

Meeting Minutes
Approved April 14, 2020
February 25, 2020

MEMBERS PRESENT: Brian Seaworth, Chairman; Robert Bourque, Vice Chairman; Clint Hanson; Dan Crean; Ann Bond, Selectman's Rep., Kathy Cruson

ALTERNATE MEMBERS PRESENT:

EXCUSED: Ian Blakeney, Holli Germain

STAFF PRESENT: Susan Gifford, Recording Secretary; Carolyn Cronin, Planner; David Jodoin, Town Administrator

Present: Laura Spector-Morgan, Town Legal Counsel, Mitchell Municipal Group

Chairman Seaworth called the meeting to order at 6:30 pm. Member Cruson recused herself for Major Subdivision Application #19-03.

Old Business

1. **Major Subdivision Application #19-03, Jon Rokeh, Rokeh Consulting, LLC, acting as Applicant on behalf of San-Ken Homes, Inc., owner of Tax Map 262, Lots 43 & 45 located at 373 Fourth Range Road in the Rural/Agricultural-Residential (R3) Zone and the Wetlands Protection (WP) District.**

The Applicant proposes a 56-lot Open Space Development with individual lots to be served by on-site septic and wells. 95 acres of open space are proposed.

- **Special Use Permit Application SUP-WP #19-310.**

The Applicant requests a Special Use Permit in accordance with Article 143-72.D., Wetlands Protection District, for construction of roadway resulting in impacts to the wetlands.

- **Special Use Permit Application SUP-OSD #19-311.**

The Applicant requests a Special Use Permit in accordance with Article X, Open Space Development, for Reduction in Specification Standards.

Planner Cronin provided an update on the application. The following items need to be addressed:

1. Collaborative discussion on superelevation, sidewalks and curbing waivers taking into consideration the Objectives of the Open Space Development ordinance (143-74).
2. Collaborative discussion on plan design (layout and lots) taking into consideration the Objectives of the Open Space Development ordinance (143-74).
3. Discuss whether any other types of studies are warranted.
4. Discuss open space issues: management plan; stewardship fee.
5. Applicant response to all comments and recommendations from Mark West's environmental review.
6. Firefighting water supply documentation (pond specs, cistern information). *In progress.*
7. Temporary construction easement on Mrazik property. *In progress.*
8. Draft deed to Town for future realignment of 4th Range Road and Pembroke Hill Road into "T" intersection ("T" intersection plan shown on sheet 17 revised on October 22, 2019 and received on November 24, 2019.) *In progress.*

OSD SPECIAL USE PERMIT ITEMS for Planning Board Consideration

1. To not provide superelevation of the roadway as required by the Subdivision Regulations 205-41 Design Standards, Section E.(3).
2. To not provide sidewalks on one side of the roadway within 1 mile of a school, in areas where required, as required by the Subdivision Regulations 205-41 Design Standards, Section E.(19).(a).
3. To not provide curbing within 1 mile of a school, in areas where required, as required by the Subdivision Regulations 205-41 Design Standards, Section E.(20).
4. To provide reduced setbacks, as required by Zoning 143-77. B(1).

Chairman Seaworth opened the continued public hearing at 6:35 p.m. If this application is not completed tonight, it will not be renoticed. Persons with interest in the case need to look at the agendas posted on the Town website to see the next hearing date. Chairman Seaworth noted that the review clock expires February 28, 2020

Jon Rokeh, Rokeh Consulting, LLC, passed out a report dated February 19, 2020 from Fieldstone Land Consultants, PLLC, 206 Elm Street, Milford NH. A large part of the packet is US Army Corp of Engineers, New England District, Highway Methodology Workbook Supplement outlining the methodology used in the report.

Chris Guida, Fieldstone Land Consultants, LLC responded to all comments and recommendations brought up in the Mark West wetlands review. Grasslands are a huge function of bird habitat. The fields have been hayed regularly since before we owned the land. Chris Guida pulled up the full maps and the proposed development is at the edge of the highest ranked habitat land in New Hampshire. Two acres is a fraction of the contiguous area. Based on having received a wetlands permit, Jon Rokeh stated that we do not feel that another Mark West report is needed. We have addressed most environmental issues.

Jon Rokeh reported that applicant has received a NHDES Wetlands Permit. A minor revision will result in an amended final permit. There is some rework on the DES Alteration of Terrain permit, with final permit coming soon. Jon Rokeh noted that all of the information the town is looking at (subdivision application, hydrology report, Mark West report, Chris Guida report, Conservation Commission minutes) has been provided to the State with both permit applications. Jon Rokeh stated that the application would like to be done with the waivers tonight so they can finalize the State permits. Jon Rokeh met with Planner Cronin and she provided a draft open space deed document that is being used as a template by the applicant's lawyer. The Whittemore Conservation area is directly adjacent to the proposed donated conservation land.

