Checklists, and Fees as presented. Seconded by Member Young.

Chairman Topliff clarified that if the documents are approved, they will go into effect immediately for all new applications.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y R. Nowe – Y

L. Young – Y

K. Krebs – Y

K. Cruson – Y

MOTION TO APPROVE ALL APPLICATIONS, GUIDELINES, CHECKLISTS, AND FEES PASSED ON A 7-0 VOTE.

Old Business

2. Minor Site Plan Amendment. Dirt Doctors. Case #10-102. Map 632, Lot 8 at 709 Keith Avenue in the Commercial/Light Industrial (C1) District, Aquifer Conservation (AC) Overlay District, Floodplain Development (FP) Overlay District, Shoreland Protection (SP) Overlay District, and Wetlands Protection (WP) Overlay District. The applicant, Dirt Doctors, on behalf of property owner Red Rock Investments, LLC, proposes the storage of mulch and landscape material on site in accordance with an updated Joint Use Agreement with Public Service of New Hampshire.

Mr. Gaeta explained that the application was accepted at the April meeting and that the 65-day review period would end before the next public hearing, therefore, the applicant has requested a continuance to the July 27, 2010 meeting. Selectmen’s Rep. Lewis said that this application has been continued for a year and renotification may, at some point, become necessary.

MOTION: Selectmen’s Rep. Lewis moved to continue Red Rock Investment’s LLC to the July 27, 2010 Planning Board meeting and grant the 65-day extension. Seconded by Vice Chairman Seaworth.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y R. Nowe – Y
L. Young – Y K. Krebs – Abstained K. Cruson – Y

MOTION TO CONTINUE RED ROCK INVESTMENT’S LLC TO THE JULY 27, 2010 PLANNING BOARD MEETING AND GRANT THE 65-DAY EXTENSION PASSED ON A 6-0 VOTE WITH 1 ABSTENTION.

3. Minor Site Plan. Kimball’s Market. Case #10-103. Map 565, Lot 241 at 351 Pembroke Street in the Medium-Density Residential (R1) District and the Architectural Design (AD) Overlay District. The applicant, Kimball’s Market, on behalf of property owners Robert Cavanaugh and Todd Smith, proposes a change in use from a convenience store and deli to an eating and drinking establishment and deli.

Present: Robert Cavanaugh and Attorney Friedrich K. Moeckel of Tarbell & Brodich, PA representing Robert Cavanaugh.

Chairman Topliff reminded everyone that, at the last meeting, the Board accepted the plan in for review and continued the application to this meeting.

Mr. Gaeta said that Kimball’s Market has revised their site plan based on the recommendations of the Board. His review of the new plan show only minor plat requirements need to be added to the plan.

Attorney Moeckel reviewed the plan:

1. The parking will be on the South property line rather than the South side of the building. All the parking will face the South property line to enable vehicles to back out of their spaces. This design improves the flow to exit the property.
2. The area on the South side of the building is a fire lane. There will be 2 “No-Parking. Fire Lane” signs affixed to the building.

3. The Accessible Parking Space was placed on the North side of the building near the ramp.
4. The dumpsters were moved away from the tenant parking.
5. All buffers and isle widths have been maintained.
6. The signature blocks will be added to the second sheet.
7. The plan meets all zoning requirements and onsite traffic progression.
8. The proposed snow storage location (North side of the driveway leading to the single family home at the rear of the property.) has been noted on the second sheet.

In order to keep customers from parking in the tenant parking spaces, Attorney Moeckel suggested placing a sign marked "For Tenant Use Only".

Attorney Moeckel said that onsite underground storage tanks were removed in the 1990s and the site has been the subject of mitigation. Geolnsight submitted a letter (a copy of which will be provided to the Board) which indicated that testing is ongoing and the only reason to notify NH Department of Environmental Services (NH DES) is if the parking lot is repaved. Attorney Moeckel said that NH DES wants to make sure that their wells are protected. It is his understanding that site monitoring will continue until there are 2 testing periods with no results.

Chairman Topliff suggested that the pavement be painted "Fire Lane. No Parking" in case someone does not see the sign.

Chairman Topliff reopened the public hearing at 7:23 p.m.

Member Krebs inquired about screening on the South property line. A discussion ensued about vegetative screening vs. fencing in front of the first 5 parking spaces on the South side of the property. Vehicle headlights shining on the side of the abutter's barn which does not contain windows was not an issue to the Board. Mr. Cavanaugh said that he has spoken with the abutter to the South side of the property. The area of concern is the windows on the North side of the abutter's house that would be affected by the vehicle lights in the first 4-5 parking spaces on the South side of the applicant's property. It was the consensus of the Board that some type of tree or shrub should be planted as screening.

Chairman Topliff closed the public hearing at 7:35 p.m. noting that, in the event the application is continued to a subsequent meeting, the public hearing would also be continued.

Attorney Moeckel said that the existing paved area will eventually be repaved.

The Board agreed that: (1) Lines on the plan showing the delineation between the paved and grass areas would be helpful; (2) A "No Parking. Fire Lane" sign should be placed on the building and painted on the pavement in front of the building adjacent to the handicapped parking space and also on the South side of the building; (3) A check for \$25 made out to the Merrimack County Registry of Deeds for LCHIP fees was needed; (4) A signature line(s) to be signed by the owner(s) of the land to be developed on Sheet 2 of 2 is necessary; (5) The names of the abutter(s) on the opposite side of Meetinghouse Brook and their address(es) should be placed on Sheet 2 of 2; (6) A note should be added that the existing residence on the 2nd floor of the subject building will remain under the current proposal; (7) Screening will be added on the South side of the property for the first 5 parking spaces with 3 ft. high, thuja arborvitaes, 7 ft. on center.

