

**Pembroke Planning Board**  
**Meeting Minutes**  
**June 12, 2018**  
**(ADOPTED)**

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

**ALTERNATES PRESENT:** Robert Bourque, Kellie Dyjak; Timothy Goldthwaite

**EXCUSED:** Richard Bean; Selectman's Rep. Ann Bond

**STAFF PRESENT:** Carolyn Cronin, Town Planner; Jocelyn Carlucci, Recording Secretary; David Jodoin, Town Administrator

**GUEST:** Ammy Heiser, Conservation Commission Chair

Chairman Topliff called the meeting to order at 7:00 pm. He asked Alternate Member Dyjak to vote in place of Member Bean.

Chairman Topliff thanked the Board for their preparation for and participation at the May 22, 2018 meeting which dealt with multiple cases, some of which were months old and very detail-oriented.

**Old Business**

1. Open Space Development Ordinance - Section 143-78: Open Space Requirements with Ammy Heiser, Conservation Commission Chair

Chairman Topliff said that it had been 8 years since the Open Space Development Ordinance was adopted. The Board membership has since changed and he thought that the present Board may have additional thoughts or recommendations on how open space is used.

He welcomed Ms. Heiser of the Conservation Commission. He asked what type of uses the Conservation Commission would be comfortable with on conservation land. He wondered if the Commission: (1) would prefer leaving the land in its natural state; (2) would consider using conservation land for recreational uses; and (3) would consider any type of development on conservation land.

Ms. Heiser thanked the Board for including the Commission in the conversation. Conservation is a tricky subject because most people do not know how to define it. She said that some times people see an open field used for soccer and think that it qualifies as open space. Although it appears to be open space, it is not conservation open space. Usually it has been fertilized, habitats have been disrupted, and kids have been using it so it does not qualify for open space. She said that when the Commission was working on an open space plan with the NH Regional Planning Commission in 2010, they had a definition of open space that they used. One of the definitions given was:

Any and all farm land, forest land or unproductive lands, as defined by this section. It shall not include any property held by city, town or district in another city for purpose of water supply or flood control for which a payment is made in place of taxes in accordance.

Designated open space is reserved land that is permanently protected from development and remains in a natural condition or is managed according to an approved management plan for natural resource functions -- forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the Planning Board under this ordinance as part of a conservation subdivision.

Ms. Heiser said that passive recreation is when land is used for walking or hunting. The land is kept undisturbed and in its natural condition.

She said that the Commission has been asked to use conservation land for ball fields. She explained that if the Conservation Commission purchases land for conservation, the land cannot be used for recreation per the State regulations. If the Commission purchases land with conservation funds, it is not 100% protected but the Conservation Commission presumes that it will be protected for conservation. She said that this was reviewed with Attorney Tom Maslin who works for SPNHF and Five Rivers.

Chairman Topliff said that there have been conversations regarding the Poirier property (aka the old Conference Center at the top of Center Road). He asked if the Conservation Commission had a purchase and sales agreement in place. Ms. Heiser said they no longer had an agreement in place.

Ms. Heiser explained that Jim Coughlin, who is Mr. Poirier's partner, contacted her 6 or 7 years ago. He had hoped to create a large subdivision on the property but found that it was not possible because of the costs associated with opening Third Range Road. He then asked if the Conservation Commission would be interested in the property.

Ms. Heiser said that the Commission performed a site walk. She explained that their site walks consist of rating the property based on their Conservation Criteria Rating Sheet. The Criteria Sheet lists the 10 top things that the Commission is most interested in for conservation purposes -- for example, land on the river is their top criteria for protection along with wetlands, streams, and brooks. Also included are large unfragmented lands, if the land abuts another property or has frontage on a range road, or agricultural land which increases the rating. The highest rating that they have ever assessed was the Hillman Property because it had high agricultural and frontage along the river, and was in threat of being developed and the Commission felt that it was an important piece to protect.

She continued to explain that, with regard to the Poirier land, it has a challenging 99 acre configuration. There are houses, built in the 1960s or 1970s, which the seller still owns because they were built prior to zoning and cannot be subdivided and sold. The Commission has had a number of discussions with Mr. Coughlin and the price was approximately \$300,000 which the Commission could not afford.

Three or four years later, Mr. Coughlin approached the Commission and said he would like to discuss the Commission purchasing the land. At that time, the Commission performed another site walk. Ms. Heiser said that there is a lot of biodiversity on the land, and they liked that the land was in a different part of town so that people on Deerpath Lane or that part of Concord could have a conservation piece to use for trails or walk dogs.

