

**Pembroke Planning Board  
Minutes of Meeting  
(ADOPTED)  
November 28, 2017**

**MEMBERS PRESENT:** Alan Topliff, Chairman; Brian Seaworth, Vice Chairman; Kathy Cruson; Larry Young, Sr.; Brent Edmonds; Selectman's Rep Sandy Goulet

**ALTERNATES PRESENT:** Robert Bourque

**EXCUSED:** Richard Bean; Kellie Dyjak

**STAFF PRESENT:** Stephanie Verdile, Town Planner; Jocelyn Carlucci, Recording Secretary

Chairman Topliff called the meeting to order at 7:00 pm.

Alternate Member Bourque agreed to vote in place of Member Bean.

**Old Business–**

- 1. Major Subdivision Application, Subdivision #16-06, Pembroke Meadows, LLC and DHB Homes, LLC. (c/o Bob Meissner), on Tax Maps 264, 266, and 567, Lots: 4 and 7, 25-4 and 26, and 1 respectively located at 282 Pembroke Street, in the Medium Density-Residential (R1) Zone, Architectural Design (AD) District, the Wetlands Protection (WP) District, and the Aquifer Conservation (AC) District, and.** The applicant Patrick R. Colburn, P.E. of Keach-Nordstrom Associates, Inc., on behalf of the property owner Pembroke Meadows, LLC and DHB Homes, LLC (Bob Meissner) is proposing a major subdivision that includes: the consolidation/merger of five existing lots of record, totaling approximately 125 acres of land, and re-subdivide the consolidated lots in order to create 110 new residential building lots, connection to municipal water and sewer systems, and the construction of approximately 10,800 linear feet of new roadway. *Continued from August 22, 2017 meeting.*
- 2. Special Use Permit Application, SUP-WP #16-308, Pembroke Meadows, LLC and DHB Homes, LLC. (c/o Bob Meissner), on Tax Maps 264, 266, and 567, Lots: 4 and 7, 25-4 and 26, and 1 respectively located at 282 Pembroke Street, in the Medium Density-Residential (R1) Zone, Architectural Design (AD) District, the Wetlands Protection (WP) District, and the Aquifer Conservation (AC) District.** The applicant Patrick R. Colburn, P.E. of Keach-Nordstrom Associates, Inc., on behalf of the property owner Pembroke Meadows, LLC and DHB Homes, LLC (Bob Meissner), requests a Special Use Permit from Article 143.72. D (2), Wetlands Protection District, which is required for the construction of streets, roads, and other access ways and utility rights-of-way, if essential to the productive use of adjoining land. This permit is associated with the Major Subdivision Plan application. Sub #16-06. *Continued from August 22, 2017 meeting.*
- 3. Special Use Permit Application SUP-AC #16-309, Pembroke Meadows, LLC and DHB Homes, LLC. (c/o Bob Meissner), on Tax Maps 264, 266, and 567, Lots: 4 and 7, 25-4 and 26, and 1 respectively located at 282 Pembroke Street,**

**in the Medium Density-Residential (R1) Zone, Architectural Design (AD) District, the Wetlands Protection (WP) District, and the Aquifer Conservation (AC) District. The applicant Patrick R. Colburn, P.E. of Keach-Nordstrom Associates, Inc., on behalf of the property owner Pembroke Meadows, LLC and DHB Homes, LLC (Bob Meissner), requests a Special Use Permit from Article 143-68.E, Aquifer Conservation District for construction roads, utilities, infrastructure, and building lots for a 110-lot subdivision. A Special Use Permit is required for any activity taking place within the Aquifer Conservation (AC) District. This permit is associated with the Major Subdivision Plan. Continued from August 22, 2017 meeting.**

Chairman Topliff said normally he would read the first three agenda items. In the interest of saving time, he would dispense with doing so since all three agenda items pertain to the Pembroke Meadows, LLC project which was to be before the Board but asked for a deferral.

Chairman Topliff read aloud the letter addressed to Alan Topliff, Chairman of the Pembroke Planning Board, from Patrick Colburn, P. E. of Keach-Nordstrom Associates, Inc. representing Pembroke Meadows LLC dated November 6, 2017.

**MOTION: Alternate Member Bourque moved to continue Major Subdivision Application, Subdivision #16-06, Special Use Permit Application, SUP-WP #16-308, and Special Use Permit Application SUP-AC #16-309 until the Pembroke Planning Board's May 2018 business meeting. Seconded by Selectmen's Rep. Goulet. Unanimously approved.**

- 1. Special Use Permit Application SUP-AC #17-304, Timothy Peloquin, Promised Land Survey, LLC, acting as the applicant on behalf of Keystone Pembroke, LLC, 17 Bridge Street, Unit 103 Billerica, MA, owner of Tax Map 634 Lot 1, located at 31-39 Whittemore Road in the Medium Density (R1) Residential Zone, the Aquifer Conservation (AC) District, the Wetlands Protection (WP) District. The applicant requests a Special Use Permit from Article 143-68.E, Aquifer Conservation District for construction roads, utilities, infrastructure, and building lots for a three (3) lot subdivision and an Open Space Development. A Special Use Permit is required for any activity taking place within the Aquifer Conservation (AC) District. This permit is associated with the Major Subdivision Plan Application #17-03. Continued from October 24, 201.**
- 2. Special Use Permit Application, SUP-WP #17-305, Timothy Peloquin, Promised Land Survey, LLC, acting as the applicant on behalf of Keystone Pembroke, LLC, 17 Bridge Street, Unit 103 Billerica, MA, owner of Tax Map 634 Lot 1, located at 31-39 Whittemore Road in the Medium Density (R1) Residential Zone, the Aquifer Conservation (AC) District, the Wetlands Protection (WP) District. The applicant requests a Special Use Permit from Article 143.72. D (2), Wetlands Protection District, which is required for the construction of streets, roads, and other access ways and utility rights-of-way, if essential to the**

productive use of adjoining land. This permit is associated with the Major Subdivision Plan Application #17-03. Continued from October 24, 2017.

3. **Special Use Permit Application, SUP-OSD #17-306, Timothy Peloquin, Promised Land Survey, LLC, acting as the applicant on behalf of Keystone Pembroke, LLC, 17 Bridge Street, Unit 103 Billerica, MA, owner of Tax Map 634 Lot 1, located at 31-39 Whittemore Road in the Medium Density (R1) Residential Zone, the Aquifer Conservation (AC) District, the Wetlands Protection (WP) District.** The applicant requests a Special Use Permit per Article XVIII Special Use Permits and Article X Open Space Development for the design and construction of an Open Space Development (OSD) and for OSD Reduction in Specification Standards. This permit is associated with the Major Subdivision Plan Application #17-03. *Continued from October 24, 2017*
4. **Major Subdivision Plan #17-03, Timothy Peloquin, Promised Land Survey, LLC, acting as the applicant on behalf of Keystone Pembroke, LLC, 17 Bridge Street, Unit 103 Billerica, MA, owner of Tax Map 634 Lot 1, located at 31-39 Whittemore Road in the Medium Density (R1) Residential Zone, the Aquifer Conservation (AC) District, the Wetlands Protection (WP) District.** The applicant proposes to subdivide Map 634 Lot 1 into three (3) single family lots and construct an Open Space Development consisting of eighteen(18) 4-plex two-bedroom units for a total of 75 residential dwelling units. The total area of the lot is approximately 88.8 acres with 23.54 acres developed for residential use, approximately 31.99 acres reserved for future activity for the Pembroke Pines Golf Course, and 33.3 acres to be dedicated/deeded to the Town of Pembroke/Conservation Commission. *Continued from October 24, 2017*

**Present:** Timothy Peloquin of Promised Land Survey, LLC; Robert MacCormack of Keystone Pembroke, LLC; Stephen Pernaw of Stephen G. Pernaw & Company Inc., Rick Van de Poll; Charles Cleary, Esquire; Steve Cummings, Engineer

Chairman Topliff said the last time the Board met with the applicant, the Board accepted the application as complete. The Board also chose to deem the project a Development of Regional Impact that dictated the Board needed to table it for a month to give the additional abutters the opportunity to be at the meeting or share information with the Board.

