

**Pembroke Planning Board
Minutes of Meeting
(Adopted)
Tuesday, January 26, 2010**

MEMBERS PRESENT: Robert Bourque, Chairman; Alan Topliff, Vice Chairman; Cindy Lewis, Selectmen's Representative; Brian Seaworth; Kathy Cruson; Kevin Krebs;

ALTERNATES PRESENT: Larry Young, Sr., Ron Nowe

EXCUSED:

STAFF PRESENT: Stephanie Alexander, Interim Planner; David Jodoin, Town Administrator; Jocelyn Carlucci, Recording Secretary

Chairman Bourque called the meeting to order at 7:00 p.m. and noted that Member Young will vote in former Member Mark Zydell's position. He also informed the Board that Alternate Member Jeff White has resigned from the Board and asked that a letter be sent thanking him for his service.

Chairman Bourque asked that Vice Chairman Topliff conduct the public hearing for the review of the zoning ordinances.

Zoning Ordinance Public Hearings

1. Amendment 3. §143-21. Table of Dimensional and Density Regulations. To amend the Zoning Ordinance to add the minimum lot size for additional dwelling units for the Limited Office District and to add provisions for waiving local setback requirements for failed septic systems.

Vice Chairman Topliff opened the public hearing at 7:05 p.m.

There being no questions or comments from the public or the Board, Vice Chairman Topliff closed the public hearing at 7:06 p.m.

Member Cruson pointed out that there are many design choices available for septic systems and questioned whether this ordinance was necessary.

MOTION: Member Krebs moved to accept revisions to any typographical errors or insubstantial errors found; and to send Amendment 3. §143-21. Table of Dimensional and Density Regulations as moved for consideration at the March 2010 Town Meeting. Seconded by Chairman Bourque.

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

MOTION TO ACCEPT REVISIONS TO ANY TYPOGRAPHICAL ERRORS OR INSUBSTANTIAL ERRORS FOUND AND TO SEND AMENDMENT 3. §143-21. TABLE OF DIMENSIONAL AND DENSITY REGULATIONS AS MOVED FOR CONSIDERATION AT THE MARCH 2010 TOWN MEETING PASSED ON A 7-0 VOTE.

2. Amendment 7. Article X. Open Space Subdivision Provisions. To replace the existing Open Space Subdivision Provisions with a new Open Space Development Ordinance and to modify §143-19. Table of Use Regulations to permit Open Space Development in the Limited Office, Medium Density-Residential, and Rural/Agricultural-Residential Districts under the Residential category.

Vice Chairman Topliff introduced Town Counsel, Jae Whitelaw and asked her to explain her recommendations for this Amendment.

Attorney Whitelaw said that her understanding was that (1) the Board needed clarification surrounding whether a Special Use Permit was required for the use itself or just for a deviation of some of the area-type requirements; and (2) whether it was usurping the Zoning Board of Adjustment's authority to grant variances.

She said that Special Use Permits (SUP) are conditional use permits and are authorized under the provisions of the Innovated Land Use Statute (RSA 674:21). There is a difference in thought on the part of municipal lawyers as to whether or not a SUP would be granted for the use itself (the open space development use) and, then anything that was done within the context of the open space zoning ordinance would come within that SUP. For example, if she wanted to create an open space development, she would apply to the Planning Board for a SUP in order to have the open space development. As part of that, one of the conditions could be that if the applicant does "something" that the Board requests, then the Applicant could be granted a reduction in the size of the lots, etc.

The way the proposed zoning ordinance is written, the applicant would not apply for the SUP unless they wanted the variation from the requirements that are in the zoning ordinance. The difference of opinion is whether or not the Board issues the SUP for that use or whether it is done basically like the ZBA does with a variance. Ms. Whitelaw's view is that the applicant applies for the SUP for the actual use which is the open space development.

She reviewed the model ordinance that Pembroke's ordinance was based on, and found that the norm under the model ordinance, is an open space development. Under the model, if the applicant created a traditional development, the applicant would need a SUP.

In her opinion, the way that Pembroke's ordinance is written, the traditional subdivision is the norm and the open space subdivision is the variation. Therefore, under the statute, a SUP would be required in order to have the use. It also provides a better separation from the idea that it is effectively granting the Planning Board the same authority to grant a variance as the ZBA does.

She is not concerned that providing for waivers of the zoning ordinance, within the zoning ordinance, is either unlawful or steps on the toes of the ZBA. The reason is because the ZBA is authorized to look at the zoning ordinance and, if there is an area variance that is not allowed in the zoning ordinance, the ZBA can grant that exception or variance if it meets the requirements. Under the open space ordinance, it is allowed under the ordinance to vary from the terms of the ordinance to that limited extent. In her opinion, when the legislature contemplated the enactment of the Innovative Land Use Statute, they wanted to give towns more flexibility, whether through the ZBA or the Planning Board, which allowed the Boards' to take specific details into account.

Attorney Whitelaw said that the Town's ordinance is a traditional subdivision and, therefore, an SUP is needed for an open space development. She said that, from a legal standpoint, there is not a significant disconnect between the model's philosophy and the Town's philosophy unless there is an issue whether or not SUPs are intended to be required to do open space developments.

She said that “from a legal standpoint, the question is whether or not you should require a SUP in order to have an open space development or just require it if the applicant wants to deviate from the standard, as the ordinance says they can.” Because the Court has not addressed the issue, Attorney Whitelaw cannot categorically tell the Board whether either way is right.