Ms. Heiser contacted David Jodoin, Town Administrator because she knew that the Town was looking for recreation land, particularly ball fields. She thought that if the Town went into the agreement for the property with the intention of using it for recreation, then perhaps they could subdivide it and create a recreation area and the Conservation Commission could purchase the remainder of the land. Because of the placement of the existing duplex on the site, the fact that the Recreation Commission did not have the money to purchase a portion of the land, and the Center Road access could be problematic, the Conservation Commission felt that there were too many obstacles to make the project happen.

Chairman Topliff said that he did not understand that conservation funds could not be used to purchase land for recreational purposes.

Ms. Heiser said that people often mix conservation and recreation.

She then said that she spoke with Mr. Coughlin and told him that the purchase price was too high for the Commission. She also pointed out that the commission did not want to pay for an appraisal from conservation funds. The Commission could not pay more than what the property is appraised for. Mr. Coughlin then agreed to have it appraised. The appraisal came in at \$180,000 for 92.3 acres after he subdivided off the houses. She said that there were conditions pertaining to the road's maintenance which the Town did not agree with and the Conservation Commission could not afford to pay for the road.

Having access to conservation land is not necessarily a Commission requirement. Ms. Heiser said that the land has walking access for anyone living nearby. There could be parking along Third Range Road. She said that there is no need for a large parking lot since it is rare to have even three cars parked at one time on conservation land.

Mr. Coughlin is in the process of subdividing the property to exclude all of the houses so that there would be no land frontage on Center Road. The Town, then, would not be implicated in having to upgrade the road.

She said that the duplex has frontage on Center Road (a private road).

Vice Chairman Seaworth said that at one point the Roads Committee looked at the property because the Town was asked to take over the entire road. The road was not built to Town specifications.

For a limited amount of traffic, Ms. Heiser said the road would not be a problem but it is clear that the road could easily become a problem for the Town if many cars used it.

Ms. Heiser also said that there is a cell tower on the property which would need access.

The Conservation Commission feels that the land has good resource value but unless the owner can figure all these issues out and he wants to sell the back land and the Commission does not have to involve the Town in making promises of repairing the road, then they would consider the purchase.

Alternate Member Bourque asked if the Board could get a list of the acceptable uses for conservation land.

Ms. Heiser said that the Conservation Commission has a Public Land Use Policy for Town-Managed Conservation Land which lists what is allowed on conservation land. It was adopted at a 2007 public hearing.

She read aloud the generally allowed uses: hiking and walking, horseback riding, dog sledding, non-motorized bicycles, cross country skiing and snow shoeing, hunting, fishing and trapping in accordance with State laws, nature study, observation, data gathering, or other educational activities, use of motorized vehicles (wheelchairs and scooters) by persons with disabilities.

The possibly allowed uses are: laying out and/or construction and/or maintenance of any trail, erection of any structure including a bridge or information kiosk, snowmobile use only on designated signed trails that are posted for snowmobile use, fires if appropriate permits have been obtained by the fire department, camping. (Ms. Heiser said that when Police Chief Wayne Cheney was in office, he would camp out with the Boy Scouts.)

The prohibited uses are: littering, paint ball, defacing, destroying, travelling by any motorized vehicles, removal, filling, or disturbance of soil surface, possession and consumption of controlled substances or alcoholic beverages.

Vice Chairman Seaworth said that he has seen ATVs on conservation land. Ms. Heiser said that ATVs do not belong there.

He then said that the Board discussed the possibility that open space land might be more restrictive in use than conservation land. For example, the Board would not want anyone to turn either land into a snowmobile track. It is possible that the Board could use the Conservation Commission outline, but note that there are certain things that a developer would not get open space credit for.

Chairman Topliff said that open space is a Planning Board term and, therefore, has the opportunity to identify the potential uses.

Alternate Member Bourque pointed out that open space can be owned by the property owner vs. conservation land is owned by the Town. The Conservation Commission has the right to impose restrictions on the conservation land. The Planning Board would take a portion of those restrictions and decide what would be allowed on open space. The Board could restrict what is allowed on privately-owned open space such as Pembroke Pines.

Chairman Topliff said that the Pembroke Pines open space will be deeded to the Town. Vice Chairman Seaworth said that Pembroke Pines separated the land that would be

deeded to the Town and only designated the amount of open space needed to qualify as an Open Space Development.

Ms. Heiser said that she understood from the site walk that Pembroke Pines' intention was to use its open space land as a golf-oriented use or possibly to expand the clubhouse. It was not to be protected on a conservation standpoint.