Ms. Verdile said that Bow, Hooksett, Concord, Allenstown, and Central NH Regional Planning Commission (CNHRPC) were notified. No comments were received from Bow, Hooksett, or Concord. Comments were received from Allenstown (contained in the Planning Board packet) and CNHRPC (not in the packets but left on the table along with the map for each Planning Board member). She said because the CNHRPC packet was just received by the Board tonight, they may wish to hold off on comments and have a representative from CNHRPC attend a meeting to review the comments. She said she was aware that the Board does not like to address documents that they receive at their meetings.

Ms. Verdile said the Board also received Town Engineer's preliminary comments. She said at this time, the additional abutters notified of the DRI have had the chance to comment and, therefore, the Board may proceed.

The Board had no comments.

Chairman Topliff gave an overview of how the Planning Board conducts public hearings. He said that some Planning Boards allow the applicant to speak outside of the public hearing. Chairman Topliff said that that was not the Board's practice specifically because they would like to ensure that all comments are heard during the public hearing by everyone who has an interest in the case and to be able to ask questions during the time that the Applicant may be presenting.

Chairman Topliff asked that everyone be respectful, that they raise their hand and be recognized, state their name and address for the record, and that they direct their questions and comments to him. He said the Board tries to discourage interaction between the Applicant and members of the public because it can, at times, be difficult to navigate.

He continued to say that, due to the large crowd, the Board is very happy that they are here and want to give everyone an opportunity to speak. He asked that all speakers keep their comments brief so that as many people as possible can be heard. Chairman Topliff also said he does not expect to conclude the public hearing this evening and fully expects that it will be continued to the Board's next business meeting. He said if the public thinks of things or does not get an opportunity to say everything that they would like, there is a high probability that there will be another opportunity to make a public comment. Chairman Topliff said that the Board welcomes public comments and values the public's input because the Planning Board does not have all the answers.

Chairman Topliff thanked the number of Town officials who were in the audience. He said that it is always helpful to have them present because they are often asked to answer questions that the Board may not have the answers to.

Chairman Topliff opened the public hearing at 7:10 p.m. He said it is the Board's practice to ask the Applicant to open the public hearing and give their presentation.

Timothy Peloquin said he is a licensed land surveyor of Promised Land Survey, LLC of Derry, NH. He is representing Keystone Pembroke, LLC. He then introduced the Applicant's team:

- Rick Van de Poll, an Environmental Consultant. Mr. Peloquin said Mr. Van de Poll performed a study for the Applicant. The Board may not be privy to the study comments but the Pembroke Conservation Commission is. Mr. Peloquin said that he would provide Ms. Verdile with Mr. Van de Poll's report.
- Robert MacCormack, owner of Keystone Pembroke, LLC and owner/abutter, Pembroke Pines Golf Course.

- Stephen Pernaw, Traffic Consultant/Engineer.
- Steve Cummings, P. E., Civil Engineer.
- Charlie Cleary, Esquire, representing Mr. MacCormack's interests.

Mr. Peloquin said the project consists of 18 four-plex units and three single family homes which is within the purview of the Board to act on based on the Special Exception granted by the Pembroke Zoning Board of Adjustment (ZBA).

He said the project is in the R1/B District, which permits single and 2-family homes. Up to six-units per building is allowed with a special exception from the ZBA.

Mr. Peloquin said Mr. MacCormack and his team studied the land and decided that the best use was multi-family four-plex townhouse-style homes which would be adjacent or across the street from the Golf Course. It would be an open-spaced condensed development. They also propose three single-family homes along Whittemore Road to keep in unison with the existing neighborhood.

The property is known as Map 634 Lot 1. It is a total of 88.8 acres and has approximately 634 ft. of frontage on Whittemore Road. It also has a public right-of-way dead-ending on their property known as Nadine Road. It was Mr. Peloquin's understanding that when the approval for the Nadine Road neighborhood was given, the intent was to connect Whittemore Road to Nadine Road. It is the Applicant's intention to connect Whittemore road to Nadine Road as well as the small cul-de-sac known as Birdie Circle and a small road known as Eagle's Way which is a driveway access to two four-plex units.

Mr. Peloquin said that the proposal is for 25.54 acres on the easterly portion of the parcel fronting on Whittemore and Nadine Road. It extends from the end of where Mr. MacCormack's new golf hole is located down to the corner of the Nadine Road subdivision. (This portion of the 88.8 acres is known as Parcel A.)

The middle parcel, which Mr. Peloquin called Parcel B, is 31.99 acres and is intended to be reserved for future golf course ancillary use. He said that it is not for residential use – not now or in the future. Mr. Peloquin said that it could be a deed restricted parcel. It is not the intention to develop the piece for any golf course ancillary use at this time. Mr. MacCormack merely wants to reserve it for the future based on the success of the golf course – for relocation of holes and improvements of the golf course or other things that Mr. MacCormack or his heirs would see fit to improve the golf course or any parts of it. Mr. Peloquin reiterated that the idea is to reserve the land for future golf course use and non-residential use.

He then explained that there is a 33.3 acre parcel (referred to as Parcel C) parcel on the most westerly portion of the land that fronts along the Merrimack River and White Sands Conservation Area. Mr. Peloquin said that the idea is to take the 33.3 acre parcel and

merge it with the White Sands Conservation Area. He said that they have discussed this idea with the Conservation Commission. It is a valuable piece of land.

Mr. Peloquin continued to say that there is an old railroad bed that bisects that parcel (shown on Sheet 11), which can also be seen as a recreational trail which goes to the White Sands Conservation area. He said that it is a nice access route, recreational trail and wildlife corridor. The Applicant, upon approval of such a plan, would donate that parcel (Parcel C) to the Town.

Mr. Peloquin reiterated that Parcel A is a very good use of the land and pointed out that it places all development by the golf course.

He then referred to Sheet 2 of the Plan which is known as the Yield Plan. He explained that a Yield Plan shows what the Applicant could do with the land without the Special Exception and if they just wanted to subdivide the land.

Mr. Peloquin said that the Yield Plan layout is a realistic one. It will yield 112 units or 56 duplexes. He directed the Board to the Notes on Sheet 2, the total Constrained Area (removing the wetlands, the flood zone area, any proposed roads, and slopes 25% or greater) is 22 acres. The Unconstrained Area is 66.72 acres.

Mr. Peloquin said that he also broke out units based on single family with water and sewer or without sewer and water. He said that with water and sewer there could be 145 units just based on what exists there (the land, density, slopes, wetlands). He said that someone would have to demonstrate that on a plan but his point was to make it clear that it is a substantial piece of land and could hold that much.

He said Mr. MacCormack's proposal is significantly less - 18 four-plexes and three single-family residential homes.

Mr. Peloquin reiterated that the middle portion (Parcel B) would be reserved for ancillary golf course use in the future. The Applicant is aware that he would have to come before the Planning Board as a site plan application in the future, if any proposal were to happen on that land. No development is part of this middle parcel and plan.

Mr. Peloquin said the Applicant has a Special Exception that granted 19 four-plex units. The Applicant reduced it to 18 and placed three single-family homes on Whittemore Rd., which was better, and more in symmetry with the neighborhood.

He said if the Planning Board feels that the Applicant should return to the ZBA to get verification, they are willing to do so even though they decreased the unit number.

Mr. Peloquin said they have gone to the Technical Review Committee (TRC) and have heeded their comments and are making any suggested changes. They received a comment letter from Mr. Vignale of KV Partners, which they are also addressing.