MOTION: Selectmen’s Rep. Lewis moved to approve the application of Kimball’s Market. Case #10-103 with the following condition:

- (1) Note abutter(s) and address(es) on the opposite side of Meetinghouse Brook on Sheet 2 of 2;
- (2) Provide a signature line(s) to be signed by the owner(s) of the land to be developed on Sheet 2 of 2;
- (3) Provide the Planning Board approval box on Sheet 2 of 2;
- (4) Provide a note stating the existing residence on the 2nd floor of the subject building will remain under the current proposal;
- (5) Delineate where the exact line of pavement will be;
- (6) Note the “No Parking. Fire Lane” on the pavement along the front (after the handicapped space) and along the South side of the building;
- (7) Add the handicapped sign and painting on the pavement for the new handicapped space;
- (8) The screening for the first five parking spaces on the South side of the property will be 3 ft. high, thuja arborvitaes, at 7 ft. on center;
- (9) Submit a check for \$25 made out to the Merrimack County Registry of Deeds for LCHIP fees.

Seconded by Member Krebs.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y R. Nowe – Y
 L. Young – Y K. Krebs – Y K. Cruson – Y

MOTION TO APPROVE THE APPLICATION OF KIMBALL’S MARKET. CASE #10-103 WITH THE FOLLOWING CONDITION:

- (1) NOTE ABUTTER(S) AND ADDRESS(ES) ON THE OPPOSITE SIDE OF MEETINGHOUSE BROOK ON SHEET 2 OF 2;**
- (2) PROVIDE A SIGNATURE LINE(S) TO BE SIGNED BY THE OWNER(S) OF THE LAND TO BE DEVELOPED ON SHEET 2 OF 2;**
- (3) PROVIDE THE PLANNING BOARD APPROVAL BOX ON SHEET 2 OF 2;**
- (4) PROVIDE A NOTE STATING THE EXISTING RESIDENCE ON THE 2ND FLOOR OF THE SUBJECT BUILDING WILL REMAIN UNDER THE CURRENT PROPOSAL;**
- (5) DELINEATE WHERE THE EXACT LINE OF PAVEMENT WILL BE;**
- (6) NOTE THE “NO PARKING. FIRE LANE” ON THE PAVEMENT ALONG THE FRONT (AFTER THE HANDICAPPED SPACE) AND ALONG THE SOUTH SIDE OF THE BUILDING;**
- (7) ADD THE HANDICAPPED SIGN AND PAINTING ON THE PAVEMENT FOR THE NEW HANDICAPPED SPACE;**
- (8) THE SCREENING FOR THE FIRST FIVE PARKING SPACES ON THE SOUTH SIDE OF THE PROPERTY WILL BE 3 FT. HIGH, THUJA ARBORVITAE, AT 7 FT. ON CENTER;**
- (9) SUBMIT A CHECK FOR \$25 MADE OUT TO THE MERRIMACK COUNTY REGISTRY OF DEEDS FOR LCHIP FEES.**

PASSED ON A 7-0 VOTE.

New Business

4. Minor Subdivision. Curley/Cushman. Case #10-02. Map 256, Lot 3 at 755 Robinson Road in the Rural/Agricultural-Residential (R3) District. The applicants, Burton E. & Fernande H. Curley, propose a two-lot subdivision in order to convey one parcel to the Cushmans to provide them with road frontage for their abutting, and otherwise land-locked, parcel located in the Town of Chichester.

Present: F. Webster Stout, III, Land Surveyor representing the Curleys and Cushmans

Chairman Topliff recollected that the Board approved this application a year ago but since the timeframe to record it had lapsed, the applicant was required to return to the Board.

Mr. Gaeta said that the applicant is requesting a number of waivers to the subdivision regulations such as topography, soil types and boundaries, soil test pits, borings, percolations, and updated environmental sensitivity analysis. A Technical Review Committee meeting was held with minor comments. The Town Administrator said that an escrow account would be required to cover the costs of updating and reprinting the zoning maps in the amount of \$8. The Roads Committee asked if the Cushmans were planning to develop the parcel which would increase traffic onto the road. The applicants have no plans on developing the land. They have modified the lot line slightly to its previous location which did not create any issues.

Mr. Gaeta said that a \$25 LCHIP check was required.

Mr. Stout said that the Board approved the lot line/subdivision in November 2008. It was approved by the Chichester Planning Board on June 3rd with the following condition: To locate the wetland areas and the "buildable area" on the 69 acres. He said that the Cushmans own 69 acres and an abutting parcel. The two parcels are separated by a swamp. The request will give the piece of property frontage on a town maintained road.

With regard to the waivers for the testpits, topographies, and soils, Mr. Stout said that the area was State approved for a septic design. The lot exceeds the lot size for Pembroke. A note has been placed on the plan that the triangular pieces (71,000 square feet) is nonbuildable.

With regard to the waiver for a letter from the NH National Heritage Bureau, the applicant received such a letter in 2008 stating that no sensitive species were found at that time and, since the applicant is merely moving a lot line, another study did not seem necessary.

Mr. Gaeta said that the Town has received a representative authorization letter.