Vice Chairman Topliff said that the Board’s intent was to give the developer the choice to select either a traditional development or an open space development and it was written in such a way to eliminate the ZBA’s involvement.

Attorney Whitelaw agreed that, the way it is presently written, an open space subdivision does not have to go before the ZBA. She said that the Board can make variations but, the issue, is whether or not the applicant would apply for a SUP just to have an open space development or whether or not they would submit an open space development, as part of the subdivision application, and, if the developer does not want to deviate, as provided in the zoning ordinance, they never have to get a SUP. She is fine with a SUP if the developer wants to deviate but with the understanding that it is not clear, under the statute, whether the Board should require the SUP in order to have an open space development or whether it is okay to apply for the SUP ONLY if the developer is deviating.

Vice Chairman Topliff opened the public hearing at 7:22 p.m.

There being no questions from the Board or the public, Vice Chairman Topliff closed the public hearing at 7:23 p.m.

Attorney Whitelaw said that if the Town required a SUP for all open space development, it would be safe. She said that she would not definitively say that the Board should pull the ordinance as it is written.

MOTION: Member Krebs moved to accept revisions to any typographical errors or insubstantial errors found; and to send Amendment 7. Article X. Open Space Subdivision Provisions as moved for consideration at the March 2010 Town Meeting. Seconded by Chairman Bourque.

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

MOTION TO ACCEPT REVISIONS TO ANY TYPOGRAPHICAL ERRORS OR INSUBSTANTIAL ERRORS FOUND; AND TO SEND AMENDMENT 7. ARTICLE X. OPEN SPACE SUBDIVISION PROVISIONS AS MOVED FOR CONSIDERATION AT THE MARCH 2010 TOWN MEETING PASSED ON A 6-1 VOTE.

3. Amendment 9. Article XVIII. Special Use Permits. To add a new Article to the ordinance setting forth the procedures and requirements for issuance of special use permits by the Planning Board.

Member Seaworth asked if Attorney Whitelaw felt that the Board created problems by only accepting some and not all of her recommendations. After a review, Attorney Whitelaw had no objections to what was done by the Board because she did not feel that any of her recommendations were critical.

Vice Chairman Topliff opened the public hearing at 7:28 p.m.

There being no questions from the Board or the public, Vice Chairman Topliff closed the public hearing at 7:29 p.m.

MOTION: Member Krebs moved to accept revisions to any typographical errors or insubstantial errors found; and to send Amendment 9. Article XVIII. Special Use Permits as moved for consideration at the March 2010 Town Meeting. Seconded by Member Seaworth.

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

MOTION TO ACCEPT REVISIONS TO ANY TYPOGRAPHICAL ERRORS OR INSUBSTANTIAL ERRORS FOUND; AND TO SEND AMENDMENT 9. ARTICLE XVIII. SPECIAL USE PERMITS AS MOVED FOR CONSIDERATION AT THE MARCH 2010 TOWN MEETING PASSED ON A 6-1 VOTE.

Old Business

4. Update on Site Plan Progress. Chickering Meadow. Case #03-104, #03-105, and #07-104. *Continued from December 8 meeting. Open items on Phases 1 and 2 on Town Engineer’s punchlist are to have been completed by November 24, otherwise revocation proceedings will begin again.*

Present: R. Jeffrey Burd, Engineer

Mr. Burd said that Bob Pace was out of town and would not be attending the meeting. The e-mail that he received today indicated that the bulk of the work is done except for the changing of valves in a few units. The valve change will require coordination between the homeowners and the contractor so that all the work can be completed at one time. Mr. Pace has called and sent letters to the homeowners. The landscape items will be done in the Spring.

Ms. Alexander said that Steve Chabot’s e-mail indicated that he did not have verification that the remaining catchbasins had been cleaned or that the sewer testing information had been received.

Chairman Bourque asked that Mr. Burd inform Mr. Pace that the work pertaining to the sewer be accomplished as soon as possible.

Harold Thompson, Sewer Commission, told Mr. Burd to call the Sewer Department office for an update on the sewer paperwork.

Mr. Burd said that the management company for Chickering Meadows has changed which may have compounded the delays.

Chairman Bourque directed Ms. Alexander to place the case on the February 23, 2010 agenda. The Board, at that time, will be looking for the sewer paperwork and the valve changes.

5. Major Subdivision. LTC Properties. Case #09-02. Map 565, Lot 193-3 at 245 Pembroke Hill Road in the Medium-Density Residential (R1) District and the Wetlands Protection (WP) Overlay District. The applicant, LTC Properties Inc, proposes a five-lot residential subdivision on 14.595 acres which includes a new road and a detention pond. *65-day extension granted at last meeting. Application and public hearing continued from previous meeting.*

MOTION: Chairman Bourque moved to grant an extension of the application and public hearing for LTC Properties, Case #09-02 to the February 23, 2010 meeting. Seconded by Member Cruson.

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

MOTION TO GRANT AN EXTENSION OF THE APPLICATION AND PUBLIC HEARING FOR LTC PROPERTIES, CASE #09-02 TO THE FEBRUARY 23, 2010 MEETING PASSED ON A 7-0 VOTE.