Jon Rokeh stated we are working on the firefighting plan by having two pull-off areas by cisterns and dry hydrants, shown by red lines and blue lines. A few houses are not within 1,000 feet and for these houses it may be more cost effective to sprinkler them. Regarding a temporary construction easement, we are proposing to replace the existing 8-inch clay pipe with larger pipe for the whole length. Applicant has requested permission to go on the land to perform a survey. The Planning Board does not need the survey for conditional

approval. An easement is provided at the corner of the parcel, providing right of way if the town should decide to open 4th Range Road as a town road.

Jon Rokeh stated we want to get through some of the waivers tonight. We have addressed everything the town has brought up to date. We would like to work out any conditions of approval the Planning Board may consider.

Chris Guida, Fieldstone Land Consultants PLLC, gave a brief overview of his February 19, 2020 report. Instead of the NH method, he used the US Army Corp of Engineer Highway Method. This focuses on the Wildlife Action Plan, a plan by State personnel that incorporates humans and animals, and describes how to manage development and open space. The best open space is contiguous with a large tract of land, which has a synergistic effect. The habitat has been put together by GIS. The pond is 12 feet deep and shallow on the rim for wetland transitional area. All of the green on the map displayed is forested wetlands and uplands. Chris Guida spoke with Mark West to ensure his report covered what Mark was looking for.

Chairman Seaworth asked if it was appropriate to send the updated comments back to the town consultant. Planner Cronin clarified that the town contracted with Mark West for a site visit, a written report, and one presentation of that report. The work that the town contracted for is complete. The town would need to enter into a new contract with Mark West for additional work.

Chairman Seaworth asked if Planning Board members want additional participation by Mark West. Selectmen's Rep Bond stated that the Planning Board members received a lot of information close to meeting time, and she has not had time to form an objective opinion. Vice Chairman Bourque asked what points need clarification. I do not have anything. Chris Guida stated that his report focused on Mark West's report. Mark and I spoke and agreed verbally that individual functions and value were addressed. The bulk of the report is the addendum. Chairman Seaworth stated the consensus of the Board was that no further report from Mark West will be needed.

Jon Rokeh addressed the applicant's requests for waivers: superelevation, sidewalks, and curbing. There is a decent amount of curbing in the project already related to wetlands. Jon Rokeh pointed out three specific sections across wetlands with curbing. Planner Cronin clarified that in the R3 zoning district, sidewalks and curbing are required within one mile of a school on one side of the road. Only a small portion of the development meets those criteria. Planner Cronin stated that sidewalk and curbing requirements are tied to the roadway design standards and can be granted relief through the Special Use Permit conditions.

Chairman Seaworth stated that the Board have typically required curbing for roads in housing developments. Some Cluster Subdivision language is still in the Subdivision Regulations. Planner Cronin noted the language likely references the old Cluster Subdivision ordinance, as it has not been updated since the newer Open Space Development was adopted. The Planning Board might want to review that language in the future for possible amendment. Chairman Seaworth stated the cluster development language was left in from a previous version. The Town of Pembroke is currently using

Open Space Development. It is true that the town does not have an extensive network of sidewalks. Requirement for sidewalks in subdivisions is a way to grow the sidewalk network, even if the sidewalk does not connect with outside sidewalk. This proposed development departs from the usual subdivision because it is high density in a rural area.

Jon Rokeh stated that this is a much denser development than having one-acre lots, but the houses are generally 150 feet apart. Kenny Lehtonen, San Ken Homes, stated that all of the subdivision roads are interior, dead end roads. Anyone speeding would likely be a neighbor and the residents would address it among themselves. Jon Rokeh stated that there are 4-foot shoulders on each side of the roads. Selectmen's Rep Bond asked if DPW equipment would be able to plow sidewalks in the subdivision. Planner Cronin noted that DPW had commented that getting equipment into the development to maintain sidewalks would be a challenge.

Chairman Seaworth stated that Planning Board practice has been that curbing is required when sidewalks are required. Vice Chairman Bourque asked if granite or asphalt curbing is planned in the development. Chairman Seaworth noted that precast concrete is specified in the plan. Vice Chairman Bourque stated that asphalt curbing does not hold up to plowing. Chris Guida stated that NHDES recommends Cape Cod berm asphalt curbing for turtle crossing and environmental reasons. Jon Rokeh confirmed Cape Cod berm sloping from 2 inches up to 6-7 inches is planned for the development. Vice Chairman Bourque stated that asphalt curbing is very easy to break with a plow. Chairman Seaworth stated that once curbing is installed, ongoing maintenance is an issue for the town. Vice Chairman Bourque stated that wherever curbing is used, it should be granite. Attorney Laura Spector-Morgan, Town Counsel, stated that plan specifications are a separate issue from whether curbing is required. Selectmen's Rep Bond asked if curbing was addressed in the Fieldstone report. Chris Guida said that NH Fish and Game always require gentle slope curbing. If the Planning Board chooses granite, there may be a need for discussion with NHDES and a significant issue with NH Fish and Game. Attorney Laura Spector-Morgan, Town Counsel, suggested that the Board could ask the applicant to provide additional curbing information at the next meeting.