MOTION: Member Seaworth moved to grant the following waivers: (I) Display the topograph; (N) Display soil types and boundaries; (O) Display soil test pits, test borings, and percolation test pits; (U) Provide an updated, 2010 letter from NH DRED to identify the existence of environmentally sensitive or unique animals or plant communities in the area. Seconded by Member Young.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y R. Nowe – Y
L. Young – Y K. Krebs – Y K. Cruson – Y

MOTION TO GRANT THE FOLLOWING WAIVERS: (I) DISPLAY THE TOPOGRAPH; (N) DISPLAY SOIL TYPES AND BOUNDARIES; (O) DISPLAY SOIL TEST PITS, TEST BORINGS, AND PERCOLATION TEST PITS; (U) PROVIDE AN UPDATED, 2010 LETTER FROM NH DRED TO IDENTIFY THE EXISTENCE OF ENVIRONMENTALLY SENSITIVE OR UNIQUE ANIMALS OR PLANT COMMUNITIES IN THE AREA PASSED ON A 7-0 VOTE.

The consensus of the Board was to place the \$25 LChip fee as a condition of approval.

MOTION: Member Seaworth moved to accept the plan as complete. Seconded by Member Young.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y R. Nowe – Y
L. Young – Y K. Krebs – Y K. Cruson – Y

MOTION TO ACCEPT THE PLAN AS COMPLETED PASSED ON A 7-0 VOTE.

Chairman Topliff opened the public hearing at 7:58 p.m.

Chairman Topliff said that the Cushmans anticipate building a home on the lot in the future.

Mr. Gaeta said that there is a driveway permit on file.

There being no questions from the Board or the public, Chairman Topliff closed the public hearing at 8:01 p.m. noting that if the application is continued to a subsequent Planning Board meeting, the public hearing would also be continued.

The following conditions of approval were discussed: (1) The required LCHIP check for \$25; and (2) an \$8 check for updating the Planning and Zoning maps.

Mr. Gaeta said that the telephone numbers of the applicants are not displayed on the plan and was discussed at a previous meeting. The applicant was uncomfortable with the request. The Board would not require the telephone numbers to be included.

Mr. Gaeta reiterated to the Board that the minimum lot requirement is not being met on the Pembroke parcel.

MOTION: Selectmen’s Rep. Lewis moved to approve the Minor Subdivision. Curley/Cushman. Case #10-02 with the following conditions: (1) The required LCHIP check for \$25; and (2) an \$8 check for updating the Planning and Zoning maps. Seconded by Member Seaworth

Mr. Gaeta said that the conditions should be noted on the plan. They are allowed to be on a separate sheet if necessary.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y R. Nowe – Y
L. Young – Y K. Krebs – Y K. Cruson – Y

MOTION TO APPROVE THE MINOR SUBDIVISION. CURLEY/CUSHMAN. CASE #10-02 WITH THE FOLLOWING CONDITIONS: (1) THE REQUIRED LCHIP CHECK FOR \$25; AND (2) AN \$8 CHECK FOR UPDATING THE PLANNING AND ZONING MAPS PASSED ON A 7-0 VOTE.

5. Minor Subdivision. Hillman. Case #10-03. Map 870, Lot 3 at 533 Buck Street in the Rural/Agricultural-Residential (R3) District. The applicant, Marilyn H. Bergevin, Trustee of the Alfred K. Hillman Revocable Trust, proposes a two-lot subdivision in order to convey one parcel to the Town of Pembroke, which is to be placed in conservation.

Present: Marilyn Bergevin, Trustee of the Alfred K. Hillman Revocable Trust, Carolyn Downing (Marilyn's sister) and Ammy Heiser, Chairperson of Pembroke Conservation Commission

Mr. Gaeta said that the existing parcel is 46 acres. The Hillmans would like to subdivide off a two-acre parcel for an existing house located on the lot. They are also attempting to finalize an agreement with the Pembroke Conservation Commission to purchase the larger parcel of the subdivision. The major concern is the boundary dispute with the Daneaults. Hank Amsden, the applicant's representative was not able to be present. Mr. Gaeta explained that the portion in question is the small triangular shaped piece that is between the light and dark colored lines shown on the map in the Daneault parcel.

Member Krebs said that the Pembroke Conservation Commission has been working on acquiring the property for a long time and are strongly in favor of this.

Mr. Gaeta explained the meaning of the term "building envelope." A building envelope is a section of buildable area where a future building can be built if ever necessary. It is a requirement of Five Rivers.

Selectmen's Rep. Lewis said that the Town will not purchase the property until the Daneault property line is clear. She said that the Town cannot say that they will not continue with the proposal because of the boundary dispute but the boundary dispute causes a conflict for the Town to buy the property. It does not affect the 2 acre lot.

Member Cruson explained that the Conservation Commission is an agent of the Town which has the funds to purchase this parcel of land as conservation land. Chairman Topliff explained that the Conservation Commission funds are the result of those parcels of land that are taken out of current use.

Member Krebs said that there are grants, and other government funding that is going toward the purchase of the 46.3 acre parcel.

Mr. Gaeta said that the Conservation Commission is having difficulty completing the steps necessary to purchase the 46.3 acre parcel. They are trying to avoid going to Town meeting in 2011.

Mr. Gaeta said that even though the property line is not clear, the Planning Board could accept this phase of the project and the Conservation Commission would continue working through the next phase.