6. Major Subdivision. Silver Hills Business Park. Case #09-06. Map 559, Lots 12 and 12-1 at 830 North Pembroke Road in the Rural/Agricultural Residential (R3) District, Aquifer Conservation (AC) Overlay District, Flood Development Overlay District (FD), Shoreland Protection Overlay District (SP), and Wetlands Protection (WP) Overlay District. The applicant, TF Bernier Inc, on behalf of owner Silver Hill Development Corporation, is proposing a five-lot subdivision on two lots totaling 116.1 acres which includes the construction of a new road to be dedicated to the Town. *Extension to 1/26 meeting granted at the last meeting. Application and public hearing continued from previous meeting.*

Present: Tim Bernier of T.F. Bernier, Inc. representing Silver Hills Business Park and Frank Merrill of Merrill Construction

Mr. Bernier said that the Applicant has received the Alteration of Terrain Permit. The meeting between the applicant, NH Department of Environmental Services (NHDES), and NH Fish and Game resulted in a consensus that a covenant (“buffer strip”) would be created on French’s Brook. Because of the NH Fish and Game’s concern for wildlife habitat along the Soucook River at the time of reclamation, the Applicant hired a biologist and wildlife person, Stoney Ridge of Alton, NH to review the restoration plan. The restoration plan was altered to create a better wildlife habitat on the land within 150 ft. of the Soucook River. The change will become part of the Wetland Permit but is not associated with the subdivision or the crossing of French’s Brook.

The buffer along French’s Brook will be a deed restriction.

With regard to the Wetland Protection Area, the Applicant incorporated the notes from the meeting into the plan set. The Note will be amended so it will be identical to the minutes.

Mr. Bernier said that the City of Concord acknowledged the location of Concord’s Wellhead Protection Area and has asked the Board to extend all the criteria including the additional criteria from the Aquifer Protection District onto a small piece of land noted in yellow on Mr. Bernier’s map. The applicant feels that it would be in the best interest of all parties, if the Board would allow the applicant to wait on the restriction for the site plan stage. He explained that nothing has been proposed for the small piece of property at the present time. The Applicant is considering bringing a proposal before the Board in the future but is not sure how that proposal will affect the use of the area. It may be necessary to perform hydrogeological studies on the area.

He explained that, if the restriction was prepared now, the enforcement issue would be a condition of approval of the subdivision. If there was a problem, the Town’s remedy would be to revoke the subdivision approval. If the Board waited and the restriction was done at the site plan approval stage, and was made a condition of the site plan approval, it would be a condition of the site plan approval and the Town’s remedy would be relative to that specific site and not the entire subdivision.

Mr. Bernier said that the applicant is asking the Board to consider granting additional time to study the specific area at the site plan stage.

Ms. Alexander said that the Articles of Agreement are being reviewed by Town Counsel.

Vice Chairman Topliff asked that a note be added to the Articles of Agreement that would require the tenants to follow the Stormwater Management Plan? Mr. Bernier will verify that the note has already been included.

Chairman Bourque opened the public hearing at 7:45 p.m.

There being no questions from the Board or the public, Chairman Bourque closed the public hearing at 7:46 p.m.

Vice Chairman Topliff agreed that it would be appropriate to extend the protection area until the site plan stage. Mr. Bernier agreed to leave the appropriate lines on the plan as a reminder that issues pertaining to the specific area were pending.

It was agreed that the Amendment to Town of Pembroke Subdivision Regulations Adopted August 26, 2008 noting "Active and Substantial Development" and "Substantial Completion" be included with a copy of the Application's approval.

MOTION: Vice Chairman Topliff moved to approve the Major Subdivision. Silver Hills Business Park. Case #09-06 with the following conditions:

1. Display the Concord Wellhead Protection Area on Sheet 1, modify the "Conditions of Approval" plan Notes 1 and 2 to include the Concord Wellhead Protection Area with the exception that the land on Lot 12-1 that is bordered by the Pembroke Aquifer Conservation District and the City of Concord Wellhead Protection District be excluded and will be dealt with at site plan review for Lot 12-1.
2. Revise Sheet 2's Regulated Substances Note to include the Concord Wellhead Protection Area and revise Note (a) to the exact text listed in the minutes of November 24, 2009.
3. Provide adequate funds, \$1,500 currently, as required by the Town into the project escrow account for engineering and legal review.
4. Articles of Agreement for SHBP Owner's Association, Stormwater Management Declaration, and Bylaws of the SHBPOA are subject to review and approval of Town Counsel.
5. Temporary slope easements, drainage easements, and right-of-way easement on North Pembroke Road are subject to review and approval by Town Counsel.
6. Legal description for the future right-of-way as depicted on the plans is subject to review and approval by Town Counsel.
7. Provide a financial guarantee for soil preservation, lot drainage, seeding, and planting related to road construction in an amount to be determined by Town Engineer.
8. Provide financial guarantee, in an amount to be determined by Town Engineer, for road construction, site improvements, post-construction performance guarantee, etc. subject to approval by Town Engineer.
9. Submit funds for an inspection escrow account in the amount estimated by Town Engineer, who will also provide the inspection schedule.
10. Submit a copy of the NHDES Subsurface Systems Bureau subdivision approval permits for Lots 1, 3, and 5 and add the permit numbers on the recordable plans.

11. Submit a copy of the NHDES Dredge and Fill permit for crossing French’s Brook and add the permit numbers on the recordable plans.
12. Provide \$25 to the Merrimack County Registry of Deeds for Notice of Decision registration in accordance with recent legislation.
13. The Road Construction Agreement to be drafted between the Applicant and the Board of Directors.

Seconded by Alternate Member Young.