He said they have applied for a Wetland Permit. There is a very small wetland crossing on Birdie Circle. They have also engaged in an environmental study with Rick Van de Poll, which was not required. A complete traffic study was done by Stephen Pernaw because they knew that there would be traffic concerns.

Mr. Peloquin also showed an architectural rendering of Mr. MacCormack's intentions for the four-plexes. He said that there would be a garage between each unit. Some units will have one bay and some will have two bays. Some units will be larger. Each unit has two bedrooms with a loft.

Mr. Peloquin said that he has worked with Mr. MacCormack for 20 years in other communities. Mr. MacCormack is Mr. Peloquin's best client in terms of a person that he really enjoys representing because he does what he says and does an excellent job.

He said he would like to have Stephen Pernaw speak of the traffic report, Attorney Cleary speak as a result of a letter that is part of the Board's packet, and then ask Mr. MacCormack to speak on anything that they might have missed.

Chairman Topliff said he would like to place a time limit on his team's comments because there are a number of people in the audience who would also like to speak. He said that he would give Mr. Peloquin's team from 7:25 to 7:35 pm.

Stephen Pernaw said he prepared four different documents. In January 2017, they prepared a Preliminary Investigation where they did traffic counts, a trip generation analysis and looked at sight distance. Later in August 2017, they were commissioned to prepare a full Traffic Impact Study. At that time, they did their data collection in August, on two separate weekdays (using the higher of the two) and then did their projections and analysis. He said that, initially, they were talking about 76 units. The study is based on 70 units. In the end, the Applicant added three units so Mr. Pernaw prepared a trip generation update which added three trips during the AM and PM peak hour periods, which did not change anything.

In October 2017, Mr. Pernaw published an addendum, which had to do with the gate that is being proposed on Nadine Drive. The purpose of the addendum is to give the Board an idea of what would happen if the gate were opened vs. closed.

Mr. Pernaw continued to say their counts were done in August. There were over 1100 cars per hour Northbound/Southbound during the morning peak hour along Route 3 and over 1500 during the evening. They reviewed crash data over a three-year period. Two crashes at the intersection of Whittemore Road and Route 3 were reported to the State. He noted since it is not a requirement to report all crashes to the State, there may have been more. Mr. Pernaw said that they prepared projections for 2018 and 2028. They adjusted the numbers to a peak month condition. In terms of trip generation, the plan before the Board would generate 42 trips during the morning peak hour (most vehicles will be leaving their homes) and 49 return trips. He pointed out that it is less than 1 car a minute.

With regard to impacts to Route 3, comparing the “no-build” projections with the “build” projections, the increase is 2% North of Whittemore Road and the increase is 1% South of Whittemore Road. He said that those kinds of changes are not noticeable to a driver or to an abutter along Route 3. The impacts on Whittemore will be much more.

Looking at the intersection, capacity, and line of service, Mr. Pernaw said there is good news and bad news. He said taking a left turn onto Route 3 from any side street involves long delays during peak hours. Level Service F is with or without the development. Northbound left turns into Whittemore Road results in Level Service B with or without the development.

With regard to sight distance, because the road is straight and relatively flat, there is good sight distance. It exceeds NH Department of Transportation (NHDOT) guidelines of 400' by a considerable margin.

With regard to the gate situation, Mr. Pernaw referred to the addendum. He said if the proposed gate is closed, all the site traffic will come in and out of Whittemore Road. If the proposed gate is open or not installed at all, two things will occur: (1) The site traffic will have two ways in and out. If heading North to Concord, they will use Whittemore Road. If they are heading South toward Town Hall, they will use the signal at Bow Lane. He pointed out that site traffic will disperse. (2) The existing residences, depending where they are located on Donna Drive, Nadine Road, and Bow Lane, may reroute themselves. In other words, if the Northwest corner by Nadine Road wants to head to Concord, and it was off-peak, those people would probably go through the proposed development and use Whittemore Road to head North.

Mr. Pernaw said in terms of Bow Lane and Donna Drive, the peak-hour volume changes are single digits in the morning and the evening.

He continued to say the biggest change will be on Route 3 between Whittemore Road and Donna Drive where, in the evening, there will be a net decrease of 18 with the gate open because of the rerouting of traffic routes. With the gate closed, it will be an increase of 19 on that section of Route 3. Mr. Pernaw said that whether the gate is open or closed or whether the gate exists or does not exist, the impacts to Route 3 North of Whittemore Road will not change. Also, the gate situation will not affect the impact South of Bow Lane. Depending on the gate situation it is a localized situation.

Attorney Charles Cleary then began his presentation. He reiterated that the project was granted a Special Exception by the ZBA, which was appealed to the Merrimack County Superior Court, by BCM Environmental & Land Law, PLLC (BCM) that represented two individuals. BCM issued a letter dated October 24, 2017 to the Planning Board. Attorney Cleary clarified a few points in the letter.

He said the first request in the letter was to stay the subdivision approval process. Attorney Cleary said there are no grounds or authority for the Board to do so. The Board accepted jurisdiction by accepting the application and the State law, under RSA 676:4



states that the Board can proceed with this process even if all Boards have not issued their permits yet. It is even stated in the Town's Subdivision Regulation §205:19.

He also said the letter requests that the Board treat this subdivision process as improper because there is no special exception because of the appeal. Again, Attorney Cleary said that the Special Exception was granted by the ZBA, a Motion for Rehearing was denied, and the appeal does not affect the Special Exception. The Board is well-suited to continue the process.

Attorney Cleary pointed out the letter is dated October 24, 2017 which was the date of the first public hearing but it asks that the Board deny the application if the Board does not stay it. Given the fact that the letter was sent before the first public hearing, it would be both unfair and inappropriate under a waiver for that business in New Hampshire.

He continued to say the letter goes on to seek denial of the application for a number of technical and legalistic reasons. Attorney Cleary said the Applicant dealt with the same issues in the ZBA process. It is the opinion of the two residents of Pembroke and nothing more than that. He said the Applicant is asking the Board to consider all the evidence and testimony. They believe that the Board will conduct a fair process. They have spoken to abutters, met with the Conservation Commission, worked with Ms. Verdile and Mr. Hodge of the Planning Department about all aspects of the application, and filed the subdivisions application in good faith. The application donates a significant amount of land to Pembroke and it will, if built out, increase Pembroke's tax base.

Chairman Topliff said that Attorney Cleary's opinion is in agreement with Town Counsel.

Rick Van de Poll, a Wetland Scientist, and Consultant from Sandwich, NH said he did a Natural Resource Inventory (NRI) for the Town with the Conservation Commission a few years ago and helped the Conservation Commission with their conservation protection of land.

With regard to the application, Mr. Van de Poll said he did a one-day site visit to the property and looked at water resource impact, soil resources, wildlife, and endangered species. He said having this property on the Merrimack River, he noted it was one of the more reasonable approaches to land use given that there is a protection package for the riverfront area of at least one-third of the property. This part of the riverfront holds some of the highest ecological value in Pembroke. He said his report indicates there is at least two state endangered natural communities and two different rare and endangered species that are being protected by this proposal – the bald eagle nest which is placed somewhere in that 33-acre zone moved down from Garvins Falls. The second involves two different communities along the riverfront.

Mr. Van de Poll said the buffering affect of having a golf course expansion area that is free from development that adds another 30 acres to this will augment the integrity of the ecology for that area and will expand White Sands Conservation Area significantly. There is active recreational use now along the riverfront and this will only help preserve that in perpetuity.