Member Crean asked if these development roads should be town roads at all. Why should the town be responsible for their maintenance? Attorney Laura-Spector Morgan stated that the Planning Board is not the town body that accepts roads. Chairman Seaworth stated that on the town side, there are pros and cons to town roads versus private roads. Chairman Seaworth noted that in any case, the Planning Board needs to require town specifications be followed for the roads. He agreed acceptance of roads goes before a different board.

Selectmen's Rep Bond asked if the wording should be "a request for a partial waiver" for curbing. Chairman Seaworth stated a waiver does not forbid the developer from using curbing as necessary. Attorney Laura Spector-Morgan, Town Counsel, advised that the waiver request would be for curbing required in a particular zone, or within a mile of a school. Chairman Seaworth stated that the Planning Board would take a vote after the public hearing. He anticipates support for granting the curbing waiver.

Chairman Seaworth changed the topic to collaborative discussion of layout and lots. Open space does not provide hard numbers. The intent of the open space ordinance is that, in exchange for keeping 50% of land set aside as open space, the Board will work with the developer on the layout and any issues with lot sizing or layout. Previously a member of the applicant's team indicated that they were not inclined to change the number of lots or layout. Kenny Lehtonen, San Ken Homes, stated that the developer has committed over 90 acres to open space and is using 70 acres for development. We could have used more land to make larger lots, but we put our best foot forward on the design. We do not intend to change the layout.

Vice Chairman Bourque stated this plan shows too many houses on this property. The homes are on top of each other and the site is overbuilt. I see a need to reduce the number of lots, or combine lots. Member Hanson stated that having two cul de sacs is a serious safety issue. Is there an alternative way to complete the second loop without a cul de sac? Kenny Lehtonen, San Ken Homes, stated we followed the town's regulations. The length of the cul de sac meets town regulations. Changing the cul de sac would require another wetland crossing. Jon Rokeh stated that a change would increase road and mitigation costs. Kenny Lehtonen, San Ken Homes, stated the factor used to calculate the number of homes was the formula in the town regulations.

Chairman Seaworth stated that some towns build incentives into their ordinance to encourage open space. The open space ordinance was not written that way in Pembroke. It was written as a collaborative process to make sure setbacks and other dimensions could be relaxed to create the best design for both the town and the developer. Kenny Lehtonen, San Ken Homes, stated that a conventional subdivision on this property was allowed 58-59 lots. Our proposed open space development has 56 lots. We have already reduced the number of lots. Jon Rokeh stated that every lot in the proposed open space development has minimum 40,000 square feet. The average square feet of all lots is 47,000-50,000 square feet.

Chairman Seaworth noted that the road in the lower cul de sac ends in three narrow frontage lots with three driveways. The applicant could go to the ZBA for relief from length of road instead of creating three parallel driveways. The design meets town regulations to the letter, but maybe not the intent. Several other feature of the plan bother me.

Kenny Lehtonen, San Ken Homes, stated there are wetlands to the left of those lots. We worked around the wetlands with 200-300 foot driveways. My own driveway is 600 feet. Jon Rokeh noted that the 30,000-gallon cisterns on sheet 13 provide protection to those houses. We worked with the Fire Department on firefighting coverage. Planner Cronin noted that Dana Pendergast, Code Enforcement Officer, will review for water supply ordinance compliance. Applicant is still actively working on the roadway lineage from the pond. Vice Chairman Bourque asked how the existing pond on the north end is replenished. Chris Guida said the pond is supplied by intercepting wetlands and intercepting groundwater, which keep it full and deep all year long. Vice Chairman Bourque stated my concern is the level of water dropping to an unacceptable level. Kenny Lehtonen, San Ken Homes, stated the pond has four times the area and twice the depth needed. Chris Guida stated that a shallow pond with freezing ice is not acceptable to the Fire Department.

Chairman Seaworth stated that the individual contiguous buildable areas on the lot are quite small. The Pembroke Zoning Ordinance seeks to limit density, particularly on lots with septic and well. How is stormwater management assured? If we were to have a discussion, I would be interested in talking about these lots with low contiguous buildable area.

Jon Rokeh stated that the calculation of contiguous buildable area using the existing 20-foot wetland buffer setback to wetlands in place is significantly higher. Jon Rokeh stated that the area average of the open space lots is almost the same as the conventional lot size required in the zone. Chairman Seaworth stated his concern is not the average, but the specific lots that are sized at half the average. Jon Rokeh agreed that five or six lots are lower than 28,000 square feet. Some are 18,000 square feet due to easements and detention ponds.