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

MOTION TO APPROVE THE MAJOR SUBDIVISION. SILVER HILLS BUSINESS PARK. CASE #09-06 WITH THE FOLLOWING CONDITIONS:

1. DISPLAY THE CONCORD WELLHEAD PROTECTION AREA ON SHEET 1, MODIFY THE “CONDITIONS OF APPROVAL” PLAN NOTES 1 AND 2 TO INCLUDE THE CONCORD WELLHEAD PROTECTION AREA WITH THE EXCEPTION THAT THE LAND ON LOT 12-1 THAT IS BORDERED BY THE PEMBROKE AQUIFER CONSERVATION DISTRICT AND THE CITY OF CONCORD WELLHEAD PROTECTION DISTRICT BE EXCLUDED AND WILL BE DEALT WITH AT SITE PLAN REVIEW FOR LOT 12-1.
2. REVISE SHEET 2’S REGULATED SUBSTANCES NOTE TO INCLUDE THE CONCORD WELLHEAD PROTECTION AREA AND REVISE NOTE (A) TO THE EXACT TEXT LISTED IN THE MINUTES OF NOVEMBER 24, 2009.
3. PROVIDE ADEQUATE FUNDS, \$1,500 CURRENTLY, AS REQUIRED BY THE TOWN INTO THE PROJECT ESCROW ACCOUNT FOR ENGINEERING AND LEGAL REVIEW.
4. ARTICLES OF AGREEMENT FOR SHBP OWNER’S ASSOCIATION, STORMWATER MANAGEMENT DECLARATION, AND BYLAWS OF THE SHBPOA ARE SUBJECT TO REVIEW AND APPROVAL OF TOWN COUNSEL.
5. TEMPORARY SLOPE EASEMENTS, DRAINAGE EASEMENTS, AND RIGHT-OF-WAY EASEMENT ON NORTH PEMBROKE ROAD ARE SUBJECT TO REVIEW AND APPROVAL BY TOWN COUNSEL.
6. LEGAL DESCRIPTION FOR THE FUTURE RIGHT-OF-WAY AS DEPICTED ON THE PLANS IS SUBJECT TO REVIEW AND APPROVAL BY TOWN COUNSEL.
7. PROVIDE A FINANCIAL GUARANTEE FOR SOIL PRESERVATION, LOT DRAINAGE, SEEDING, AND PLANTING RELATED TO ROAD CONSTRUCTION IN AN AMOUNT TO BE DETERMINED BY TOWN ENGINEER.
8. PROVIDE FINANCIAL GUARANTEE, IN AN AMOUNT TO BE DETERMINED BY TOWN ENGINEER, FOR ROAD CONSTRUCTION, SITE IMPROVEMENTS, POST-CONSTRUCTION PERFORMANCE GUARANTEE, ETC. SUBJECT TO APPROVAL BY TOWN ENGINEER.
9. SUBMIT FUNDS FOR AN INSPECTION ESCROW ACCOUNT IN THE AMOUNT ESTIMATED BY TOWN ENGINEER, WHO WILL ALSO PROVIDE THE INSPECTION SCHEDULE.
10. SUBMIT A COPY OF THE NHDES SUBSURFACE SYSTEMS BUREAU SUBDIVISION APPROVAL PERMITS FOR LOTS 1, 3, AND 5 AND ADD THE PERMIT NUMBERS ON THE RECORDABLE PLANS.
11. SUBMIT A COPY OF THE NHDES DREDGE AND FILL PERMIT FOR CROSSING FRENCH’S BROOK AND ADD THE PERMIT NUMBERS ON THE RECORDABLE PLANS.
12. PROVIDE \$25 TO THE MERRIMACK COUNTY REGISTRY OF DEEDS FOR NOTICE OF DECISION REGISTRATION IN ACCORDANCE WITH RECENT LEGISLATION.
13. THE ROAD CONSTRUCTION AGREEMENT TO BE DRAFTED BETWEEN THE APPLICANT AND THE BOARD OF DIRECTORS.

PASSED ON A 7-0 VOTE.

7. **Special Use Permit-Wetlands. Concord Sand and Gravel, Inc. Case #09-SUP-14WP.** Map 559, Lot 3 on North Pembroke Road in the Rural Residential (R3) District, Aquifer Conservation (AC) Overlay District, and Wetlands Protection (WP) Overlay District. The applicant, Concord Sand and Gravel Inc., on behalf of owners Robert A. Cole, Successor Trustee of the CS&G Revocable Trust and Lucille A. Ladd, Successor Trustee of the Levi K. Ladd 2004 Revocable Trust, request a Special Use Permit from Article 143-72.E, Wetland Protection District, for the removal of 790sf of wetland on Map 559, Lot 3. This permit is associated with the related excavation expansion plan application #09-107. *Application and public hearing continued from 11/24 meeting.*

8. **Special Use Permit-Aquifer. Concord Sand and Gravel, Inc. Case #09-SUP-15AC.** Map 559, Lots 3, 5, and 6 on North Pembroke Road in the Rural Residential (R3) District, Aquifer Conservation (AC) Overlay District, and Wetlands Protection (WP) Overlay District. The applicant, Concord Sand and Gravel Inc., on behalf of owners Robert A. Cole, Successor Trustee of the CS&G Revocable Trust and Lucille A. Ladd, Successor Trustee of the Levi K. Ladd 2004 Revocable Trust, request a Special Use Permit from Article 143-68.E, Aquifer Conservation District, which is required for any activity taking place in the District, for the use of the existing haul roads on Map 559, Lot 6 by excavation activities on Map 559, Lots 3 and 5. This permit is associated with the related excavation expansion plan application #09-107. *Application and public hearing continued from 11/24 meeting.*