Chairman Topliff said that, in terms of the subdivision of land, the boundary disagreement does not affect the minimum lot size requirement. If it did, a buyer would be wise not to purchase a piece of land until they knew the exact bounds. Since the Conservation Commission is not a legal entity, the Town of Pembroke would own the property. Selectmen's Rep. Lewis said that since the Conservation Commission is a Commission, they hold public hearings and it is their decision whether to purchase a piece of land. The Board of Selectmen must vote to accept the land.

Member Young said that he does not agree that the Town should purchase land which would remove it from the tax roll. The Hillman property will never be a fire station, ball field, or school. It will have no specific purpose. Unless the Conservation Commission intends to link the property with another property or to establish a future purpose for the land, he is not in favor of purchasing the 46.3 acre parcel.

Selectmen's Rep. Lewis said that the purpose of the USDA grant is that the parcel will remain agricultural in perpetuity. It is farm land that presently is farmed. The property would continue to be used for agricultural purposes.

Ammy Heiser said that the Conservation Commission has an agreement with the USDA. They applied for matching funds to purchase the property after Stanley Grimes approached the Conservation Commission with fear of losing his most prime agricultural field. The Grimes family has been farming this parcel of land for the past 40 years.

The Conservation Commission applied for matching funds that the government was offering for prime agricultural land. It is part of the Farm and Ranch Protection Program. Because prime farm land is being lost to development coupled with the fact that this particular piece of property has a prime soil type that makes it highly regarded for agricultural use, the Conservation Commission was granted the matching funds. During the ongoing process new rules have periodically come into play such as the order in which documents must be filed.

Ms. Heiser continued to explain that the "building envelope" is recommended by the USDA not Five Rivers. It is required for the purpose of providing an area of land where something could be built that would be necessary to keep the farm going such as a barn, a vegetable stand, a wind generator, or even a parking lot, for example. The building envelope area is not taken out of the figure of the conservation land. It is still considered part of the conservation figures. The Commission was advised to err to the larger side of the building envelope even though the amount may not be needed.

Ms. Heiser said that the land is currently in current use. The property will be subdivided into 2 lots and the Town will receive more taxes with it subdivided than if the entire parcel remained in current use. The farmer will lease the property and will pay the commensurate amount of money so there will be no deficit to the tax structure of the Town. The Town Administrator has confirmed that the Town will make more money on this particular parcel with it subdivided in the way that is being presented, not less money.

Harold Thompson, Pembroke Sewer Commissioner, said that the Board is presently being asked to approve the subdivision of one lot. The issue before the Board has nothing to do with the Conservation Commission or the Daneault boundary dispute.

Mr. Gaeta noted the following waivers are being requested: (I) Depict topography on the entire area of both lots; (J) Delineate wetlands on the entire area of both lots; (M) Display how surface water will be collected and discharged; (U) Perform environmental sensitivity analysis.

Mr. Gaeta said that he thought NH DES required the depiction of the wetlands as part of the application for the sewage disposal system. He has not received a copy of the application.

Selectmen's Rep. Lewis said that she would not grant a waiver to do the wetlands on the 2.1 acre parcel.

Ms. Bergevin presented a map to the Board. Selectmen's Rep. Lewis said that the map dated May 25, 2010 lists two surveyors, a subsurface designer, and a wetlands scientist. The map would change the acreage on

the subdivision because the wetlands extends into the lot more than is shown on the Subdivision Plan. The information on the map presented by Ms. Bergevin must be transferred to the subdivision map.

Selectmen's Rep. Lewis said it is assumed that the waiver requests are only for the larger parcel and not the smaller parcel even though it is not clearly stated.

Mr. Young stated that the application clearly states that the applicant is proposing a two-lot subdivision in order to convey a parcel to the Town of Pembroke. It is his opinion that the Board cannot ignore the larger parcel and only concentrate on the smaller lot in the whole subdivision application as proposed by Mr. Thompson.

Chairman Topliff said that the Town is not in a position to make a decision relative to the purchase by the Conservation Commission but the Planning Board has no purview over the decision of whether the Town purchases the land and whether that land becomes conservation land. Since the parcel is intended to be conservation land, it is appropriate for the Board to look at the parcel just as it would for any applicant considering placing land in conservation. Typically the Board looks for documentation stating the use of the land and is provided with assurance that it will be used for conservation in perpetuity. Chairman Topliff said that Mr. Thompson's point was that the Board may be getting too involved with the conservation portion of the application although it is important background information for the Board to consider.

Mr. Young said that he did not know how the Board could separate the two because it is indeed a two-lot subdivision of which the Board cannot just look at one portion.

Chairman Topliff said that, if the Board acts on the two-lot subdivision, it merely creates two lots out of one.

Selectmen's Rep. Lewis suggested that the "Building Envelope" along with Note No. 1 which states: "The purpose of this plan is to alienate a 2.14 acre lot, with house, from the parent tract and convey the remaining 43.6 acres to the Town of Pembroke, to be placed in conservation." be eliminated from the plan since it is a future projection and the applicant is only before the Board for a two-lot subdivision.

Member Krebs agreed that the Board should only concentrate on creating a two-lot subdivision because the remaining acreage may not, in the future, become conservation land. He questioned whether the application would become null and void if the Board accepted the note that the larger parcel would eventually become conservation land, and the land never actually became conservation land.

Member Cruson agreed with Member Krebs. She felt that the Board should require that the paperwork be cleaned up in terms of it not being designated as conservation land since it is not happening at the present time and it is not the Board's concern.