Vice Chairman Seaworth said that because the Board did not feel that the use would be what the Town would allow for open space, Pembroke Pines cut off the land for a driving range and deeded it to the golf course. The open space land that Pembroke Pines designated in the final approved plan will remain in its natural state.

Ms. Heiser said that she was happy to hear that because it is not open space if it is a putting green. Chairman Topliff said that that was also the Boards' feeling.

When asked about the river frontage, Ms. Heiser said that the riverfront is part of the conservation land.

Member Cruson asked if conservation land could be used for swimming. Ms. Heiser said yes because it does not change the land function. She said that White Sands was the only conservation land in Town that could be used as a swimming area and there have been numerous problems because people were able to drive into the beach area and park. The Conservation Commission found that someone had dumped a truckload of shingles, old appliances and hundreds of tires which the Commission had to clean up. She also said that the old stone-arched bridge was being crushed by the traffic so the Commission had a meeting in 2011-2012 with anyone who wanted to weigh-in on the subject. Public Service owned the right-of-way which was the access that people were traveling on to get to White Sands Beach. In the end, Public Service agreed to gate it, which noticeably improved the area.

Ms. Heiser pointed out that White Sands was not purchased with conservation funds. There was a small discussion on reversing the designation from conservation land to a recreation use. Ms. Heiser said that the only way that White Sands would work as a recreation use is if there were porta potties and trash pickup. She said that the Police were very much in favor of closing the road because they were constantly taking people out of White Sands.

Ms. Heiser said that the Commission's newest member works for the Society for the Protection of New Hampshire Forests. That member said that ATVs are not legally allowed on range roads because they are public highways and ATVs are off-road vehicles. Unless the Board of Selectmen have specifically stated that ATVs are allowed to use range roads, they technically are not, according to NH Fish and Game.

In speaking with Mike Tardiff at the Master Plan Transportation Subcommittee meeting, Ms. Heiser said that she asked Mr. Tardiff what measures could be taken to protect the range roads while not restricting landowners from accessing their property. He said that it was a statewide problem and said he would look into it.

Ms. Heiser said that game cameras could be installed in some of the problematic range road locations. She also said that Mr. Tardiff asked her to mark the high-abuse areas on a map in order to create a strategy to remedy the situations.

Alternate Member Bourque said that the game cameras would also help catch the people who are dumping trash along the range roads.

Chairman Topliff thanked Ms. Heiser for coming to discuss conservation land. Ms. Heiser said that she was very happy to work with the Board.

The Board then discussed recreational uses not allowed on conservation land but that may be considered when rewriting the open space ordinance. Alternate Member Bourque suggested skateboard parks, playgrounds, ball fields, or soccer fields.

Member Cruson wondered how the Town would feel about taking on the liability if the Planning Board is encouraging certain recreational areas.

Mr. Jodoin said that the Police would want some input. Skate parks generate traffic which could be a liability. He said that, at the present time, there is a lack of playing fields for baseball, soccer, and lacrosse. Lacrosse tends to damage fields because of the equipment that is used such as cleats.

Alternate Member Bourque asked if it would create problems if the Board asked a developer to create a recreational field which would then bring a lot of people for scheduled games.

Chairman Topliff agreed that it could be an unfair burden on the property owner. He thought that there would have to be an established policy for maintaining and managing the land. The responsibility would have to lie within the Recreation Commission.

Vice Chairman Seaworth said that Pembroke Pines indicated that they would place the open space into current use. Current use land can be open to the public or posted. There is no indication what Pembroke Pines will do with their land with regard to access.

He then asked if the Board would be more lenient with uses if the developer noted on the plan that the open space was a publicly accessible site.

Member Cruson said that her understanding of the way that the Recreation Commission presently functions is through one person who then directs what will occur. It is also very under-funded in terms of providing recreational activities for kids. If ball fields were offered, she questioned whether the Recreation Commission could handle the additional responsibilities with the current funding.

Chairman Topliff said that the entire concept would probably have to go to Town Meeting.

Alternate Member Bourque said that he agreed with Vice Chairman Seaworth -- to give developers the option to make recreation area for the Town from their open space.

Chairman Topliff suggested inviting Rose of the Recreation Commission to introduce the concept since it will inevitably be the responsibility of the Recreation Commission. If she is in favor, the Planning Board could make a presentation to the Board of Selectmen. The Board agreed.

## 2. Electronic Packets

Member Bourque said that the ZBA preferred working with paper copies. The reasons given were computer access and printing all the material from home.

Mr. Jodoin said that the Board of Selectmen have not discussed the electronic packets too much. He presently sends out 3 electronic packets and prints 2 packets. He said that it is a matter of making things user-friendly.