Relative to the impact to aquifers and the Aquifer Conservation District, Mr. Van de Poll said that, based on the transmissivity of the aquifer's map by NH Department of Environmental Services (NHDES), he estimated the total impact of 1.7% of the volume of infiltrating water easily offset by the permeable detention-basins and the grassland swales. He said he specifically looked to see if the impervious areas were going to have an affect on the water being able to reach the aquifer. He found it was an insignificant change – it is more of the relocation of where the infiltration will take place rather than a complete interruption of that infiltration.

In terms of water resource impacts beyond what has already been stated, Mr. Van de Poll said that 500 square feet of wetland impact for a 73-unit subdivision is perhaps one of the smallest wetland impacts he has ever worked on in 25 years. He said that he did not have any problems with that. He made some design suggestions relative to flow-through of the water in that area where Birdie Circle will go over the wetland area. He looked at it with Peter Schauer of Schauer Environmental Consultants LLC and did the wetland delineation and both agreed that it is a low value wetland system relative to the functions and values that he looked at when he performed the NRI. Mr. Van de Poll said that this system has a much higher value up-stream of where this particular subdivision site is. That conservationary seepage forest and core conservation area is a moderately high value wetland system but as it comes down through several different channels onto this property, it is a much lower value relative to functions and values of wetlands.

Mr. Peloquin concluded there is a site walk on the property with the Conservation Commission scheduled for Saturday (December 2, 2017) at 10 a.m. He said that they will have a land survey crew mark the roadways and other features so that there will be a clear knowledge of where the development is going. He said that he mentioned to Ms. Verdile that the walk may be an opportunity to invite the Planning Board to be part of the site walk if they so desired.

Chairman Topliff said he would like to dedicate some time to public input. He asked that those members of the audience who wish to speak raise their hands and state their name for the record.

Ann Bond (433 Micol Road) said she was very concerned when the Applicant discussed the zoning issues and what was approved. She asked if the Board had a copy of the approval. She said that the gate was not to be opened onto Nadine Road and that it was part of the exception.

Chairman Topliff said that they are aware of that.

Ms. Bond said the gate being opened or closed is not an option based on the prior approval.

Chairman Topliff said that her conclusion is correct based on the Zoning Board approval as it stands.

Ms. Bond asked if the Planning Board could change the ZBA's decision.

Chairman Topliff said no, that it would have to go before the ZBA.

Chris Ryerson (51 Whittemore Road) asked how the traffic study could have come up with 42 cars leaving in the morning and 49 returning at night. She said that she and her two neighbors have 8 cars leaving in the morning and returning home. She wondered, with 73 units, how a count of 42 would be correct given that, even with one car per 73 units, there would be more than 42 and 49 vehicles.

Chairman Topliff said that Mr. Pernaw also performed a traffic study for Pembroke Meadows and there are nationally recognized standards that are used to predict traffic flow. It is the best that are available at this point and, although the Board also has a hard time with the numbers, one of things that the Board can do is ask the Applicant to pay for an independent traffic study and the Board may chose to do that.

Keith Watts (47 Whittemore Road) showed the Planning Board photos of water pooling on the building site on two different times of the year along Whittemore Road. The photos were taken in the spring and winter of 2016.

Mr. Watts said that he was given a gentleman's agreement that a fence was to be built to block off the view of the clubhouse and the dumpster. He said that it was promised over a year ago and has still not been done. Mr. Watts said that other impacts that the neighborhood has been dealing with is dust, blasting, tractors coming up and down the road at 5:30 a.m. and dumpsters being emptied at 5:30 a.m.

Peter Gailunas (415 Fourth Range Road) asked if the units would be rentals or for sale.

Mr. MacCormack said that they have designed the project as a condominium complex. It will be a for-sale project.

Beth Vacco (440 Nadine Road) asked if the units did not sell individually if they would be mass-sold to investors for rentals that could impact the schools. She said that the Town has already been affected by the tax rate and asked if the impact on enrollment would be assessed.

Chairman Topliff said the Planning Board struggles with the future impact that a development may have on the schools. He said this project will consist of two-bedroom units which would be less attractive to larger families versus other developments that have 3-4 bedroom homes. He continued to say that the only opportunity that the State law gives the Planning Board to say no when a development is expected to have a significant impact on the school is if the school is incapable of handling the additional students. In the case of Pembroke, as the schools stand today, the enrollment is shrinking and the school capacity is not being fully utilized.

Ms. Vacco asked if there has been any thought of having the School Board in on the development discussions.

Chairman Topliff said that the Planning Board can make sure that the School Board is aware of the projects.

Mark Morency (268 Pembroke Street) noted that the traffic study was done in August on a non-school day. He said that there is a big difference between traffic on school days and summer vacation days.

Chairman Topliff agreed and said that he was going to ask Mr. Pernaw at some point to consider the impact during the time of year when school is in session because it is substantial. He also said that in August, there are people on vacation so the traffic is significantly less.

Mr. Peloquin said the first traffic study that was done was in January of 2017 and then provided supplemental reports after that.

Mr. MacCormack said they have designed the units for empty nesters. They are single-floor living units. There is a second bedroom on the second floor, but the first floor contains the kitchen, living room, dining room, master bedroom, master bathroom, and laundry room.

Amy Manzelli (418 Ross Road) of BCM Environmental & Land Law of Concord. She said that she is here in a personal capacity representing herself and her husband, Chad Turmelle. She said that she submitted a letter to the Board on October 24, 2017 just in advance of the Board's last meeting. She said that she would summarize her main points.

Chairman Topliff said that he would appreciate it if she would keep it to no more than 5 minutes.

Ms. Manzelli began by saying that Attorney Cleary's remarks seem to be saying that she and her husband are like a Jack Russell Terrier nipping at the heels with pesky, legalistic and technical points.

Chairman Topliff asked Ms. Manzelli to stick to the facts. He said the Board is not interested in personalities and emotions because it does not serve a useful purpose. He said he would like to hear factual information that is germane to the Planning Board's consideration.

Ms. Manzelli said the Board is not obligated to approve all proposals that come before it. She said there are certain standards that need to be satisfied and when all the standards are satisfied, then the Board has the discretion and authority to approve the projects. Ms. Manzelli said the headline that she would like to give to the Board is that the Applicant's work at the ZBA is not done. They have not completed everything they need to do at the ZBA. She explained that, on pages 1 and 2 of her letter, she summarized 7 main points.

The first point is that she is requesting that the Board stay the application. She said she does not think the Planning Board's letter from Town Counsel is public. Ms. Manzelli said that she understands that Town Counsel is saying that the Board is free to move forward.

Chairman Topliff said yes, that he was in full agreement with Town Counsel, after reading the State RSA.

Ms. Manzelli reiterated the Board should stay the application and said that if the Board moves forward and approves the project and the court were to reverse the ZBA granting of the Special Exception, in her opinion, it calls into question the validity or effectiveness of the Board's approval and creates a lot of deficiency.

Ms. Manzelli continued to say if the Board does not stay the applications, she respectfully requests that the Board deny the Applicant's applications. She said the proposed use is not the use that the ZBA approved. The differences were highlighted by the Applicant as 19 multi-plexes and now it is 18 multi-plexes and 3 single-family residences. Even if the court did not overturn the ZBA's approval, the Applicant is still here with a different use.

Chairman Topliff said that the Board and the Applicant both agree that that issue needs to be addressed.

With respect to the equitable waivers, Ms. Manzelli said the Applicant has not identified the substantive subdivisions from which it seeks a waiver, has not addressed most of the required waiver standards or even articulated them. She also said that, with respect to some aspects of the waiver requests, the Applicant seems to be seeking waivers of dimensional requirements that are under the purview of the ZBA. In other words, the Planning Board does not have the jurisdiction to grant some aspects of the waivers that are being requested. She said, again, that the business of the ZBA is not complete.

Ms. Manzelli said she wanted to make a point that was not in her letter and now that she understands that the public hearing will be continued, she will put her point in writing for the Board's benefit.