Chairman Seaworth changed the topic to any additional studies the Planning Board feels are necessary. No studies were requested by the board. Chairman Seaworth turned to discussion of management of open space. Selectmen's Rep Bond asked how much land is proposed as a donation to Pembroke Conservation Commission. Jon Rokeh stated that 95 acres is targeted for the Conservation Commission. Chairman Seaworth asked if the land would be held privately or not.

Ayn Whytemare-Donovan, member of Conservation Commission, stated that the Conservation Commission has not focused on land management as much as their concern about the number of houses being built on the property, and how they affect the wetlands. Open space is better than houses on wetlands. The Conservation Commission is the de facto ears and eyes of the rural part of town. Development completely changes the nature of the area. As a commission, we love tracts of land larger than 10 acres. Ayn Whytemare-Donovan stated that the Beck property adjacent to the Donna Drive area has given the Conservation Commission so many problems. Because the protected land is adjacent to abutters, residents say I ought to be able to expand my yard. You cannot fill in the wetlands. Why not, they ask. It is public land. The Conservation Commission is concerned with the density of this proposal and how the development will affect the wetlands.

Chairman Seaworth thanked Ayn Whytemare-Donovan very much for her comments.

Paula Heath, 4th Range Road, stated that she is concerned about contamination of septic and wells with lots having just 18,000 square feet contiguous building area. A study from one of the applicant's consultants reported it takes 8 inches of rainwater to replenish the wells. The leach fields will also absorb some of this water. I am concerned about rock salt used on the roads getting into the water. My sister works for NH Wetlands Bureau. My back yard is wetland.

Member Crean has concerns that the proposal violates the concept of open space. It cuts off 95 acres of land and builds on the remainder. The developer takes no responsibility to provide amenities for future homeowners. The taxable value of the donated land is lost. David Jodoin, Town Administrator, noted that usually in condominium style development,

open space is apportioned to all the owners. Member Crean noted that if the donated land were put in current use, taxes would likely be \$200 per year. Kenny Lehtonen, San Ken Homes, agreed that land held in current use generates minimal taxes. However, potential timber harvest of oak trees in the 95-acre area could bring \$40,000 to \$50,000 to the town. By select cutting, timber harvest revenue is possible. Selectmen's Rep Bond asked if doing anything is allowed in conservation area. Ayn Whytemare-Donovan stated that Chichester has done logging to create paths. She noted that in her 15 years of serving, the Pembroke Conservation Commission has chosen not to do logging.

Chairman Seaworth stated that there has not been an accounting of what is best to maintain the land. The developers ended up with two uses, donating good land the Conservation Commission may be interested in and keeping the other land for development. I am inclined to listen to Pembroke Conservation Commission recommendations. This is a work in progress. The firefighting plan is still being worked on. The board has not reviewed a summary of the construction easement. The applicant has discussed deeding an area around the road to the town to reconfigure the intersection. This is the end of the list of discussion items for tonight.

Member Crean stated that zero amenities are provided; no recreation, no benches, and no hiking trail. In other developments in town, the Homeowners Association maintains the roads and provides amenities. I do not see any benefit for these future homeowners. Jon Rokeh stated that the prior conventional subdivision application included upgrading 4th Range Road. With open space development, the trails in the range roads remain as is in perpetuity. Kenny Lehtonen, San Ken Homes, stated that he would like to push back on the homeowner association suggestion. No homeowner association is planned. These property owners would be taxpayers. They have a right to snow plowing and other town services, or they should get reduced taxes.

Selectmen's Rep Bond asked how we ensure that the wetlands donated to the town are not filled in. Jon Rokeh stated that the wetlands will be marked with medallions and there will be specific language in the deed of each house. Chairman Seaworth stated that Planner Cronin called NHDES. No further wetland disturbance will be allowed in this area. Future individual owners may not apply to NHDES for a wetland crossing. The question is how do we enforce that? How is it regulated?

Chris Guida stated it is a policing and enforcement issue. Disturbing wetland is a criminal offense. Future owners will be notified by deed language. Selectmen's Rep Bond asked how many medallions would be placed along the wetland. The Planning Board can require medallions placed every 100 feet or every 50 feet as a condition.

Ayn Whytemare-Donovan stated that the Conservation Commission is required to walk every conservation property line once a year. We are volunteers. Ayn Whytemare said that no matter how many medallions are hung to establish survey lines, a lot of damage to the wetland can occur in one year. In prior year walks, we have found trees that displayed wetland medallions were felled. Chairman Seaworth stated that proposed houses would be abutting conservation land. Some wetlands are on individual property. How do we ensure wetland on private land are protected? Selectmen's Rep Bond stated language will

be in the deed. Kenny Lehtonen, San Ken Homes, stated protection of wetland falls under code enforcement. Beyond the medallion markers, there is wetland buffer.