9. **Existing Excavation Expansion. Concord Sand and Gravel, Inc. Case #09-107.** Map 559, Lots 3, 5, and 6 and Map 258, Lot 13-3 on North Pembroke Road in the Rural Residential (R3) District, Aquifer Conservation (AC) Overlay District, and Wetlands Protection (WP) Overlay District. The applicant, Concord Sand and Gravel Inc., on behalf of owners Robert A. Cole, Successor Trustee of the CS&G Revocable Trust and Lucille A. Ladd, Successor Trustee of the Levi K. Ladd 2004 Revocable Trust, propose to expand the existing grandfathered mineral extraction and processing operations on Map 559, Lot 6 onto Map 559, Lots 3 and 5, and to retain Map 258, Lot 13-3 as a buffer lot not to be used for excavation. The expansion would encompass 17 acres. *Application and public hearing continued from 11/24 meeting.*

Present: Brett Kay of Nobis Engineering, Inc.; Mark Sargent of Richard D. Bartlett & Associates, LLC
 Bob Cole of Concord Sand and Gravel, Thomas Bobowski of Nobis Engineering, Inc., John Brooks of
 Emery & Garrett Groundwater, Inc. (EEGI)

Mr. Kay said that responses to comments from the Alteration of Terrain Bureau and the Wetlands Bureau are being drafted.

Discussions on Review of Staff Items from Status Report of Review & Comment Items for Applications at the January 26, 2010 meeting:

1. **Provide adequate funds as required by the Town into the project escrow account for engineering and legal review.** Ms. Alexander will contact the Applicant with a price to be escrowed.
2. **Provide a copy of the NH DES Dredge and Fill permit for the 788 sf wetland removal and complete plan No. #11 on the coversheet with date of issuance and permit number.** Mr. Kay anticipates receiving the permit in February 2010.
3. **Provide a copy of the NHDES Alteration of Terrain permit and complete plan No. #12 on the coversheet with the permit date of issuance and permit number.** Mr. Kay anticipates receiving the permit in February 2010.

4. **Provide a copy of the Town's Intent to Excavate application.** Mr. Kay said it is done annually by the Applicant and the Intent to Excavate application is submitted for the parcels of land that are being excavated. Therefore, with regard to this application for the expanded areas of Lot 3, 5, and 6, it is non-applicable until they begin excavation on the specific parcels.
5. **Address Department comments.** Mr. Kay said that all Department comments have been addressed.
6. **Address Town Engineer comments under separate cover(s).** Mr. Kay recently received additional comments from the Town Engineer based on his January 12, 2010 response. Town Engineers' comments were: (1) to note on the Plan the minimum plant sizes along the buffer of the exposed ledge, and to create a planting plan with planting details. Mr. Kay stated that it would be difficult to see the requested details on the plan because of the limited space available and, therefore, suggested that a detailed sketch of a 50 ft. section of what the horizontal benches in the berm would look like along with the planting details added to the sheet would be best. It would be noted that the representative section will be duplicated throughout the designated area; (2) to include the cost of the trees in the financial guarantee; (3) to place a 15% contingency. The comment regarding \$30,000 being placed in escrow for reclamation of Lot 6 is erroneous. The \$30,000 is for another site that the Applicant owns in the Town and is totally unrelated to this site. Because of its grandfathered status, Lot 6 does not require any money be placed in escrow for reclamation.
7. **Address EGGI concerns and recommendations under separate cover(s).** Mr. Kay said that they will work through EGGI's comments with NHDES.
8. **Review briefly the CNHRPC comments under separate cover(s) as discussed in November.** Mr. Kay said that: (1) Since the regulating authority (NHDES) is not requiring a pre and post drainage report, they do not feel that it is necessary for this project; (2) With regard to the wells, they are collecting analytical data from the wells. The Applicant will be preparing a Blasting Plan, Source and Control Plan, and a Monitoring Plan for the site which will be reviewed and approved by NHDES; (3) Regarding the City of Concord's comments on the protection of their water resources, the sampling and creation of the above-stated plans addresses the issue; (4) Regarding Concord's access to the site, CNHRPC recommended sharing anticipated trip-generation numbers with Concord which has been done; (5) Regarding the blast noise, Mr. Kay said that the site is buffered very well and Concord has not raised any concerns of blasting noise in the past. (Concord Sand & Gravel has a pre-blast call list that is used regularly and has worked very well in the past. This method will continue to be used.)
9. **Complete the Note on Sheet C-3 that a Special Use permit for activity within the Aquifer Conservation District granted on _____ by the Planning Board and that all provisions of Zoning 143-68 Aquifer Conservation (AC) District will be followed.** Mr. Kay will do so once the Special Use Permit has been completed.
10. **Reply to any remaining comments provided by the Conservation Commission and Town Engineer after the 01/12 submission related to the wetland Special Use Permit.** Mr. Kay said that the Conservation Commission asked for analytical samples from the site. The Applicant is prepared to do so. Town engineer did not provide any comments on that issue.
11. **Complete the Note on Sheet C-3 that a Special Use Permit for activity within 20' of a wetland within the Wetland Protection District was granted on _____ by the Planning Board and that all provisions of Zoning 143-72 Wetland Protection (WP) District will be followed.** Mr. Kay said that the note will be revised as requested.
12. **Board to discuss whether future land use from Master Plan is addressed at this area.** Mr. Kay said that the area is targeted for commercial use in the Master Plan and the result will be such.
13. **Board to discuss hazard or injury potential to public welfare.** Mr. Kay said that the Board would need to discuss based on what the Applicant has proposed in the past.