Member Cruson said that, if the Board accepted the two-lot subdivision and the matching grant was not received, the Board would not want to have treated the application differently and possibly not have the Board's intended result. This application should be treated like any other subdivision. Any reference to being conservation land on the maps should be deleted. Member Krebs, Vice Chairman Seaworth, Mr. Gaeta, and Selectmen's Rep. Lewis agreed.

Member Nowe said it would be difficult to ignore what might be done with the 46.3 acre parcel.

The solution, Member Young said, was to vote only on what is before the Board which clearly is a two-lot subdivision – not what the Board would like to see. The request is to give a piece of the two-lot subdivision to the Town of Pembroke.

Member Cruson reiterated the importance of treating this application in the same way that the Board would treat any other piece of land because, if the sale does not go through, the Board's decisions will be just as valid as if the sale had gone through.

Selectmen's Rep. Lewis said that, if the sale goes through, the map would return to the Board and the information regarding the building envelope and what the property is conveyed for would be noted at that time. The reason the Conservation Committee is before the Board is because they need to establish a value for the property. The Town of Pembroke would not want to own the existing house. Subdividing the land increases the value of the property which, in turn, will help determine the value of the remaining 46.3 acres.

Member Young said that he would vote differently if he knew that it was only a two-lot subdivision rather than a two-lot subdivision with one lot being used for possible conservation land. He will vote no if the Board is approving a two-lot subdivision with a lot being used for conservation. He would vote yes if it was a regular two-lot subdivision.

Chairman Topliff concluded that the consensus of the Board is that the information presented is not clear which is leading to some confusion resulting in some Board members being uncomfortable. It is his opinion that the Board should not consider the waivers and asked the applicant to work with the Planning Department to clarify the submittals and return at a later date.

Selectmen's Rep. Lewis said that she would not accept the plan in because there is inaccurate information pertaining to the 2.14 acre lot. It does not have anything taken out for nonbuildable area and, based on the other plan that Ms. Bergevin presented, there is nonbuildable area on the lot. The Board needs an accurate plan.

The Board needs to also consider whether to continue the public hearing or accept the plan as complete and possibly deny the application.

Chairman Topliff said that the wetlands are not shown on the plan for the smaller lot and the applicant is asking for a waiver of the wetlands.

Member Young said he does not want to vote no on this application, but if he had to vote on the application the way that it is presented at this time, he would vote no.

Member Nowe said that he does not feel that there is any confusion. The applicant wants someone's tax dollars to own this piece of the property and he does not feel that the Town should own the property.

Vice Chairman Seaworth said he sees an issue with the members overstepping their charge as a Planning Board. The Board should focus on the application as a subdivision and should demand that the information

presented be as clear as any other subdivision presented to the Board. The Board should also decide whether to continue the public hearing or deny the application.

Chairman Topliff said that the application is not acceptable for consideration and apologized for any inconvenience. He said that Mr. Gaeta would be happy to assist the applicant in any way possible.

Chairman Topliff recessed the meeting at 8:45 p.m.

Chairman Topliff reconvened the meeting at 8:52 p.m.

6. Special Use Permit-Aquifer. Pento Autobody & Performance. Case #10-103-SUP-AC. Map VW, Lot 214 at 6 High Street in the Business/Residential (B1) District and the Aquifer Conservation (AC) Overlay District. The applicant, Sean Pento, on behalf of property owner Jim Bivona, requests a Special Use Permit from Article 143-68.E, Aquifer Conservation District, which is required for any activity taking place in the District. This permit is associated with the related minor site plan application #10-105, a change in use from an upholstery shop to a car audio/accessory installation shop.

Present: Jim Bivona, Property Owner

Mr. Gaeta said that the property was previously used as an upholstery shop. It has been converted to a storage space and a car audio/accessory installation shop. It is technically over the Aquifer Conservation District but the Water Department said that it is not over the Wellhead Protection Area. Since the business is not dealing with any automotive fluids, the Water Department has no concerns with the Special Use Permit. The Health Officer has also signed off on the application.

Chairman Topliff opened the public hearing at 8:55 pm

There being no questions from the Board or public, Chairman Topliff closed the public hearing at 8:56 p.m.

MOTION: Member Krebs moved to grant the Special Use Permit-Aquifer Pento Autobody & Performance. Case #10-103-SUP-AC. This Special Use Permit for activity in the Aquifer Conservation District is subject to the approval of Case #10-105 and granted conditionally until the above-mentioned Case has received final approval, at which time, this Special Use Permit becomes final for as long as the Case is approved. If at any time the Case is revoked or final approval was not received, this Special Use Permit becomes invalid. Seconded by Selectmen’s Rep. Lewis.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y R. Nowe – Y
L. Young – Y K. Krebs – Y K. Cruson – Y

MOTION TO GRANT THE SPECIAL USE PERMIT-AQUIFER PENTO AUTOBODY & PERFORMANCE. CASE #10-103-SUP-AC. PASSED ON A 7-0 VOTE. THIS SPECIAL USE PERMIT FOR ACTIVITY IN THE AQUIFER CONSERVATION DISTRICT IS SUBJECT TO THE APPROVAL OF CASE #10-105 AND GRANTED CONDITIONALLY UNTIL THE ABOVE-MENTIONED CASE HAS RECEIVED FINAL APPROVAL, AT WHICH TIME, THIS SPECIAL USE PERMIT BECOMES FINAL FOR AS LONG AS THE CASE IS APPROVED. IF AT ANY TIME THE CASE IS REVOKED OR FINAL APPROVAL WAS NOT RECEIVED, THIS SPECIAL USE PERMIT BECOMES INVALID.