At this point, Mr. Jodoin said that the Board of Selectmen is looking into the TV systems and screens for the meeting room. He has asked Dana Pendergast to look into it because the Town received an annual grant from Comcast.

Mr. Jodoin said that Town Hall has storage problems so they are also looking into adding more to the online tax maps such as copies of the building, plumbing, and mechanical permits, Zoning Board permits, and assessment information associated with individual properties.

If any grant funds remain, they will look into acquiring tablets for the Board of Selectmen. Although the Selectmen packets are thick, the Planning Board packets are the largest and most expensive in relation to postage, volume of papers, etc.

Member Cruson said that the maps, on paper, are important because of the nature of what is on them and the size.

Mr. Jodoin said that the map can be loaded on the file but the maps could still be photocopied. The information would be on a cloud-based system.

Chairman Topliff asked the Planning Board what their thoughts were with regard to electronic packets. He stated that he was open to the packets with the following prerequisites: that whatever equipment is necessary is provided by the Town; that the Board of Selectmen adopt the format, work with it for a while, and find it helpful and useful.

Vice Chairman Seaworth, Members Cruson, Edmonds, Alternate Members Bourque, Dyjak and Goldthwaite said that they were open to electronic packets as long as a paper map is also available.

Member Young preferred paper copies.

## 3. Change of Use Procedure and Site Plan Threshold

Ms. Cronin said that she wanted to discuss what the Board likes to see for a Major or Minor Site Plan and a Change of Use. She and Mr. Pendergast have discussed what should go to Site Plan vs. Change of Use. In the Site Plan regulations there are

definitions for Major and Minor Site Plans. In Zoning, there is discussion of TRC and their jurisdiction over minor site plans. The Zoning and Site Plan regulations conflict.

She asked if the Board had ever seen minor site plans and, if so, in what instances. Chairman Topliff said that minor site plans are very common. Currently the Planning Board has no official policy in place that allows someone to get approval for a Change of Use unless it comes before the Planning Board which requires a Planning Board application. Determination of whether it is a Major or Minor Site Plan is solely determined by their related definitions. With regard to the downtown area, there typically is no change to a Main Street building other than the use (from a restaurant to a second-hand shop) and in those cases, the Planner took care of it. It did not come before the Board. He recalled that the last downtown business that came to the Board was Oddball Brewery because the building was previously an apartment building and the new owners wanted to put in a micro brewery and wanted to offer the public the opportunity to do tastings.

Chairman Topliff said that, as it stands, it is either a Minor or Major Site Plan or a Change of Use. The TRC is only advisory. They have no decision-making authority and do not consider applications in any way, shape or form. It was hoped that TRC's function would change slightly in order to satisfy the downtown and to have someone other than the Planning Department look at it – in particular, Police and Fire Departments. After discussions with Town Counsel and Central NH Regional Planning Commission, the Board learned that the State RSA does not allow TRC to have that authority.

Ms. Cronin said that the Zoning Ordinance section says that it authorizes TRC to approve minor site plans. It also says that TRC must comply with RSA 676:4 which is the Planning Board Procedure Regulations.

Vice Chairman Seaworth explained that the conflict was because it was a two-step process. In order to delegate anything, the Planning Board needed to be granted authority by the Town. The Board went to Town Meeting with a Zoning amendment to get the authority to delegate if they felt it was appropriate. The amendment was granted. The written procedure was not completed and never came to fruition. Chairman Topliff agreed. Ms. Cronin said that she would discuss this explanation with Mr. Pendergast to clear up the confusion.

Chairman Topliff said that the Board has been trying to come up with a less onerous process than a Minor Site Plan, but have not been successful.

Ms. Cronin said that she found a Village Approval form. Chairman Topliff said that those are usually ruled upon by the Planning Department and do not come before the Board. Ms. Cronin said that if she received any Village Approval forms, she would bring it to the Board to see if the use is in agreement with past practices.

## **New Business**

### **4. Special Use Permit**

Ms. Cronin said that she wanted to review how the Special Use Permits and Waiver Requests are handled. She also wanted to discuss how they could be improved.



She said that the way the Zoning reads regarding the Special Use Permits such as for the Aquifer Conservation and the Wetlands, it centers on the use. The way that it has been interpreted in the past is that the use does not have to be in that district, just on a property where that district is. For example, the Silver Hills Development scale house required a Wetlands Special Use Permit. The same issue has come forward on a new application scheduled for the July meeting. Ms. Cronin asked if the Board wanted to require a Special Use Permit if the use was on any part of the parcel or if it was only when the use is in the district itself regardless of the rest of the property.