Chairman Seaworth stated that he expects that this case will be continued to another meeting. The time limit for Planning Board review expires at the end of the week. Kenny Lehtonen, San Ken Homes, stated he is inclined to submit a written request for an extension of one meeting. Mr. Lehtonen gave Chairman Seaworth a written request for an extension of the review period to March 31, 2020. Jon Rokeh stated that at the next meeting, we will be asking for a Planning Board vote. If there are any items the Planning Board wants, we are happy to provide anything requested.

Vice Chairman Bourque asked what kind of reduced setbacks the applicant is seeking. Jon Rokeh responded half of the required setbacks. Planner Cronin stated that would be a condition of the Special Use Permit. Jon Rokeh noted that the cluster concept proposed half the area, in return for half the setbacks. Jon Rokeh noted that our calculation of buildable area uses the current 20-foot buffer from wetlands, not the cluster 50 feet from wetlands or the proposed 50-foot wetland buffer being voted on at town meeting.

Chairman Seaworth stated that calculations need to show average buildable area for the entire project using setbacks as required. Easements figure into the calculation. Selectmen's Rep Bond asked if 30 foot setbacks are reduced to 15 feet. That is correct. Selectmen's Rep Bond asked how much area needs to be shown for septic. State subdivision regulations require a 4,000 square foot area be shown on the plan for septic. Chairman Seaworth said that septic must be shown within setbacks, but actual well radii does not have to be within setbacks. Ken Lehtonen said the actual size of a leach field is 400-500 square feet, 1/10 the size required to be shown on the plan. Chairman Seaworth asked what the restrictions on well radii are. Lot 11 and 12 lines overlap. Chris Guida said wells are subject to 75 feet setback from leach fields. A State of NH well release form needs to be filed for each lot. Before 1989 there was no regulation and a well could effectively take land from an abutter. Overlapping well radii are figured into non developable land.

Selectmen's Rep Bond noted that the State of NH setback of well from septic as stated on the NH Well Release form is 10 feet. Jon Rokeh stated that the Town of Pembroke is more restrictive. Member Cruson asked how enviro leach fields function. Chris Guida said that according to State and town regulations, leach fields must be two and a half feet above the water table. Member Cruson stated I assume fill is used to get to two and a half feet. That is correct. Chris Guida stated that the average water table in NH is 24-30 inches.

Chairman Seaworth opened the questions to general comments.

Brian Mrazik, Pembroke Hill Road, stated:

- There is no justification for use of open space in this development on prime agricultural land, where vistas are located.
- There is no justification for the density proposed and will cause future problems.
- The objectives of the open space ordinance are not met.
- One ingress and egress make access difficult.

- Pembroke Hill Road is narrow with a sharp curve and cannot support this size subdivision.

Kathy Cruson, Pembroke Hill Road, stated I agree with Brian Mrazik.

- This proposal has nothing to do with open space.
- The wetland is wet all year long and makes it difficult to site leach fields.
- Water problems are already occurring on 4th Range Road.
- The proposal calls for overbuilding.
- Sidewalks are needed on the cul de sac. Children are bused to school from age 5 to 8th grade.
- The traffic study is not realistic. Most locations have 2-5 vehicles per household.
- I see up to 37 vehicles in queue at the signal intersection.
- Contiguous buildable areas are not adequate.
- The developer should provide some recreation, benches or walking trails.

Kenny Lehtonen, San Ken Homes, stated I was personally involved with 32 test pits dug 5-7 feet deep on the property. Only one had water. We were driving 6,000-pound vehicles on the property. I want to clarify that the property is not wet 24/7.

Vice Chairman Bourque stated this application has way too many homes. The number of buildable lots needs to be reduced.

At 8:40 p.m., Chairman Seaworth closed the public hearing on Major Subdivision Application #19-03 for tonight.

Planner Cronin noted that waivers from the subdivision regulations is codified in the Special Use Permit. She offered to draft the waivers into the Open Space Development Special Use Permit conditions. Chairman Seaworth stated his concern was the applicant is trying to pull in information for their final application to the State.

MOTION: Vice Chairman Bourque moved to approve Special Use Permit Application SUP-OSD #19-311 in accordance with Article X, Open Space Development, for Reduction in Specification Standards until Major Subdivision Plan #19-03 has received final approval, at which time the Special Use Permit becomes final for as long as the plan is approved. If at any time, the plan is revoked or final approval is not received, the Special Use Permit becomes invalid, with the following conditions:

1. To not provide superelevation of the roadway as required by the Subdivision Regulations 205-41 Design Standards, Section E.(3).
2. To not provide sidewalks on one side of the roadway within 1 mile of a school, in areas where required, as required by the Subdivision Regulations 205-41 Design Standards, Section E.(19).(a).
3. To not provide curbing within 1 mile of a school, in areas where required, as required by the Subdivision Regulations 205-41 Design Standards, Section E.(20).
4. To provide reduced setbacks, as required by Zoning 143-77. B(1).