7. Minor Site Plan. Pento Autobody & Performance. Case #10-105. Map VW, Lot 214 at 6 High Street in the Business/Residential (B1) District and the Aquifer Conservation (AC) Overlay District. The applicant, Sean Pento, on behalf of property owner Jim Bivona, proposes a change in use from an upholstery shop to a car audio/accessory installation shop.

Present: Jim Bivona, Property Owner

Mr. Gaeta said that the applicant received a Change of Use Special Exception from the Zoning Board of Adjustment (ZBA) on May 24, 2010 with the following conditions:

1. All installation and testing must be performed inside the building with all doors and windows closed.
2. Adequate off-street parking must be provided for customers and employees to prevent any on-street parking.
3. The hours of operation will be Monday to Saturday, 9:00 A.M. to 5:00 P.M.
4. No oils or other fluids will be changed. No welding will be done at this location.
5. Must meet all State and Local rules and regulations including all requirements of §143-68AC Aquifer Conservation (AC) District.

Mr. Gaeta said that the two main issues of concern at the Technical Review Committee (TRC) meeting were parking and noise. The Committee expressed concern about the enforcement of the noise issue. With regard to parking, the Committee was concerned about adequate on-site parking. If cars are parked on both sides of High Street, emergency vehicles would have a very difficult time passing through.

Member Cruson said she attempted to drive up High Street and, because of the parked vehicles on both sides of High Street, it was difficult and dangerous to use that street. She said that school vehicles also use that route and she did not feel that the Board should allow an increase in the amount of traffic in that area. She said it presently is a safety concern and a hazard to navigate through the area.

Mr. Gaeta said that the Notice of Decision from the ZBA says “adequate spaces” and, at the TRC meeting, the Code Enforcement Officer said that 3 were asked to be placed on the plan. Mr. Gaeta said the zoning regulations for the car audio business required 3 spaces. If the garages are used as storage space, they are only required one space for the square footage.

Mr. Bivona said that the property is on a non-conforming lot and there is adequate parking for the tenants. As requested, he placed 3 parking spaces on the plan. The property has always had parking to the property line but does not appear on the plan because of the required 5 ft. buffer area. All other properties in that area are non-conforming. The Code Enforcement Officer has considered creating one-side on-street parking along High Street to eliminate congestion.

Mr. Bivona said that he was on-site today and there was adequate parking for all employees. There were only 3 cars that went in and out all day. He also said that there have not been any noise complaints since the business has been working at that location (4 months). Mr. Bivona said that the business performed an audio installation today and, with all the windows and doors closed, no noise could be heard outside of the building.

Mr. Gaeta said that the LCHIP check for \$25 has not been received.

Mr. Gaeta said that the accuracy of the scale on the plan was previously a concern, and although the applicant resubmitted the plan, the scale is still a bit off.

Mr. Gaeta said that the space between the 2 buildings is 23 feet. There is no new asphalt being added. All the gray area on the plan represents paved area.

Member Krebs noted that if a person parked in front of the store/shop, the vehicle in the garage on the opposite side of the store/shop would not be able to exit.

MOTION: Selectmen’s Rep. Lewis moved to accept plan in for review. Seconded by Vice Chairman Seaworth.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – Y R. Nowe – Y
 L. Young – Y K. Krebs – Y K. Cruson – Y

MOTION TO ACCEPT THE PLAN IN FOR REVIEW PASSED ON A 7-0 VOTE.

Chairman Topliff opened the public hearing at 9:11 p.m.

Cathe Roche, 9 Middle Street, said that she lives approximately 150 feet away from the audio/accessory shop. She is very familiar with the property. If she had been aware of the ZBA meeting, she would have attended.

Ms. Roche made the following points:

1. There has been a considerable amount of noise in the neighborhood in the past 4 months.
2. She no longer can enjoy the quiet of her backyard in the evening or on Saturdays. Since the business has been on High Street, she hears the noise associated with testing the base on a new sound system or the roar of loud muffler systems.
3. There are 22 buildings within a 200 ft. radius of the High Street property. The sounds reverberates throughout the neighborhood and disturb many people.
4. Because of the small lot sizes, children ride their bikes and play in the street. The traffic caused by the activities at the Transfer Station, the Village School, and Memorial Field already create a hazard for the children in the area.
5. The exit to the Emerson Mills Condominium parking lot feeds onto Front Street, directly across the street from the High Street property.
6. The Planning Board should not allow this property to increase the congestion problems already experienced in that neighborhood.
7. The parking area designated for the tenants can only fit 5 vehicles, not 7 as marked on the plan.
8. The audio/accessory shop should be located in an area that is better suited for it. Although the present location is in the B1 zone, not all types of businesses are appropriate for the area given the close proximity of the buildings. The business is not a “good fit” for the area.

Mr. Bivona said that the audio/accessory shop installs running boards, lights, bed covers, DVD players inside the cars. He said that exhaust systems generally require welding and welding is not allowed on the site.

Mr. Gaeta said that the business is allowed to install all bolt-on accessories. Bolt-on mufflers can be installed at the High Street location.

Mr. Bivona said that the business is closed at 5 p.m. and is not open on Saturdays.