Vice Chairman Seaworth said that he agreed with the principal that it seems ridiculous to discuss an aquifer protection when they are not near the aquifer or impacting it. The special case, which they have had in the past, is where it was a Development of Regional Impact and Concord was involved. In their assessment, it impacted their wellhead district. In the applicant's assessment, the land's slope was the other way so it did not impact the wellhead district. His concern is where there can be a legitimate difference of opinion. Some scientists will say that the water flow would impact the aquifer and some would not agree. In that case, the Board has preferred to have the applicant come before the Board so that the Board could decide rather than finding out later that the Board ignored a use that really does impact a wetland, wellhead, or aquifer. Vice Chairman Seaworth said that that was his caution on the subject.

Alternate Member Bourque said that there are other cases where there is an application for a building that is a change in use and nothing is happening outside the building, but because it is in an overlay district, a Special Use Permit is required. The individual would then have to spend an extra two or three hundred dollars for a Special Use Permit that they really do not need for doing interior work inside the building.

Member Cruson said that the vast majority of the Special Use Permits are related to the aquifer. Even if the activity was inside the building, depending on the use, it still could affect the aquifer. Alternate Member Bourque did not agree.

Alternate Member Goldthwaite said that if the overlay district is on part of a property and the project is somewhere else, and the Board decides that, because of the reason that it could possibly affect the overlay district, would it also affect the abutting properties. Where does the Board draw the line?

Member Cruson said that the aquifer district is very large and goes beyond what has direct impact that we know of on the aquifer.

Alternate Member Bourque said that he does not believe that changing the interior of a building and not doing anything outside the building is going to affect the aquifer, wetlands, an architectural district or other overlay district.

Vice Chairman Seaworth said that typically the Board would require the applicant to apply for the permit and then the Board would grant it. Ms. Cronin said that she now understands that the Board leans on the side of caution.

Alternate Member Bourque argued that there are fees involved in order to be granted a permit for something that they do not need. He said that it made no sense to require the

Special Use Permit for Wetlands from Silver Hills for the scale house that was so far removed from the district just because a portion of the property was in that district.

Member Cruson asked about the concept of vehicle overhauls inside a building and substances that could be leached.

Chairman Topliff said that the Board considers each one on a case-by-case basis.

Alternate Member Bourque said that a case such as Pace Academy, does not need a Special Use Permit but they had to apply for one.

Member Cruson asked if there was a way to channel those types of businesses that could have more of a substantial impact on the environment into Special Use Permits.

Alternate Member Bourque said that the phrase in the description that triggers everything is "any use". He said that if "any use" is connected to the overlay district, a special use permit has to be applied for as opposed to any activity or work in the overlay district.

Chairman Topliff read aloud a section of the Aquifer Conservation District §143-68:

The purpose of these regulations is, in the interest of public health, safety, and general welfare, to protect, preserve, and maintain existing and potential groundwater supply and groundwater recharge areas within known aquifers from adverse development, land use practices, or depletion.

The prohibited uses of the Aquifer Conservation District:

- (1) Disposal of solid waste;
- (2) Subsurface storage of petroleum and refined petroleum products and chemicals;
- (3) Disposal of liquid or leachable wastes
- (4) Industrial uses which discharge contact type process waters on site.
- (5) Outdoor unenclosed or uncovered storage of road salt and salt/sand mixtures;
- (6) Dumping of snow containing de-icing chemicals if it is brought from offsite;
- (7) Commercial animal feedlots;
- (8) Excavation of sand or gravel except where the land owner can demonstrate through hydrogeological studies or otherwise that there will be no adverse effects on the aquifer;
- (9) Disposal, processing, storage, or recycling of hazardous waste, as defined in NH RSA 147-A:2, VII;
- (10) Automotive service or repair shops;
- (11) Junk and salvage yards;
- (12) Storage of hazardous waste for resale or distribution;
- (13) Commercial and Industrial vehicle maintenance.

He then referred to the ordinance, in general, that refers to the Special Use Permits, not limited to aquifer:

§ 143-140. The purpose and intent of a special use permit is to allow certain uses that are not normally permitted under conventional zoning provisions . . .

Specifically authorized special uses appear in Sections 143-44 Agricultural Retail Outlets, 143-53 Driveways, 143-68 Aquifer Conservation (AC) District, 143-72 Wetland Protection (WP) District, Article X Open Space Subdivision, and by any other Section when specified in the Zoning Ordinance. A special use (permit) shall be approved if the application is found to be in compliance with the Standards of Review in Section 143-144. Further conditions may be placed on the special use permit . . .