Seconded by Member Hanson.

Discussion: Board members discussed whether they could vote on the individual conditions of the Special Use Permit. Planner Cronin noted that typically the Planning

Board would vote on a Special Use Permit with all its associated conditions together at once. Chairman Seaworth noted we may need a different motion. I set up expectations that these items were waivers. We do not have the language of the Special Use Permit before us. Planner Cronin suggested waiting to vote on the Special Use Permit.

Vice Chairman Bourque rescinded his motion. Member Hanson rescinded his second.

NEW MOTION: Vice Chairman Bourque moved that among the conditions of approval for Special Use Permit Application SUP-OSD #19-311 in accordance with Article X, Open Space Development, for Reduction in Specification Standards, will be:

1. To not provide superelevation of the roadway as required by the Subdivision Regulations 205-41 Design Standards, Section E.(3).
2. To not provide sidewalks on one side of the roadway within 1 mile of a school, in areas where required, as required by the Subdivision Regulations 205-41 Design Standards, Section E.(19).(a).
3. To not provide curbing within 1 mile of a school, in areas where required, as required by the Subdivision Regulations 205-41 Design Standards, Section E.(20).
4. To provide reduced setbacks, as required by Zoning 143-77. B(1).

Seconded by Member Hanson.

Discussion: Vice Chairman Bourque asked for clarification that the motion is for “among the conditions of approval for Special Use Permit Application SUP-OSD #19-311 NOT for the PERMIT APPROVAL.” Town Counsel stated that is correct. Member Hanson stated I have difficulty with items #2 and #3. Planner Cronin clarified the intent is that the developer must provide sidewalks only on the westernmost side of the property, which is within one mile of a school, and is not required to install sidewalks outside of the project area.

VOTE: B. Seaworth – YES C. Hanson – YES A. Bond - NO
 D. Crean – NO R. Bourque – YES

MOTION TO APPROVE THAT AMONG THE CONDITIONS, ITEMS 1 THROUGH 4 WOULD BE CONDITIONS FOR SPECIAL USE PERMIT APPLICATION SUP-OSD #19-311 PASSED ON A 3-2 VOTE.

MOTION: Member Crean moved to approve the request for time extension for plan review to March 31, 2020 at the request of the applicant. Seconded by Member Hanson.

VOTE: B. Seaworth – Y C. Hanson – Y A. Bond - Y
 D. Crean – Y R. Bourque – Y

MOTION TO APPROVE THE REQUEST FOR TIME EXTENSION FOR PLAN REVIEW TO MARCH 31, 2020 AT THE REQUEST OF THE APPLICANT PASSED ON A 5-0 VOTE.

MOTION: Vice Chairman Bourque moved to continue the public hearing on Major Subdivision Application #19-03 to March 24, 2020 as requested by the applicant. Seconded by Member Hanson.

VOTE: B. Seaworth – Y A. Bond – Y C. Hanson – Y
 D. Crean – Y R. Bourque – Y

MOTION TO CONTINUE PUBLIC HEARING TO MARCH 24, 2020 PASSED ON A 5-0 VOTE.

Chairman Seaworth said that the public hearing would not be renoticed. The public is advised to call the Planning Department or check the Town website for any updates or schedule changes.

Member Cruson returned to the Planning Board.

Chairman Seaworth called a five-minute recess to clear the room of departing attendees.

New Business

2. Minor Site Plan Application #20-101, Ayn Whytemare-Donovan, Found Well Farm, owner of Tax Map 565, Lot 100 located at 439 Pembroke Street in the Medium Density Residential (R1) Zone and the Architectural Design (AD) District.

The Applicant proposes a seasonal Agricultural Retail Outlet (Farm Stand) with a 120 SF sales shed.

Planner Cronin provided an overview of the proposed Minor Site Plan. The applicant proposes to operate an Agricultural Retail Outlet (Farm Stand), which would be accessory to the single-family home. The applicant proposes to be open to the public seasonally and conduct sales from a proposed 10 ft. by 12 ft. sales shed. The property is located in the Medium Density Residential (R1) Zone and the Architectural Design (AD) overlay districts. The use is permitted in the R1 District.

The Applicant has requested waivers from checklist items E. Outdoor lighting and M. List of chemicals.

A TRC meeting was held on February 11, 2020. Issues were raised about the flowerbeds potentially being located in the setback. There were no other concerns. The Conservation Commission reviewed the application and had no concerns. Engineer review was not warranted.

Vice Chairman Bourque would like to review the MSDS sheets even though the applicant does not meet the limits of one gallon or more on site or 5 gallons yearly. Vice Chairman Bourque would like to grant the waiver of Part A, Item E but not Part A, Item M List of Chemicals. He would like to continue on to accept the application as complete and discuss the chemicals used in public hearing.