Noting that this is the first time that the Board has seen these Staff Items, Vice Chairman Topliff suggested that the Board have time to review them prior to making comments.

Mr. Kay said that there are only 4 out of the 33 Staff Items that need to be addressed by the Applicant: (1) Town engineer's additional comments regarding planting details; (2) Revision of the financial guarantee; (3) To review and incorporate comments from EEGI; (4) To provide signage detail.

Mr. Brooks of EEGI stated that the concern with Pembroke and Concord, as the quarry expands through construction, is that the blasting activities may pose a hazard to the water resources or the City wells located West of the proposed quarry. They had a field meeting with Nobis Engineering and Mr. Cole to review information that they have generated in support of their Alteration of Terrain Permit, the hydrogeological report, and Operational Plan.

Mr. Brooks said that the Applicant is acting proactively in the permitting process and with the information that they have generated.

In review, the existing sand pit where the excavation of sand and gravel for aggregate use stems, is on the West side of the Soucook River to the East side of the river and in the area between the proposed excavation area and Concord Sand and Gravel bounds.

Mr. Brook explained the hydrogeology of the site. He said that the real concern was contamination from the project not whether there would be a decrease in the yield from the Concord wells. Contamination can occur as part of the operational process (fuel spill from fueling the trucks or a broken hydraulic hose) or from residual material left over from blasting.

The result of the report was that many fractures in the bedrock exposure trended to the North-Northeast and the shallow-dipping fractures trended East-West and Northeast which would then trend under the Concord wells. There could also be pathways which would allow nitrates to reach the Concord Wells. A series of monitoring wells have been drilled.

After reviewing the data, they noted that the proposed Concord Sand and Gravel monitoring wells would monitor surface water flow toward the river but not surface water flow or bedrock flow in other areas.

Recommendations: (1) Create an Operation Plan, Blasting Plan, and a Groundwater Monitoring Plan; (2) That all Plans be reviewed by Pembroke and the City of Concord prior to the Alteration of Terrain Permit approval. (All noted in EEGI's Review of Information Supplied by Nobis Engineering In Support of an Application for Expanding the Concord Sand and Gravel Bedrock Quarry Onto Lots 559-3 and 559-5, Pembroke, NH.)

Ms. Alexander said that Concord asked if there had been any testing done regarding the presence of radioactive substances. Mr. Brook said it has not been considered because it is not, in his opinion, a large risk.

Mr. Kay reiterated that they will take the recommendations from EEGI and meet with NHDES to formulate a plan. The final plan will be submitted for official review and approval to NHDES and the Town. A Source Control Plan will be created which will define the handling of the fuels on site. As stated before, an Operations Plan, Blasting Plan, and Groundwater Monitoring Plan will also be created.

Mr. Kay said that the Applicant has acknowledged that additional wells will be needed and has already proposed them to NHDES for their approval.

Mr. Bobowski said that he is familiar with the resistivity approach and feels that with the Best Management Practices that NHDES is requiring for the blasting and the monitoring plans, he feels that the Applicant will have a good network. He questions the cost, effort, and merits of doing a resistivity profile survey on a site of this size and scale. He feels that this is a lot of effort to create a monitoring well in the ground relative to what they are trying to monitor. The primary contributor is from the river and the firing range and commented that the lead and ammunition in the firing range would most likely be more of a concern. The firing range is 200 ft. away from the well field. The proposed Concord Sand site is 1400 ft. away from the well field.

Mr. Kay said that, depending on demand, the Applicant could potentially blast 3 times per week with 20,000 lbs. of blasting material per occurrence. Mr. Cole said that they have been blasting for 20 years and have collected data on the Concord wells for the last 5 years. A large portion of the nitrate is being consumed by the blast. Mr. Kay clarified that 20,000 lbs. of material is not going into the ground water.

The Board agreed that the following Staff items from Status Report of Review & Comment Items for Applications at the January 26, 2010 meeting will be removed: Nos. 4, 5, 8, 12, 13, 15, 16, 19, 21, 23, 27, 29, 30, 32.

The Board agreed that the following Staff items from Status Report of Review & Comment Items for Applications at the January 26, 2010 meeting will remain: Nos. 1, 2, 3, 6, 7, 9, 10, 11, 14, 17, 18, 20, 22, 24, 25, 26 with the following change: "Board to discuss . . . to be performed by Town of Pembroke and to whom the semi-annual . . .", 28, 31, 33.

Chairman Bourque opened the public hearing at 9:36 p.m.

MOTION: Chairman Bourque moved to continue the Special Use Permit-Wetlands. Concord Sand and Gravel, Inc. (Case #09-SUP-14WP), Special Use Permit-Aquifer. Concord Sand and Gravel, Inc. (Case #09-SUP-15AC), Existing Excavation Expansion. Concord Sand and Gravel, Inc. (Case #09-107) and public hearing to February 23, 2010. Seconded by Vice Chairman Topliff.

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

MOTION TO CONTINUE THE SPECIAL USE PERMIT-WETLANDS. CONCORD SAND AND GRAVEL, INC. (CASE #09-SUP-14WP), SPECIAL USE PERMIT-AQUIFER. CONCORD SAND AND GRAVEL, INC. (CASE #09-SUP-15AC), EXISTING EXCAVATION EXPANSION. CONCORD SAND AND GRAVEL, INC. (CASE #09-107) AND PUBLIC HEARING TO FEBRUARY 23, 2010 PASSED ON A 7-0 VOTE.