Ms. Roche said that she walked by the High Street property at 6:30 p.m. on June 21, 2010 and the business was working on a car. At 4:45 p.m. on June 22, 2010 there was no place to park at or near the High Street property.

Selectmen's Rep. Lewis agreed that it is impossible to get the quantity of vehicles in the tenant parking area that is depicted on the site plan. She has also seen vehicles parked on the asphalt beside the building along Front Street. Mr. Bivona said that no one ever parks there because it's a sidewalk. Selectmen's Rep. Lewis also said that the 23 ft. of space between the buildings is not adequate to turn a vehicle. She pointed out that, since the area on the end of the storage garages is tarred, vehicles will park there.

Mr. Gaeta said that in order to accommodate the 5 ft. buffer regulation, the parking spaces were eliminated from the asphalt area adjacent to the property line. Mr. Gaeta said that when the ZBA reviewed the application it was merely for the car audio shop. The Board felt that the apartment building was an existing use.

Mr. Bivona said that there are only 6 cars associated with the apartment portion of the building. Since the business is only open from 9 a.m. to 5 p.m., it was brought up at the ZBA meeting that the business could use all available spaces while the apartment dwellers were at work.

Mr. Bivona said that there are 1-2 employees for the audio shop.

Chairman Topliff clarified that the Planning Board is not considering the entire site but merely the change of use of the two-story building which the business occupies and the parking associated with it.

Mr. Bivona said that he has spoken with his abutter, Sylvia Couture, who has agreed to allow Mr. Bivona to erect a fence 4 ft. onto her property. It would eliminate the children from cutting through their properties. He also pushes snow onto her property now and the 4 ft. distance onto Ms. Couture's property would allow him to continue doing that.

Chairman Topliff said that the noise would be an enforcement issue.

There being no further questions or comments from the Board or the public, Chairman Topliff closed the public hearing at 9:30 p.m. with the understanding that, if the application is continued, the public hearing would also be continued to a subsequent meeting.

Chairman Topliff pointed out that the business is located in a mixed use area and is an appropriate use for the area.

Member Young said that there are reasons why people live in a business district. The congestion, people parking where they are not suppose to, and noise is all part of living in a business district. The business is located in the correct district.

Member Cruson pointed out that some businesses make more noise than others.

Selectmen’s Rep. Lewis said that the noise factor would need to be enforced. According to her calculations, there are 10 spaces on the lot

Mr. Pento has installed security cameras on the property which have eliminated the vandalism and some of the foot traffic between Ms. Couture’s property and the applicant’s property. Mr. Bivona said he would prefer if the Board did not require a fence because it will make plowing difficult.

The Board considered continuing the meeting so that the Board can visit the site. Member Cruson was in agreement since the property is a unique site. The consensus of the Board was not to visit the site.

MOTION: Member Young moved to approve the Minor Site Plan. Pento Autobody & Performance. Case #10-105 subject to the following conditions: (1) Submit a check for \$25 made out to the Merrimack County Registry of Deeds for LCHIP fees; (2) Provide a signature line to be signed by the owner of the land to be developed; (3) Revise the scale to correlate to whichever paper size is being submitted (the scale does not equal 1” = 30’, nor do dimensions on the drawing scale to their displayed length); (4) Provide abutter information (owner(s) and address(es)) on the plan; (5) Provide the Planning Board approval box; (6) Eliminate “Parking Space #3”; (7) Add one parking space adjacent to “Parking Space #1” and one adjacent to “Parking Space #2”. Seconded by Member Nowe.

Selectmen’s Rep. Lewis clarified that because the ZBA granted a change of use in a non-conforming location, the Planning Board is required to evaluate all the requirements of a minor site plan. She said that the applicant cannot proceed with the audio/accessory business until their minor site plan is approved.

Member Seaworth said that if this site was not non-conforming, the Planning Board would evaluate the change of use per the zoning ordinance. At the present time, it is per the zoning ordinance in conjunction with the fact that the applicant has been granted the special exception by the ZBA. The Planning Board must factor that in and the Board cannot take issue with something that conflicts with the zoning decision. The Board is still making the same sort of approval that it would for any other change of use that would come before the Board.

VOTE: A. Topliff – Y B. Seaworth – Y C. Lewis – N R. Nowe – Y
 L. Young – Y K. Krebs – N K. Cruson – N

THE MOTION TO APPROVE THE MINOR SITE PLAN. PENTO AUTOBODY & PERFORMANCE. CASE #10-105 SUBJECT TO THE FOLLOWING CONDITIONS: (1) SUBMIT A CHECK FOR \$25 MADE OUT TO THE MERRIMACK COUNTY REGISTRY OF DEEDS FOR LCHIP FEES; (2) PROVIDE A SIGNATURE LINE TO BE SIGNED BY THE OWNER OF THE LAND TO BE DEVELOPED; (3) REVISE THE SCALE TO CORRELATE TO WHICHEVER PAPER SIZE IS BEING SUBMITTED (THE SCALE DOES NOT EQUAL 1” = 30’, NOR DO DIMENSIONS ON THE DRAWING SCALE TO THEIR DISPLAYED LENGTH); (4) PROVIDE ABUTTER INFORMATION (OWNER(S) AND ADDRESS(ES)) ON THE PLAN; (5) PROVIDE THE PLANNING BOARD

APPROVAL BOX; (6)ELIMINATE “PARKING SPACE #3”; (7) ADD ONE PARKING SPACE ADJACENT TO “PARKING SPACE #1” AND ONE ADJACENT TO “PARKING SPACE #2” PASSED ON A 4-3 VOTE.