She said that the minimum lot size of the three single-family homes has not been met. 60,000 sq. ft is required of each lot. The ZBA's approval granted sewer connection for 11 of the multi-family homes not for all the multi-family homes. When looking at the recent court decision regarding the disputes between Allenstown and Pembroke and the Wastewater Treatment Plant, the decision, in her opinion, says that Pembroke has no legal authority to allow any additional sewer hookups. She said that when the Board looks at a minimum lot size requirement for the three single-family lots, they have to apply the lot requirement for lots with Town water but not with Town sewer which is 60,000 sq. ft. or 1.377 acres. Ms. Manzelli said that none of the lots is 1.377 acres. It is possible that the Applicant could get a variance from the ZBA to have these undersized lots but they would have to make that request to the ZBA.

Ms. Manzelli referred to §143:68 - Aquifer Conservation District. She asked the Board to compare two sections, Section E which calls for a Special Use Permit. A Special Use

Permit is for a use permitted in the underlying district. She pointed out that it does not say whether it is permitted by right, by Special Exception or Variance. The ambiguity is cleared in Section F. Section F says Special Exception for uses which may be allowed by Special Exception. She said that she is not conceding that the use is allowed by Special Exception but her legal position at court is that this use requires a variance.

She said if the Board assumes it does require a Special Exception, then Section F applies and is very explicit. "For use which may be allowed by Special Exception in the underlying zoning district, the Zoning Board of Adjustment must first find in written findings of fact that all the . . . ." She then concluded that the work at the ZBA is not done. The Applicant has not requested an Aquifer Special Exception from the ZBA even though it is required to do so. The Applicant is also required to get a Special Use Permit under the Aquifer Protection Overlay District from the Planning Board for the portion of the project of open space development concept which is permitted by right in the district. She concluded that the Applicant needs both a Special Use Permit for the Open Space Development and a Special Exception Aquifer Protection District with respect to the Special Exception multi-family aspect of the use.

Ms. Bond said that, at the ZBA, 11 units were approved to be hooked up to sewer. With regard to her house on Micol Road, she said that on the back of her property she is not able to build because it is a natural waterway. She asked if this would redirect the water flow so that the neighbors would not have to worry about the rises in the spring.

Mr. Van de Poll said no. He said that it is a low discharge intermittent stream which was dry at the time of his survey but has flow during the wintertime. There will be no redirect of that flow from the wetland underneath Birdie Circle. He said that it would not add to it either.

Mr. Peloquin said they have a retention basin and other things to mitigate that. It is a requirement that any part of the development have zero impact, in terms of drainage. He said that is the goal every single time which must be proven by their numbers.

Gene Gauss (Fourth Range Road) asked, with regard to the ZBA Special Exception, if any of those meetings were put to public hearing.

Chairman Topliff said that typically the ZBA would have had a public hearing. The Planning Board and the ZBA are two separate bodies and it is important that the Boards keep their deliberations separate.

Mr. Gauss said, with regard to the traffic, the Board referred to national standards that may not apply to all tallies. He suggested that something other than the national standards be reviewed to take into consideration the impact of more traffic coming out of Whittemore Road onto Pembroke Street since the gate is now closed and is not granted a special exception at this time. He said that when the kids are in school, "it is a mess out there".

Chairman Topliff asked the Board members if they had questions.

Member Cruson said that she also had a concern about the traffic study having been done in August. She would like to see a study done when school is in session and done with traffic counts.

She also asked about the elevation typography of Parcel C.

Mr. Peloquin said that Sheet 3 shows the demarcation line of the 33.33 acre parcel and is relatively flat with steep banks down to the brook. It also has gently sloping areas and steep slopes as it goes back toward the gravel pit.

Member Cruson said that the sand would be good for percolation.

Mr. Peloquin agreed.

Member Cruson asked Mr. Van de Poll if the middle parcel (Parcel B) were used as a golf course, what impact would the chemicals or fertilizers have on the river.

Mr. MacCormack said they had already gone through that with the Town and they have a professional superintendent on site who is licensed to use fertilizers and fungicides on the golf course. He said that all the fertilizers and fungicides used are organic. They are all sprayed under strict guidelines and kept in strict guidelines and monitored by NHDES. Mr. MacCormack said that the course has been at its location since approximately 1960 and, to his knowledge, the course has had no impact on area water. He said that he is sure that it is monitored quite frequently.

Member Cruson said that even organic fertilizers can have significant impact on waterways.

Mr. MacCormack agreed but he reiterated that it is being done by a professional and only on low wind days. It is also done in a way that they use very small amounts which contacts and dries onto the leaf, therefore, there is a very small chance of any contamination occurring. If the Board requested, Mr. MacCormack said that he could bring the professionals in to go over the application of fertilizers, talk about what the rules and regulations are, and the licensing involved to do so.

Member Cruson said that she was aware of some of those regulations. She asked Mr. Van de Poll what the impact would be on the river if using fertilizers on the middle parcel. She asked if there was enough footage between that parcel and the river.

Mr. Van de Poll said that, not too long ago, he completed a study of approximately 864 water-related buffer impacts that came across the national and the median value of nitrate, which is the biggest concern along with total phosphorus reduction away from a site that has been fertilized. It is about a 90% reduction, about 67 feet away from a site that has been fertilized. Under those excessively drained soil conditions there is about 99% at 78 feet. He reiterated that it was the median value and it would vary by site, but this parcel has several hundred feet to deal with. Phosphorus goes out even more quickly than

nitrates. They are talking about total nitrates just in case there isn't a total nitrate release on the fertilization.

Mr. MacCormack reiterated that, if they were to do anything on that Parcel, they would have to come before the Planning Board.

Vice Chairman Seaworth asked if the subdivision was submitted under the open space regulations.

Mr. Peloquin said yes.

Vice Chairman Seaworth asked Ms. Verdile if, after the yield plan is done, and the more concentrated development takes place on a portion of the land, the Town regulations stipulate who owns the portion of the land that remains open space.

He asked if the parcel still meet the Town's open space regulations if the Applicant splits it into three properties with some becoming a golf course and some being given to the Town.

Ms. Verdile said that she believes it does. This is the first application she is aware of that comes in under the open space regulations. Her interpretation of it is that it is because it stays attached with the land and there is enough that stays with the development land to compensate for that.

Vice Chairman Seaworth said that if the land is given away to become part of a golf course or part of the conservation area, then it is no longer attached to the developed land.

Ms. Verdile said that it is her understanding that the portion that is being dedicated to conservation by itself is adequate to meet the open space requirements.

Vice Chairman Seaworth asked again if it was an allowable use and still counted as open space if ownership of some of the parcel were transferred to the Town and the applicant no longer had control of the land.

Ms. Verdile said yes.

Alternate Member Bourque said, with regard to open space, he thought 50% was to be open space.

Ms. Verdile said that she would review the regulations.

With regard to the ZBA's Notice of Decision, Alternate Member Bourque asked Ms. Verdile what the TRC said about Item 3 which says that a permanently locked gate will be installed and opened only to allow emergency access to Nadine.

Ms. Verdile said that the TRC was not in favor of the gate.

Vice Chairman Seaworth said that the Roads Committee is also not in favor of it.



Alternate Member Bourque asked if that decision was going to be reversed.

Ms. Verdile said that it was one of the issues that need to be addressed with the ZBA.

Ms. Verdile said she had clarifications for the Board. She said Ms. Manzelli mentioned a few things she wanted the Board to be aware of in the zoning ordinance. Referring to §143:68F which was copied for the Board in the staff report, it discusses: "Special Exceptions: For use which may be allowed by special exception in the underlying zoning district the Zoning Board of Adjustment must first find, in written findings of fact. . ."