Chairman Bourque recessed the meeting at 9:42 p.m.

Chairman Bourque resumed the meeting at 9:50 p.m.

New Business

10. Cote Voluntary Merger. Case #09-10. Map 258, Lot 38 at Borough Road and Lot 38-1 at 722 Borough Road in the Rural Residential (R3) District. The owners, Paul C., Brenda J. and Scott Cote want to merge both parcels into Map 258, Lot 38 at 722 Borough Road. *Hearing not required. Board to approve merger.*

The Applicant was not present.

MOTION: Selectmen’s Rep. Lewis moved to approve the merger and require a new deed. Seconded by Chairman Bourque.

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

MOTION TO APPROVE THE MERGER AND REQUIRE A NEW DEED PASSED ON A 7-0 VOTE.

11. Minor Subdivision Lot Line Adjustment. Moses-Curley. Case #09-11. Map 256, Lot 3 at 755 Robinson Road in the Rural/Agricultural-Residential District (R3) in Pembroke, owned by Burton E. & Fernande H. Curley and Map 2, Lot 58 at 8 Higgins Road in the Residential (R), Rural-Agricultural (RA), and Conservation-Open Space-Steeplands (OSS) Districts in Chichester owned by Brent A. Moses. The owners propose a lot line adjustment to increase Lot 3 by 0.0675 acres (2,941 sf) to 4.269 acres and to decrease Lot 58 to 20.8 acres. *Application to be considered for acceptance prior to public hearing.*

Present: Web Stout of FWS Land Surveying, Brent Moses.

Mr. Stout described the location of the property. He explained that, in previous surveys, the stone wall was used as the Town line. He determined that the line is not on the stone wall. Mr. Moses is subdividing his property and a small portion of the property was located in Pembroke. Because of the expense associated with his original plan, Mr. Moses chose to deed 3,000 sq. ft. of his property to the abutting landowner which will result in all of Mr. Moses’ property to be in Chichester and all of the abutter’s property to be in Pembroke.

Ms. Alexander read a letter from the Chichester Planning Board which stated that there was no evidence that the proposal would not be allowed by the ordinances or regulations of the Town of Chichester. The application is scheduled to be heard and is expected to be approved on February 4, 2010.

The Board did not feel that the case was a project of regional impact. Ms. Alexander said that all staff items have been addressed.

MOTION: Selectmen’s Rep. Lewis moved to waive Items A, H, I, N, O & U of the Status Repot of Review & Comment Items for Applications at the January 26, 2010 meeting. Seconded by Chairman Bourque.

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

MOTION TO WAIVE ITEMS A, H, I, N, O & U OF THE STATUS REPOT OF REVIEW & COMMENT ITEMS FOR APPLICATIONS AT THE JANUARY 26, 2010 MEETING PASSED ON A 7-0 VOTE.

MOTION: Selectmen’s Rep. Lewis moved to accept the plan for review. Seconded by Member Seaworth.

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

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

Chairman Bourque opened the public hearing at 10:01 p.m.

There being no questions or comments from the public or the Board, Chairman Bourque closed the public hearing at 10:02 p.m.

MOTION: Chairman Bourque moved to approve the application for Minor Subdivision Lot Line Adjustment. Moses-Curley. (Case #09-11) with the following condition: Any cost associated with lot line changes affecting the tax map will be the responsibility of the Applicant and will be subtracted from the escrow account prior to mylar signing. Seconded by Vice Chairman Topliff.

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

MOTION TO APPROVE THE APPLICATION FOR MINOR SUBDIVISION LOT LINE ADJUSTMENT. MOSES-CURLEY. (CASE #09-11) WITH THE FOLLOWING CONDITION: ANY COST ASSOCIATED WITH LOT LINE CHANGES AFFECTING THE TAX MAP WILL BE THE RESPONSIBILITY OF THE APPLICANT AND WILL BE SUBTRACTED FROM THE ESCROW ACCOUNT PRIOR TO MYLAR SIGNING PASSED ON A 7-0 VOTE.

12. Hall Voluntary Merger. Case #09-12. Map 939, Lot 37 at Dudley Hill Road and Lot 38 at 403 East Meadow Lane in the Rural/Agricultural-Residential District (R3). The owners, Dale F. and Laura M. Hall want to merge both parcels into Map 939, Lot 38 at 403 East Meadow Lane. *Hearing not required. Board to approve merger.*

MOTION: Selectmen’s Rep. Lewis moved to require that a new deed be made in the Hall Voluntary Merger (Case #09-12). Seconded by Chairman Bourque.

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

MOTION TO REQUIRE THAT A NEW DEED BE MADE IN THE HALL VOLUNTARY MERGER (CASE #09-12) PASSED ON A 7-0 VOTE.

MOTION: Noting that it was after 10:00 p.m., Chairman Bourque moved to continue the meeting and hear the next case.

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

MOTION TO CONTINUE THE MEETING AND HEAR THE NEXT CASE WAS TIED WITH A 3-3 VOTE WITH ONE ABSTENTION.

Selectmen’s Rep. Lewis agreed to withdraw her abstention in order to break the tie.

MOTION: Chairman Bourque moved to continue the meeting and hear the next case.

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

MOTION TO CONTINUE THE MEETING AND HEAR THE NEXT CASE PASSED ON A 4-3 VOTE.