Planner Cronin noted that the Board's precedence is to not accept "N/A Not Applicable" as a checklist response. Therefore, an applicant needs to request a waiver if not providing the item.

MOTION: Vice Chairman Bourque moved to grant the waiver request for checklist item: Part A, Item E, Outdoor Lighting as requested by the applicant. Seconded by Member Crean.

VOTE: B. Seaworth – Y C. Hanson – Y A. Bond - Y
D. Crean – Y K. Cruson – Y R. Bourque – Y

MOTION TO GRANT THE WAIVER REQUEST AS LISTED PASSED ON A 6-0 VOTE.

MOTION: Vice Chairman Bourque moved to accept the application as complete.
Seconded by Selectmen's Rep Bond.

VOTE: B. Seaworth – Y C. Hanson – Y A. Bond - Y
D. Crean – Y K. Cruson – Y R. Bourque – Y

MOTION TO ACCEPT THE APPLICATION AS COMPLETE PASSED ON A 6-0 VOTE.

Chairman Seaworth opened the public hearing at 9:12 p.m. Chairman Seaworth said that if the application is not completed tonight, the public hearing would not be renoticed. The public is advised to call the Planning Department or check the Town website for any updates or schedule changes.

Ayn Whytemare-Donovan thanked all present for coming to the Planning Board hearing on her proposal. Ayn stated her intent is to move a business she has been operating at 730 Borough Road since 2007 to her home at 439 Pembroke Street. She indicated she was a self-declared plant addict and needed an agricultural retail outlet to share her many unique plants. The plants sold are 100% grown on her own land. The solar panels on her property block any view of her nursery except for Natalie and Chris Glisson at 205 Center Hill Road. Ayn has put up a fence along property line with 205 Center Road for the turkeys.

Ayn Whytemare-Donovan stated that Dana Pendergast determined that boards, planks and wood chips constitute a structure and she will move the planting beds outside of the 15-foot setback. She sells native plants that spend 6 weeks at Borough Road. She is open approximately 45 days from April 1 to November 1. She proposes a 120 square foot sales shed. One parking space is required for each 300 square feet of retail space. She will have four parking spaces. The house has 11 parking spaces in all. She uses limited chemicals, as she has been Certified Organic since 2008. She has to have the MSDS sheets to submit her application to the Department of Agriculture each year. Can she just provide a copy of her annual pesticide application?

Member Bourque noted that we only need the MSDS sheet for each chemical used. They can be printed online. As the time is past 9:00 pm the Planning Board needs to make a decision about continuing the meeting.

MOTION: Vice Chairman Bourque moved to continue the Planning Board meeting beyond 9:00 pm to complete this application tonight. Seconded by Member Hanson.

VOTE: B. Seaworth – Y C. Hanson – Y A. Bond - Y
D. Crean – Y K. Cruson – Y R. Bourque – Y

MOTION TO CONTINUE THE PLANNING BOARD MEETING PASSED ON A 6-0 VOTE.

Member Cruson asked Ayn her thoughts on the steep, narrow driveway. Ayn Whytemare-Donovan stated that she had the driveway resurfaced and its pitch is less than Center Hill Road. She will not be open with any snow on the ground. There is fencing for the sheep on the front lawn and sandy soil to pull a vehicle over. The most people I ever had stop at

one time is four, on Labor Day, once. Member Cruson asked about the logistics of one car at the bottom and one at the top of the driveway. Ayn stated she had 25 guests for Christmas Eve and there was no problem with parking. There is a significant portion of lawn to park on at the middle of the driveway.

Chairman Seaworth asked how the difference between a home based business and a farm stand are distinguished. Planner Cronin stated that the Home Occupation provisions are different from the Farm Stand provisions, and this would qualify as a Farm Stand and not have to meet the Home Occupation requirements. If there are any changes to the property, the applicant would discuss their plan with the Code Enforcement Officer to determine if it was in improvement to the home or to the business.

Dick Armstrong, 438 Pembroke Street, stated that Ayn had the driveway ripped up and changed the angle to a long gradual driveway. Dick stated he parked up on the north side and there is plenty of parking at the top. I have lived in Pembroke for 35 years. I was the meat manager at Shaw's. I have cut up deer in my barn for 25 years, approximately 300 per season from September 1 through December every year. I have had no problems with undue traffic. Ayn does a great job keeping her property up, and her proposed use will not disturb my view. Dick Armstrong stated that he previously lived at 438 Pembroke Street while raising children and keeping farm animals including a horse. The barn was determined to be too close to the house and I had to get rid of the horse. This farm stand is a plus for Pembroke.

Debbie Hawkins, 440 Pembroke Street, has no concerns about the farm stand.

Roger Bergeron, 440 Pembroke Street, noted that there is a spot 25-30 feet up the driveway where 2-3 vehicles can pull completely off the driveway.