Ms. Verdile said the Applicant has applied for a Special Use Permit for activity in the Aquifer Conservation District, so that is already taken care of through the ordinance, through E which says: "Special Use Permit: Any use permitted in the underlying district, except these which are expressly prohibited . . . shall be reviewed by the Planning Board, the Health Officer, Pembroke Water Works, and shall conform to the provisions of this section. Special use permits may be granted by the Planning Board subject to the following additional limitations: . . ."

Ms. Verdile emphasized that the applicant is doing that. A special use permit is not issued by the ZBA -- it is issued by the Planning Board. For clarification, Ms. Verdile said when the Applicant returns to the ZBA, for this "findings of fact", she said that it is imperative that the Planning Board be very specific with what they are talking about and what the applicant is applying for.

Ms. Verdile continued to say that Ms. Manzelli spoke about the Applicant's request for a waiver from the zoning ordinance regarding the open space development. It clearly says §143:77, B, 8 that "The Planning Board may authorize reductions from above standards, except for any requirement covered by state regulation, by up to 50% by special use permit, for the purpose of providing flexibility in the design of the subdivision to meet the objectives of this section or to support the creation or continuation of a traditional village-style development pattern."

She explained that normally an applicant asking for a dimensional reduction would be a variance to the ZBA. In this case, it does not apply. With regard to a waiver reduction in dimensional regulations, the Zoning Ordinance clearly gives that authority to the Planning Board in the open space development regulations.

Ms. Verdile said that although it can be confusing, she stressed that the Board be very specific about what terms and applications and permits are being used.

Warren Potroski (124 Terrie Drive) asked if the traffic study was evaluated with the gate opened or the gate closed given that the increase in traffic along Nadine Drive, Donna Drive and Bow Lane. He also asked what the impact would be once it became a thoroughfare for both neighborhoods to go in and out of North and South.

Chairman Topliff said that the ZBA made a condition that a gate be placed in that location, the Police and Fire Departments, and the Department of Public Works would prefer that it not be there for ease of access to those homes in case of emergency. This has yet to be played out with the ZBA.

Mr. Potroski asked what the traffic impact would be to the dead-end of the neighborhood.

Chairman Topliff said that Mr. Pernaw would be best to comment on that question.

Jennifer Murphy (423 Terrie Drive) asked if, at this point, the ZBA has said that there will be a gate and that it will stay closed.

Chairman Topliff said that yes, it was a condition of the ZBA's approval.

Ms. Murphy asked that, if at a later date the Applicant applied to have that gate opened, how the residents would be notified of any changes that are being proposed.

Chairman Topliff said it is not up to the Planning Board to tell the Applicant what to do relative to the ZBA, but if the Applicant decides to ask the ZBA to reconsider the closed gate, it would be noticed as a public hearing before the ZBA. The best way to keep on top of that would be to periodically go onto the Town's website and look for Planning Board and ZBA meeting agendas. By doing so, they could attend the public hearings to share concerns and learn about the process.

Ms. Verdile also said if anyone is a direct abutter to the site, they would be noticed by certified mail. Anyone not a direct abutter to the project site would have to call the Town or go onto the Town's website.

Beth Vacco (440 Nadine Drive) asked, given the possibility of it becoming a through-road, if the Applicant had the power to override the Planning Board's decision to have it be gated.

Chairman Topliff said the decisions rests solely with the ZBA because they approved the special exception with the condition that there be a gate and that the gate be locked. Therefore, that is a firm, solid, legal requirement. The only way that that can be changed is by the Applicant going back to the ZBA and requesting reconsideration. He said that, as things stand today, there will be a gate and it will be locked.

Mark Morency (268 Pembroke Street) encouraged the Planning Board to require an independent traffic study.

Chairman Topliff said that the Board would certainly consider it.

Nathalie Peterson (290 Belfry Court) said that her family owns a cottage at White Sands, on the back side of the sand pit. She asked what kind of traffic or construction equipment they could expect to come through the old sand pit to access the development. She also expressed concern that with more access, vandalism would increase.

Chairman Topliff said that those concerns are shared by the Conservation Commission and the Recreation Commission. He said that White Sands has been a double-edged sword. It is a wonderful recreational area for the Town but, in terms of trash and people dumping things there and making improper use of that space, there are many people who share her concerns but he did not think that anyone had a good answer to that problem.

Mr. MacCormack said the golf course has also been vandalized several times. They have made several police reports of people driving on the golf course, and doing donuts on the fairways. They assumed that it was kids that are down there and congregating on weekends. He said that one of things that he would like to bring up is that, for years, there has been a gate down there. He said that the golf course would prefer that the gate be locked and give keys to all the people who live there. He said that the golf course thinks that it would greatly slow down the problems for both the golf course and the cottages. Mr. MacCormack said that he did that for a long time but eventually someone cut the lock off on a regular basis. They would not allow us to keep the gate locked. He said that if Ms. Peterson would like to get together with some of the other people who own cottages they would like to see if they could work out something that would work for everyone's benefit.

Ms. Peterson said it is her feeling that the majority of the people are coming from the trail along the old railroad bed and the White Sands area and not from the golf course. She said that in the past the cottage owners would find the gate locked and because there was a new lock on it, no one would have a key. When the owners would go to the golf course to get a key, they would be told that the manager was not in and he was the only one who had keys.

Sandy Fuller (8 White Sands Road) said that she shares Ms. Peterson's concerns. She said that she cannot enjoy her property with the amount of dirt bikes riding in the sand pit and people shooting their guns in the sand pit. She said that it is not safe down there. She said that the cars are at the top of the sand pit and in the back of the sand pit. The problem is not at the gate.

Mr. MacCormack said that vandals are also going by way of the power lines.

Ms. Bond asked how close the additional properties being built are to Micol and Nadine Drive.

Mr. Peloquin said that it is 75 feet to the property line at its closest point.

Ms. Bond asked if the building is 75 feet from the property line.

Mr. Peloquin said yes.

Ms. Bond asked if she could receive a copy of the plans.

Chairman Topliff said that the full size plans are in the Planning office and Ms. Verdile would be happy to work with her.

Chris Ryerson asked if the comments from Allenstown were public record and if she could request copies.

Ms. Verdile said they are part of the file and Ms. Ryerson can get copies.

Selectmen's Rep. Goulet left the meeting at 8:25 p.m.

Chairman Topliff said Allenstown was concerned about sewer hookups. One of the challenges is the court's decision just came down about the sewer plant and capacity so no one has had a chance to analyze what the impact would have on this project. CNHRPC submitted comments, which he briefly read. They had to do with general practices and policies and did not express any particular concerns about the project. He advised Ms. Ryerson to check with Ms. Verdile who could make copies for her.

Mr. Peloquin said with regard to 19 four-plexes or 18 four-plexes and three single-family homes, the Applicant is willing to go back to 19 four-plexes if that is the best use of the land. They are willing to eliminate the three single-family homes and build a four-plex instead if it is an issue.

With regard to the gate, Mr. Peloquin said they have shown the gate on the plan because that is what was put on the table. When they went to the ZBA, they did not think that the ZBA had the jurisdiction to say to put a gate there but, nonetheless, it was a hot issue with the neighborhood and the Applicant was willing to do it. He said that they expressed to the ZBA that they are willing to put a gate there and they realize that they will have to go through a process with the Planning Board but are willing to do whatever is best for everybody. He admitted that, in some ways, it is better for the Applicant to have a gate.

The Board had no further comments. Chairman Topliff said that it was clear that they were not going to conclude the discussion tonight. He said that there is still a lot of work to be done. He thanked everyone for their participation. The next meeting will be Tuesday, December 12, 2017.

Mr. Peloquin invited the public and the Planning Board to attend the site walk on Saturday, Dec. 2, 2017 at 10:00 a.m. with the Conservation Commission. He asked that anyone interested meet at the golf course clubhouse parking lot. He said that the center line of the roadways will be flagged along with where the subdivision will be located.