B. No structure, building or land requiring a special use permit shall be used, constructed, altered or expanded unless a special use permit specifically required by this article has been granted by the Planning Board.

C. Any use that was lawfully established prior to the adoption, extension or application of this article and is now permitted by this article subject to a special use permit may continue in the same manner and to the same extent as conducted prior to said adoption or extension of this article. A special use permit shall be secured from the Planning Board before the use or structure or building in which said use is conducted may be altered, added to, enlarged, expanded or moved from one location to another on the lot on which said use is located.

Chairman Topliff said that the Aquifer Conservation District language obligates the Planning Board to determine that the proposed use is not, in any way, going to compromise the aquifer. He asked how the Board would know that unless the applicant comes before the Board and tells them what they intend to do with the land. The section does not say "on a certain portion of the land" and does not say "on a portion of the land 200 feet away from the designated aquifer conservation". It is broad and anywhere on the land.

As the regulations stand now, Chairman Topliff said that if the applicant had a use somewhere on a 1,000 acre parcel, he would be required to have a Special Use Permit.

He said that, as the ordinance is written today, he does not think that the zoning ordinance allows the Planning Board any leeway in terms of whether they require a Special Use Permit or not as long as any portion of the land encompasses a special use protected area.

Alternate Member Bourque asked if the Board would be interested in rewriting it so that some kind of leniency could be allowed.

Chairman Topliff said potentially but the Board would have to figure out some way to have an opportunity to review the use in the absence of the Special Use Permit or an application. The Board would still have to be obligated to find some way to determine whether or not we felt that the use could potentially compromise, in this case, the aquifer.

Vice Chairman Seaworth said that he wondered if it would be possible to waive the fee under certain circumstances. For example, if the Planning Department found that there is nothing to prove, the applicant could fill out the paperwork and the fees could be waived if there is no Town effort involved, particularly because they are usually accompanying a major site plan application which have many fees associated with the process.

Alternate Member Bourque said that it would be less complicated than rewriting the ordinance. If the applicant still applied for the Special Use Permit and it was granted, it would become part of the overall package and, whether the fee is waived or not, it would be a good deal. If it is waived, the Board would still have the Special Use Permit. If the fee had to be paid, the Board would still have the Special Use Permit. He continued to say that, either way the Special Use Permit would still become part of the application.

The Board agreed.

Chairman Topliff said that he did not think that filling out the Special Use Permit application was onerous on the applicant. The Board would have to figure out where the fees are specified and how they would be handled.

Member Cruson said that if it was too difficult to eliminate the fee, perhaps reducing it would be appropriate which would cover a little office work.

Chairman Topliff said that he felt an obligation to specifically protect the Aquifer Conservation District, and appreciated the opportunity to review each application, particularly in that District.

Ms. Cronin said that the discussion was helpful.

With regard to the Wetlands Special Use Permit, Ms. Cronin said that she reviewed an application which involves a subdivision consisting of single-family houses. The land is presently undeveloped. The applicant does not plan on impacting the wetlands or the required 20 ft. buffer from the zoning. They are not asking to fill wetlands. They would maintain it on the property and the house would be located somewhere else on the same lot.

Ms. Cronin said that her opinion was that the applicant should file for a Wetlands Special Use Permit. In her opinion, it cannot be said that there is no impact because they are regrading and loaming which is impacting the entire property.

Her question was: Is it the District or the property? The applicant's argument is that, technically, they are not impacting the district because they are not impacting the wetlands. She asked if the Board, in that instance, would like the applicant to file for a Wetlands Special Use Permit if wetlands are proposed on a new residential lot.

Chairman Topliff said that he is a big proponent of being consistent and the Board has always required them in the past.

Vice Chairman Seaworth said that the typical Wetlands Special Use Permit is not the Board granting them dredge and fill permission, the Board is looking to make sure that the applicant is not encroaching into the 20 foot buffer with their trucks and that, when they are done, they delineate the wetlands so when sold, the new owner knows the area that they are not suppose to touch. He said that what the Board typically has done with the Wetlands Special Use Permit, is exactly for what the situation that the applicant is presenting to the Board.

Alternate Member Bourque said that, in the past, the applicant would have to place medallions, at their expense, at the 20-foot mark of the wetlands. He said that there have been properties that the Board approved and the wetland medallions were driven over.

Ms. Cronin thanked the Board for their guidance.

### **Waivers and N/A Items**

Ms. Cronin asked to speak about waiver request paperwork and procedures and if there was a way to streamline the process.