Conceptual Consultations

8. Nicole’s Greenhouse. Map 561, Lot 6-1 at 91 Sheep Davis Road in the Commercial/Light Industrial (C1) District and the Aquifer Conservation (AC) Overlay District. The potential applicant, Lisa Mills dba Nicole’s Greenhouse, would like to discuss future additions to the approved nursery use on the site.

Lisa Mills said that she submitted a copy of the site plan indicating the location of the Energy North propane filing station tank. It is approximately 80 sq. ft. and the area that is needed is 4’ wide x 20’ long. Energy North will install the station and train the staff. Ms. Mills is responsible for the permits.

With regard to the vegetable garden, it is located on the abutter’s property. The plants are being grown for Ms. Mills’ personal use and not for sale.

Ms. Mills said that the following additions to the site may occur in the future:

1. A farm stand to sell produce. They have already had discussions with Diamond Hill and Pearl to bring produce to the site.
2. Wood pellets: They have been a distributor of New England wood pellets for the past 4-5 years. The wood pellets are not onsite because a location has yet to be established.
3. Christmas trees: Ms. Mills felt that selling Christmas trees was a natural progression from the “mum” season.
4. Sheds: At some point, they would like to display and process orders for sheds.
5. Bark mulch: They are presently selling bulk mulch.
6. Stones: They are considering selling stones and all kinds of related gardening items.

The site consists of 2 acres. No additional paving will be done.

Mr. Gaeta said that the original use on the property was a greenhouse and nursery. He was not comfortable with the transition to landscaping material without the Board’s approval. If the Board feels that the use is different from the original use, the applicant will have to return with a plan showing the placement of all the uses.

Member Young said that when he approved the greenhouse and nursery use, he did not envision piles of bulk mulch or propane tanks on the site.

Selectmen’s Rep. Lewis noted the importance of the Board approving how the applicant is using the site. She explained that there are calculations for green space and other variations that must be taken into consideration. Where the propane tank, shed, mulch, stone, and the pellets are stored on site and the quantities of each can create issues.

Ms. Mills said that the pellets will probably be stored in the greenhouses and the Christmas trees will be placed at the location where plants are presently being displayed.

Mr. Gaeta said that a letter has been sent and a phone call has been made to the abutters regarding the garden but he has not received a reply.

Selectmen's Rep. Lewis said that a revised site plan should be created. Ms. Mills is allowed to take the existing site plan and draw, to scale, what and where the products will be placed on the site. Mr. Young said that storage of construction equipment is also important to note.

Mr. Mills said that the Bobcat will always be parked on the property for the business use. The bulldozer, backhoe, and the dump truck will not be there once the swale is completed.

Selectmen's Rep. Lewis said that, if the products are being sold inside the existing building, it is not necessary to place that on the site plan, but if any of the products are placed outside, then they would have to be noted on the plan. Ms. Mills said that some of the products will be displayed on the deck but the vegetables will be sold inside the building. Chairman Topliff recommended making a note on the plan for the vegetables.

Member Young asked if outside furnaces would be sold on site since it is the natural progression from selling wood pellets. Ms. Mills said no.

Mr. Mills said that if a customer wants more mulch than a pickup truck can handle, they suggest that the customer purchase it from the Dirt Doctor because the Mills do not have the equipment to handle and deliver large amounts of mulch.

Member Cruson said it is important that the plan show a safe traffic pattern on the site.

Mr. Gaeta said that the plan should be in by June 29, 2010 in order to meet the deadline for the next Planning Board meeting.

Minutes

9. Review and Approve Meeting Minutes of June 8, 2010

The Board agreed to review the June 8, 2010 minutes at the next meeting.

Miscellaneous

10. Correspondence

Mr. Gaeta reported receiving: (1) The June 2010 Town And City magazine; and (2) the Summer edition of the 2010 ARC newspaper.

Mr. Gaeta said he sent a letter to Lisa Mills and the abutter about the garden.

11. Committee Reports

Central NH Regional Planning Commission: Ms. Cruson said that Central NH Regional Planning Commission: (1) had a speaker on conservation law and will have another speaker on the same subject in September; (2) are available for energy technical assistance if the Town felt that it would benefit from converting its buildings to another energy source; (3) are conducting the "Safe Routes to School Program"; (4) would help

the town record the locations of its workforce housing for future use. They will also help create ordinances regarding workforce housing.

12. Other Business

The consensus of the Board was not to meet for the work session on July 13, 2010.

Mr. Gaeta said that the open space discussion scheduled for July 19, 2010 was moved to August 2, 2010 at 6:30 p.m.

Continental Paving is coming before the ZBA and intends to come before the Planning Board at the September meeting.

Selectmen's Rep. Lewis said that, if the Planning Board is concerned about the decisions that are made at the ZBA, a Board member can attend a ZBA meeting as long as he clarifies that they are speaking as an individual and not for the Planning Board. She said that the only issue is that the member may have to recuse himself from the Planning Board meeting.

Chairman Topliff said that Nita Briggs was not approved by the Board of Selectmen as a member of the Planning Board.

The Summer newsletter will not be mailed to the residents. It will only be on the website.

MOTION: Vice Chairman Seaworth moved to adjourn. Seconded by Member Cruson.

The vote was unanimous in favor of the Motion.

The meeting adjourned at 10:53 p.m.

Respectfully submitted,
Jocelyn Carlucci, Recording Secretary