13. Special Use Permit-Aquifer. WS Dennison Cabinets, Inc. Case #09-SUP-16AC. Map 559, Lot 12 on Silver Hills Drive at 796-826 North Pembroke Road in the Rural Residential (R3) District, Aquifer Conservation (AC) Overlay District, and Wetlands Protection (WP) Overlay District. The applicant, Wayne Dennison, WS Dennison Cabinets, Inc., on behalf of owner Frank Merrill, Silver Hill Development Corp., 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 major site plan application #09-108, a manufacturing facility for wooden cabinets. *Public hearing to be held.*

14. Major Site Plan. WS Dennison Cabinets, Inc. Case #09-108. Map 559, Lot 12 on Silver Hills Drive at 796-826 North Pembroke Road in the Rural Residential (R3) District, Aquifer Conservation (AC) Overlay District, and Wetlands Protection (WP) Overlay District. The applicant, Wayne Dennison, WS Dennison Cabinets, Inc., on behalf of owner Frank Merrill, Silver Hill Development Corp., proposes the construction of a new 19,200sf facility for the manufacture of wooden cabinets with associated paved driveways and parking. *Technical Review Committee meeting has been held. Application to be considered for acceptance prior to public hearing.*

Present: Tim Bernier of T.F. Bernier, Inc. representing WS Dennison Cabinets, Inc. and Wayne “George” Dennison of WS Dennison Cabinets, Inc.

Mr. Bernier noted that the Applicant is proposing a 19,200 sq ft manufacturing facility to be located at Silver Hill Drive off of North Pembroke Road. The Applicant makes wood cabinets and wishes to relocate from its present facility on Sand Road.

The Applicant has a maximum of 18 employees and anticipates 2-3 box truck deliveries and 1 tractor trailer truck delivery per day. The site is designed with a paved 2-way entrance driveway and a wide unpaved one-way exit driveway primarily for the tractor trailer truck. The one-way exit was created to prevent the tractor trailer from turning around to exit the facility. The building will house office spaces, a manufacturing floor space, and a separate finishing room and paint storage room. There will be an outside septic and well on the site.

Mr. Bernier clarified that the “loading dock” on the plan has a drop-down dock for the loading of the Applicant’s box trucks. Deliveries are not made to the “loading docks”. It will not be used by the tractor trailer truck. The rear “overhead door” area will be used by the tractor trailer truck and unloaded with the use of a forklift.

Oil-based stains are used on the cabinets.

The new facility is subject to all the conditions of the Aquifer Protection District and the Concord Wellhead Protection Area restrictions. The Applicant is very familiar with the criteria of such Districts because its present facility on Sand Road is also in the Aquifer Protection District and subject to all necessary criteria.

The consensus of the Board was that it is not a development of regional impact.

Mr. Bernier said that all the notes which Ms. Alexander requested be added to the Plan will be added.

Because the subdivision has an Alteration of Terrain Permit, the Alteration of Terrain Bureau wished to review the application. Mr. Bernier said that the application has been submitted to them.

Mr. Bernier said that revisions, based on Town Engineer’s comments, are being made.

There is no on-site fuel storage.

Mr. Dennison said that chemicals that are on the premises will be stored in a flameproof cabinet located in a room with a concrete floor. A spill would not extend beyond that room.

Vice Chairman Topliff indicated his concern that a chemical spill may occur when unloading chemicals and, therefore, Mr. Bernier agreed to develop a spill plan. The largest container of chemical is 5 gallons. They are unloaded by hand. The forklift is used to unload lumber and plywood.

Mr. Bernier is arranging a meeting between Concord’s General Services Department and the Pembroke Water Works to ensure that the aquifer is protected. Pembroke Water Works will visit the site and make certain that employees are trained. Vice Chairman Topliff would like clarification on the frequency of their visits.

MOTION: Selectmen’s Rep. Lewis moved to accept the application for Major Site Plan, WS Dennison Cabinets, Inc. (Case #09-108) as complete. Seconded by Chairman Bourque.

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

MOTION TO ACCEPT THE APPLICATION FOR MAJOR SITE PLAN, WS DENNISON CABINETS, INC. (CASE #09-108) AS COMPLETE PASSED ON A 7-0 VOTE.

Chairman Bourque opened the public hearing at 10:21 p.m.

There being no questions or comments from the Board or the public, Chairman Bourque closed the public hearing for the evening at 10:22 p.m.

MOTION: Chairman Bourque moved to continue the application for Special Use Permit-Aquifer, WS Dennison Cabinets, Inc. (Case #09-SUP-16AC), the application for Major Site Plan, WS Dennison Cabinets, Inc. (Case #09-108), and the public hearing to February 23, 2010. Seconded by Vice Chairman Topliff.

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

MOTION TO CONTINUE THE APPLICATION FOR SPECIAL USE PERMIT-AQUIFER, WS DENNISON CABINETS, INC. (CASE #09-SUP-16AC), THE APPLICATION FOR MAJOR SITE PLAN, WS DENNISON CABINETS, INC. (CASE #09-108) AND THE PUBLIC HEARING TO FEBRUARY 23, 2010 PASSED ON A 7-0 VOTE.

Selectmen's Rep. Lewis asked Mr. Bernier to make sure that the length of the driveway apron be an appropriate length based on the sizing of a tractor trailer truck.

MOTION: Chairman Bourque moved to review the draft minutes of previous meetings and continue the remainder of the agenda to the next Board meeting. Seconded by Member Krebs. Unanimously approved.

MOTION: Chairman Bourque moved to adjourn. Seconded by Member Krebs.

The vote was unanimous in favor of the Motion.

The meeting adjourned at 10:25 p.m.

Respectfully submitted,
Jocelyn D. Carlucci, Recording Secretary