Presently there are two different applications. For example, if filing for a subdivision, there is a subdivision checklist which consists of all the items required in the subdivision regulations. The applicant must check everything that they are showing on the plan to demonstrate that they have met the regulations. It is 5-6 pages long.

There is also a Checklist Waiver Request form which is the exact same checklist. All the items that the applicant did not check on the original list, they would check on this list and ask for waivers. She felt that it was redundant.

She suggested combining the two checklists into one and have the applicant check what they are showing (or write "W" or "waiver") with the paperwork and show justification.

The other item that people struggle with is the "N/A" items. Ms. Cronin said that the checklists are designed to encompass every possible project so that there are not a hundred different application forms. Many times there are items that will have nothing to do with the plan such as open space. In other towns, Ms. Cronin said that they would write "N/A" on the checklist because it is agreed that it does not meet the type of regulations that they are going by.

In Pembroke, Ms. Cronin said that the Town asks for waivers for the "N/A" items which involve additional paperwork. Since other communities do not require the additional paperwork, she spends time calling the applicant for it. She would like to eliminate asking for additional paperwork and get in step with other communities.

She respectfully requested that the two checklists be combined into one and a system be devised with a "check" to show that it is on the plan or a "W" if they are requesting a waiver along with the justification paperwork. If it is a non-applicable item, allow the applicant to write "N/A" and trust that it does not go with what the applicant is filing. She said that it would cut down on the back-and-forth with applicants in order to get all the appropriate paperwork and application forms.

She said that she was hoping that it would cut down on the packet paperwork and make it easier for the applicants.

Alternate Member Bourque said that, in the past, the Board had applications come in with their engineers who would just say that they wanted everything waived. The Board would grant it. Finally someone asked for justification for the waivers and the applicant said that they just did not want to fill out the paperwork. That was the beginning of asking the

applicants to justify their waiver requests. He said that he does not mind streamlining the list but he felt that the applicant should answer all the questions. The Planner or the Board should be the one to determine what is not applicable to the application and not the applicant by merely writing "N/A".

Ms. Cronin said that waiver justification is required in the RSAs and defined as hardship or that it still meets the intent and spirit of the regulations. In the Pembroke Sand and Gravel checklist requirements, it was required to show the entire topography and contours of the entire site. That was a hardship because the project area is very small in comparison to the entire lot size. Their compromise was to ask for a waiver from all topography but would show topography in the project area. That would be the type of thing that would be considered justifiable.

With regard to the "N/A" items, Ms. Cronin said that it is not the applicant that decides what is not applicable. It has to do with the regulations. For example, in the Pembroke Sand and Gravel Major Site Plan application, they were not building anything residential but still had to ask for a waiver from multi-family housing because it is on the checklist. It is on the checklist because it shows up on the Site Plan Regulations. That is an example of when "N/A" would be appropriate. "N/A" would not be an acceptable way to handle the contour lines.

Ms. Cronin said that she would review the application and make the N/A determination along with checking on the waivers and their justifications. Her duties would not change.

Alternate Member Bourque said that the list of waivers has increased over the years. The Board has never removed any; only added to the list in order to try to create an all-encompassing list for major and minor site plans.

Ms. Cronin said that the application checklist has to cover everything that could possibly come before the Board.

Member Edmonds said that periodically there would be confusion on the checklists because "N/A" or a checkmark would be written on items. It was not always clear what the applicant was trying to achieve. He said he would not mind streamlining the process in order to make it more comfortable for Ms. Cronin, as long as she could explain to the Board what the applicant was trying to convey.

Vice Chairman Seaworth said that he agreed with combining the two checklists. If done right, the "N/A" would help the Board but he said it would be very important to make sure that "N/A" would not be placed on anything that was a "gray area". There have been times when the applicant and the Planner have found something to be inapplicable but the Board questioned why.

He continued to say that presently, the Board approves the waivers before going into public session so the Board cannot ask the applicant to justify a waiver at the meeting. If the applicant had not completed all the paperwork, requested a waiver and then justified it, the Board could not vote. It would be a larger disservice to the applicant if the Planner told the applicant that something was not applicable and the Board did not agree and turned away the application rather than to ask them to fill out an extra part of a form.

Chairman Topliff said that having “N/A” without any explanation could become a problem, especially in the gray areas. It would fall to the Planner to determine whether or not it would be appropriate to not provide an explanation. There is the risk that it could cost the applicant another month in the process because the Board did not have an “N/A” explanation.

Ms. Cronin said that those things would be sorted out at a TRC meeting. The subdivision application that she is presently working on is requiring a number of conversations back and forth with the applicant in order to prepare the application for the TRC. She asked that the Board keep her suggestions in mind as new applications come up so that additional conversations on streamlining can be had.