Chairman Topliff closed the public hearing at 8:31 p.m. He reiterated that there will be another public hearing on December 12, 2017 at 7 p.m. Chairman Topliff also told the public to check the agendas on the Town's website.

Member Bourque asked if the ZBA had the authority to order bars and gates.

Ms. Verdile said that they really do not. In her opinion, the ZBA are treading into Planning Board territory and should not be making those kinds of conditions with their approval. She said that those types of discussions should be at the Planning Board.

Alternate Member Bourque suggested that in the application process, the applicant first go to TRC before going to the ZBA or the Planning Board.

Chairman Topliff suggested that discussions of procedural changes be discussed later in the meeting at the Board Member discussions.

Ms. Verdile said that the Applicant is working with Mike Vignale on engineering concerns.

Ms. Verdile said she has not prepared a complete staff report for this application yet because there are discussions about waivers and reductions that still have to be addressed.

Chairman Topliff said that someone made reference to the 11 sewer hookups that were available. Based on the sewer capacity court decision, he asked if anyone had gone back to the application.

Ms. Verdile said that she would ask Paulette Malo of the Sewer Commission to clarify.

A short discussion about the possible sewer capacity took place without conclusion.

Ms. Verdile said that Ms. Malo, Jim Boisvert the Director of Public Works and Fire Chief Paulsen were asked to standby in case the gate discussion became more prevalent.

Chairman Topliff said that, at this point, it is up to the Applicant to return to the ZBA for reconsideration.

Vice Chairman Seaworth said that if the Planning Board finds a gated town road unacceptable, but the ZBA required it, the Planning Board could not approve the application. It is the Roads Committee's opinion that it would have to be a private drive then. He said that from the Planning Board's standpoint, if the Applicant said that they did not want to hear from the ZBA anymore, the Planning Board would either have to approve it with the gate, because that is what the ZBA said that they had to have, or not approve it with the gate or the current configuration. He continued to say that it is up to the Applicant to make the decision that they either want to go back to the ZBA and change the decision or try to fit all the comments together and put something through that they think both fits their exception and would meet the Planning Board's approval.

Chairman Topliff said that it would be prudent for the Department of Public Works, and the Fire and Police Departments to send a letter to the ZBA Chairman and the Applicant expressing their opinion on the gate situation.

Member Young asked if it would help to have a letter from the Town Attorney saying that the ZBA should stay out of it.

Ms. Verdile said the ZBA is supposed to follow their specific criteria for a special exception. They can attach conditions of approval however; it is confusing because special

exceptions dance into some Planning Board areas where they talk about public safety and utilities, etc. She continued to say that the ZBA should stop putting conditions of approvals that are under the Planning Board's purview. The ZBA can put conditions of approvals if they want but it can get messy, confusing, and time-consuming.

Alternate Member Bourque asked if the Roads Committee could send a letter to the ZBA about barring a Town road.

Vice Chairman Seaworth said that the Roads Committee answers to the Planning Board and the Board of Selectmen. Also, it is not an application before the ZBA, so until the Applicant reapplies to the ZBA, there is no case to make a recommendation on.

**MOTION: ALTERNATE MEMBER BOURQUE MOVED TO CONTINUE CONSIDERATION OF PEMBROKE PINES APPLICATIONS TO THE DECEMBER 12, 2017 MEETING. SECONDED BY MEMBER CRUSON. UNANIMOUSLY APPROVED.**

Chairman Topliff asked Ms. Verdile to get the water photos from Mr. Watts to the applicant.

**New Business** – Public Hearing #1 for 2018 Zoning Amendment #5

### **Zoning Amendment #5**

Are you in favor of the adoption of Amendment #5 as proposed by the Planning Board to add a definition of an Accessory Dwelling Unit to the Town Zoning Ordinance as follows:

#### **§ 143-18 Definitions.**

**Accessory Dwelling Unit (ADU)- A residential living unit no larger than 750 square feet that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, includes provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies. Refer to 143-18.1.**

Ms. Verdile said, based on the language the Board approved at the last meeting, Zoning Amendment #5 will add the definition of the ADU to the Town Zoning Ordinance. This is the first public hearing.

**MOTION: ALTERNATE MEMBER BOURQUE MOVED TO ACCEPT THE PROPOSED LANGUAGE FOR ZONING AMENDMENT #5 AS PRESENTED AND SEND IT TO TOWN MEETING TO BE VOTED UPON ON MARCH 13, 2018 TOWN MEETING. SECONDED BY VICE CHAIRMAN SEAWORTH. UNANIMOUSLY APPROVED.**

### **Zoning amendment #6 -**

Chairman Topliff said Mr. Hodge asked that a few things be combined so that part of the Table of Uses would be clearer.

Ms. Verdile said this is not a public hearing for Zoning Amendment #6. She said if the Board is in agreement with the language, she will send it for its first public hearing on December 12, 2017.

She said this amendment addresses parking issues that Mr. Hodge ran into with Serendipity Day Spa and other commercial applications in the past. The regulations do not require parking for staff and employees and it was found that the parking space requirements were taken over by the staff. She said that Zoning Amendment #6 would alleviate a lot of issues.

**MOTION: VICE CHAIRMAN SEAWORTH MOVED TO ACCEPT THE PROPOSED LANGUAGE FOR ZONING AMENDMENT #6 AS PRESENTED AND HOLD THE FIRST PUBLIC HEARING ON DECEMBER 12, 2017. SECONDED BY ALTERNATE MEMBER BOURQUE. UNANIMOUSLY APPROVED.**

### **Zoning amendment #1 –**

Ms. Verdile said that language “A minimum of” was added to §143-18.1 E. New language was added: “I. Owner shall occupy one of the dwelling units and the Town of Pembroke shall require proof of owner occupancy.”

Member Cruson said that she was happy that the language was added.

Ms. Verdile said that she has not heard back from Town Counsel about how to handle enforcement of §143-18.1 I.

Vice Chairman Seaworth said he was concerned because generally when an ADU is created, it is because of an owner who wants an apartment for possibly a relative. The concept makes sense for the first owner. Once he sells the home, the new owner may not have wanted an ADU but it came with the building. The attached stipulation that any future owner must prove that they are living on the premises is problematic.

Member Cruson commented that the home becomes a duplex instead of a single family home.

Ms. Verdile said that technically an ADU does not make a single family home a two-family home. A two-family has to be constructed as a two-family from the ground up at the beginning of construction. This is a single family home with an ADU.

Member Cruson said if the owner does not have to live there, the Board is encouraging rental of the two units on that same individual property.

Alternate Member Bourque said the realtors are going to sell it as a duplex.

Ms. Verdile said one of the training sessions she and Mr. Hodge went to when the ADU law was coming out, indicated that the reason why it says the town **may** require owner occupancy was because of the college towns.

Member Young said his daughter runs a daycare in a residential neighborhood and it says that they can only have a daycare if the owner lives there. The issue is owner-occupied business requirements. He said there is only a business relationship if the owner lives there. He asked how it would be enforced.

Vice Chairman Seaworth said when a site plan allows a business to occupy a home as long as the owner lives there, what happens if the owner has to leave the property. In his opinion, that would revoke the site plan for the business, therefore the business could no longer be at that location.

Using that same concept, Vice Chairman Seaworth asked what would happen if the owner of an ADU was required to leave the property (perhaps he was in the military and was being transferred), would the Town revoke the ADU and make them demolish the ADU.

Ms. Verdile said she does not think that the Planning Board should get involved with whether the ADU is rented or not. She said that the Planning Board has more important things to concern themselves with.

Alternate Member Bourque said he does not agree with it because of the same reasons that Vice Chairman Seaworth mentioned. He said he does not agree that if a person buys a property with an ADU, the owner should be required to live there.