Chairman Topliff said that one option could be to not require a written explanation on N/A items on a trial basis – for a few months, as long as the Planner and TRC find that there are no gray areas. The applicant would have to be aware that the Board may see things differently.

Vice Chairman Seaworth said that if Pembroke can achieve its purposes while being consistent with the rest of the State that would be the ultimate goal. When the Planner tried to trim down the checklist, it was found that every one of the items had a purpose under some circumstance and, at that time, it seemed that what was being done was the best way to do it.

Ms. Cronin said that she agreed that the checklist items correspond with a regulation in any given application at any given time/circumstance.

**Minutes:** May 22, 2018

**MOTION: VICE CHAIRMAN SEAWORTH MOVED TO APPROVE THE MAY 22, 2018 MEETING MINUTES AS AMENDED. SECONDED BY MEMBER CRUSON. UNANIMOUSLY APPROVED.**

Chairman Topliff turned the meeting over to Vice Chairman Seaworth.

## **Miscellaneous**

### **Correspondence**

Ms. Cronin received a dredge and fill application from NHDOT for culverts on I-393 which will affect an unnamed stream in Pembroke near Rymes Oil.

She also received a Ground Water Monitoring Report for Continental Paving dated April 2017. Chemical levels were normal.

### **Committee Reports**

Roads Committee: Vice Chairman Seaworth was in attendance with Alternate Member Goldthwaite. They discussed the Pembroke Loop Road because there were issues with frost heaves. The Town is waiting for the “as-builts”.

They also discussed the Union Street project which was done with encumbered money. The price went over projections. Discussions were heated because there was at least one board member who recalled that when the project was approved, paving bids were put out for both Union Street and the parking lot in front of 4 Union Street. There were also drainage issues. The Roads Committee did not want to pay for the parking lot work but it made sense to put it as one bid since more work would be less expensive. It was pointed out that the Board of Selectmen make the decisions.

They also talked about the East View and East Meadow projects. NHDES required larger pipes and drains for the culverts and drainage system than what the Town had existing and what was on the plans. Part of NHDES’ justification was the MS-4, which is when in a densely populated area, the municipality is required to get a discharge permit for stormwater. Pembroke now has a portion of it in the covered area. East View and East Meadow are not in the area but NHDES said that for the future, Pembroke should size everything for the eventual permit process. The Town had to put in the larger pipes and drains and encountered a lot more ledge than anticipated. The result was that the project went over budget which may impact the Beacon Hill project.

The Roads Committee reviewed a plan for Mr. Berube’s 7<sup>th</sup> Range Road project. He is extending the road and will be taking it to the Board of Selectmen for acceptance by the Town.

Mr. Jodoin said that Mr. Berube received approval from the Board of Selectmen to continue the road and will later have to return to the Board in order to get them to accept the additional road as a Town road.

The Road Committee briefly discussed the inability to require Mr. Berube to bring the range road up to town specifications all the way to the end of his property line. Legal counsel said that the requirement is not enforceable for a single lot. The regulations would be appropriate if there were multiple houses being built in a subdivision.

Vice Chairman Seaworth said that the Roads Committee reviewed the paving bids and did not make a recommendation on them because they wanted to wait until the fall to see if there was any remaining money to encumber for next year.

Center Road also came before the Roads Committee. The developer asked the Town to take over the road. The Roads Committee was very much against that because even though the road had recently been paved, it was not done to Town standards. The Committee suggested that if the Conservation Commission needed access to the land, that they access it from Third Range Road.

TRC: Member Young said that TRC met with the architect on the National Guard building on Route 106 for a non-binding consideration. It will come before the Planning Board. There will be no firearms training on site.



Member Edmonds said that the facility that the National Guard is applying for will have the public use component. The present building is a very secure facility and is only for use by Home Land Security, State Police and the military.

Master Plan: Alternate Member Dyjak said that the subcommittees are working on their different chapters.

### **Other Business**

Board Member Items: Alternate Member Bourque said that he would like the Board to work on the definition of §143-8 Commercial Greenhouse and Agricultural Retail Outlet. He asked that it be placed on the work session agenda. The Zoning Board was very confused about the way that they are written. There are no distinguishing items that realistically separate the two.

**MOTION:** Alternate Member Bourque moved to adjourn the meeting. Seconded by Member Young. Unanimously approved.

The meeting was adjourned at 9:17 p.m.

Respectfully submitted,  
Jocelyn Carlucci, Recording Secretary