Member Cruson said the State endorsed the Accessory Dwelling Unit and, therefore, the Town must have them. She said that this must be an invasive problem in many towns.

Ms. Verdile said the Town may put in a provision for owner-occupancy.

Member Young said the Board is creating more of a problem than they are solving.

Member Edmonds said that he would support striking it.

Member Cruson asked if there are conditions on the ADU that would not be placed on an apartment in a house.

Chairman Topliff said that there must be a connecting door between the two units.

Member Cruson asked if there was anything else that would interfere with separate living.

Alternate Member Bourque asked if the ADU could have a full kitchen.

Ms. Verdile said yes. It is a separate dwelling unit.

The consensus of the Board was to strike §143-18.1 I.

**MOTION: ALTERNATE MEMBER BOURQUE MOVED TO ACCEPT THE PROPOSED LANGUAGE OF ZONING AMENDMENT #1 WITH THE EXCLUSION OF I AND TO**



**HOLD THE SECOND PUBLIC HEARING ON DECEMBER 12, 2017. SECONDED BY VICE CHAIRMAN SEAWORTH. UNANIMOUSLY APPROVED.**

**Minutes-** November 14, 2017 Meeting

**MOTION:** Vice Chairman Seaworth moved to accept the Meeting Minutes of November 14, 2017 as amended. Seconded by Member Edmonds. Approved with abstentions – Alternate Member Bourque, Members Cruson, Member Young.

**Miscellaneous**

**1. Correspondence-**

Ms. Verdile received a letter indicating that the NHDOT is planning a resurfacing project along U. S. Route 3 from the pavement joint at Skyview Terrace and northerly to a pavement joint South of Airport Road in Concord. A section of guardrail along Route 106 will also be replaced.

Chairman Topliff said that the letter belongs in the purview of the Roads Committee.

Vice Chairman Seaworth suggested giving the letter to David Jodoin.

**2. Committee Reports-**

Roads Committee: Vice Chairman Seaworth said that the Committee will hold an emergency meeting on December 4, 2017 because they are opening bids for East View Drive and Upper Beacon Street.

Board of Selectmen: Chairman Topliff reported that the said that Selectmen's Rep. Goulet reported that the Board of Selectmen were very busy with the municipal budget and trying to keeping everything level-funded as much as possible while managing the tax rate concerns.

Tri-Town Ambulance: Alternate Member Bourque said that the Committee reviewed new policies having to do with education money for EMTs, and paramedics and personnel policies regarding responsibilities.

Conservation Commission: Member Edmonds said that the Commission will attend the Pembroke Pines site walk on Saturday, December 2, 2017. He said that the Commission will issue a comment on the Pembroke Pines improvement after the site walk.

**3. Planner Items-** approve 2018 Planning Board meeting schedule.

Ms. Verdile said that the revised 2018 Planning Board schedule would be available at the next meeting.

**4. Board Member Items-**

Chairman Topliff said that it may be prudent to address the issue of the ZBA delving into Planning Board business before the Board consider changing TRC goals and responsibilities.

He said if the Board looks at the State RSA and the ZBA's responsibilities, there are five criteria. He said if the ZBA sticks to what they are statutorily and legally empowered to consider, he did not think that much of that would fall under the purview of TRC or be in conflict with TRC.

Vice Chairman Seaworth said he agreed with Chairman Topliff. He said that when the ZBA gets into things that are specified by the Planning Board, that is when the Applicant needs the TRC recommendations. If the overlap did not exist then, perhaps, the Applicant would not have to go to the TRC.

Chairman Topliff asked Ms. Verdile if she could talk with Mr. Jodoin about having a joint meeting with the ZBA after the first of the year.

Member Cruson agreed that it would be helpful.

Alternate Member Bourque said in order to avoid having the Applicant be reconsidered and changes made, he suggested that, before going to the ZBA or the Planning Board, the Applicant go to TRC. He said the concerns of the department heads should come out at the beginning of the process so that the applicant can handle them before going to the ZBA or the Planning Board. It would make the process easier.

If the applicant only had to go to the ZBA, Alternate Member Bourque asked if they should still go to TRC first. He said that if the applicant has to go before the Planning Board, then they definitely have to go to TRC first. He said that he was trying to eliminate mistakes that have to be corrected later.

Ms. Verdile said the ZBA deadlines are different from the Planning Board. To have TRC involved with the schedule may be difficult in comparison to only having the TRC involved with the Planning Board.

Alternate Member Bourque said if the department heads want changes on the plan and the ZBA has already met and given their approval, it could cause problems.

Ms. Verdile said the ZBA needs to stop adding conditions of approval that the Planning Board can take care of. They need to stay within their five criteria. They can attach conditions of approval but they must be germane to ZBA standards and not get into the Planning Board purview. She said adding the TRC to the ZBA would create legal issues because the ZBA is more quasi-judicial than the Planning Board. She continued to say when the ZBA is getting input from department heads on variances and special exceptions, they are getting into a legal issue such as too many people talking about the application before it is presented to the ZBA, which the Zoning Board is not suppose to do. Solicitation from department heads to the ZBA is not appropriate.

Member Young said there are two issues at hand: (1) What should the ZBA be approving or not approving; and (2) In no case should the applicant go to the ZBA before they go to the TRC. In his opinion, the applicant should not start with the ZBA or the Planning Board before going to the TRC. He said that it makes no sense for the application to already have conditions before coming before the TRC.

Chairman Topliff asked Ms. Verdile if she could ask Town Counsel to talk to the Planning Board.

Vice Chairman Seaworth said that the RSA is specific. The Planning Board cannot tell the applicant the order to which they can seek approval. He said that requiring them to go to TRC would be a subset of that. TRC is advisory to the Planning Board and to tell the applicant that they must schedule their ZBA appearance around the Planning Board requirements would fall into that same RSA prohibition. The Planning Board cannot force the applicant to either get their zoning variance first or go to the Planning Board first and then go to TRC. He said the State leaves that up in the air.

Alternate Member Bourque said the TRC is there to help the applicant so it is not just a prerequisite for the Planning Board; it is to help the applicant with the way that the other departments in Town see the application and the issues of what needs to be corrected. It is a guide for the applicant.

Ms. Verdile said TRC helps the Planning Board by stipulating what the department heads' concerns are. It is a very useful part of the process for the Planning Board, it is not intended nor designed to be a part of the ZBA process.

Chairman Topliff said the Board should wait to see what Town Counsel has to say about the topic.

Alternate Member Bourque asked if the Board was going to look at the noise ordinance again.

Chairman Topliff said that the noise ordinance is not a Planning Board matter. The Planning Board regulates things that have to do with developments and construction. They do not regulate the noise ordinance and are not empowered to do so.

Ms. Verdile said the noise ordinance is a not land use regulation and falls under the Board of Selectmen.

Member Young said there are towns that have dealt with concert noise and said that there must be some language that would be helpful.

Chairman Topliff told Member Young that he could research it if he wanted. He said he has yet to find a noise ordinance that is fair and enforceable and not full of subjective material.

Ms. Verdile said that the only other zoning amendment that the Board had was regarding notes. She said that the Board asked her to check with the Town Counsel about how the Board should legally notice them and how to take the notes and put corresponding notations with them. She was advised to notice it and try to find a way to make it shorter for the public hearing notice.

**MOTION: ALTERNATE MEMBER BOURQUE MOVED TO BRING ZONING AMENDMENT #7 TO PUBLIC HEARING ON DECEMBER 12, 2017. SECONDED BY VICE CHAIRMAN SEAWORTH. UNANIMOUSLY APPROVED.**

Chairman Topliff thanked the Board for conducting a very professional meeting and said that Ms. Verdile did an awesome job.

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

The meeting adjourned at 9:45 p.m.

Respectfully submitted,  
Jocelyn Carlucci, Recording Secretary