Natalie Glisson, 205 Center Hill Road, stated myself and my husband Chris are not opposed to or for the proposal. We are a young, working couple who look forward to our weekend down time for yard work, reading, peace, and quiet. Our concern would be added noise. We request a vegetative barrier, no light intrusion into our home, and that hours of operation be consistent.

Ayn Whytemare-Donovan stated I would like to be open three weekends per year. I have an email list of 700 people. They never come to the site in large numbers. I typically open 12 pm to 6 pm on weekdays and 9 am to 6 pm on weekends. Member Bourque suggested that a condition be 3rd week of April to first week of June and one weekend in the fall. Planner Cronin stated open for six months is consistent with farm stand. Applicant needs a Special Use Permit to operate outside of those limits. Chairman Seaworth stated that in the past, the Planning Board has included proposed hours of operation on the plan. If Ayn needed night hours, that would be a huge change from operating hours proposed. Member Bourque suggested 3 weeks in spring and 2 weeks in fall. Ayn would like more flexibility than that due to uncertainties in the growing seasons. She suggested that outer limits of hours could be 11 am to 7 pm on weekdays and 8 am to 7 pm on weekends.

Planning Board members reviewed the proposed conditions of approval and the three additional proposed conditions.

Ayn Whytemare-Donovan asked what if I discontinue using one chemical and substitute another. Member Bourque stated MSDS sheets on chemicals on hand now would go into the file. Ayn asked who she would send updates to. Planner Cronin noted that for operations in the Aquifer District, we definitely need updates. Where this isn't in the aquifer there is no oversight by Pembroke Water Works, so it's not as urgent. Ayn asked what the purpose is for submitting MSDS sheets. Member Bourque stated compliance of chemicals being used on the property. Ayn Whytemare-Donovan stated she is willing to provide information anytime anyone asks. Chairman Seaworth stated that the Planning Board created the process of getting copies in town hall files so the public can view them. It is a matter of access. We are generating paperwork where the applicant does not meet the limits. Sometime in the future, a chemical could meet the 5 gallons per year usage threshold. Member Bourque asked Ayn to provide MSDS sheets on what you have now, and keep updates for yourself.

Planner Cronin said that the Code Enforcement Officer determined that planting beds are a structure and structures must meet setbacks. Technically, fences must also meet setbacks but that is not something that has ever been enforced. In the future that might be a zoning change. Ayn said that a structure is permanently attached to the ground. Chairman Seaworth stated that whether planting beds are a structure is a code enforcement determination.

Chairman Seaworth noted that the path for relief is not through the Planning Board. Ayn Whytemare-Donovan stated I just want to be open for this season. I agree with conditions to provide MSDS information sheets, keep planting beds out of setback and I am willing to provide a vegetative buffer for abutter at 205 Center Road in a way amenable to all. Chairman Seaworth stated that if we expect a buffer to go up that is suitable to the abutter, should there be a condition of approval. Member Bourque asked if we want a list of waivers and a list of the conditions of approval on the plan, and asked if the applicant is limited to 45 days of operation. Chairman Seaworth stated that farm stand regulations allow no more than 6 months open. I would be hesitant to limit the number of days. Member Bourque asked if hours of operation should be a condition. Planner Cronin stated that would be up to the Planning Board. Chairman Seaworth noted that the MSDS sheets for each chemical used currently should be submitted to the town and the buffer should be amenable to abutters at 205 Center Road. Does that sound workable?

Ayn Whytemare Donovan stated that she agrees to the conditions as listed as well as the three additional conditions as discussed.

There being no further input Chairman Seaworth closed the public hearing at 9:54 p.m.

MOTION: Vice Chairman Bourque moved to approve Minor Site Plan Application #20-101 with the following conditions:

1. Prior to signature, all waivers and conditions of approval shall be listed on the plan.
2. The original signatures of all property owners shall be provided on the final plan.
3. The Site Plan Review Notice of Decision shall be recorded at the Merrimack County Registry of Deeds.

4. Approval is subject to compliance with all provisions of Zoning Section 143-44.B. Farm Stand.
5. A building permit is required for the sales shed.
6. The site plan will not be considered as receiving final approval until all conditions of approval are met.
7. MSDS for each chemical used in association with the farm stand and its operations shall be submitted to the Town.
8. All planting beds and structures shall meet all setback requirements.
9. A vegetated buffer is required between the farm stand operations and the abutter at 205 Center Road.

Seconded by Member Hanson.

VOTE: B. Seaworth – Y C. Hanson – Y A. Bond - Y
D. Crean – Y K. Cruson – Y R. Bourque – Y

MOTION TO ACCEPT APPROVE MINOR SITE PLAN APPLICATION #20-101 WITH CONDITIONS ON A 6-0 VOTE.

1. **PRIOR TO SIGNATURE, ALL WAIVERS AND CONDITIONS OF APPROVAL SHALL BE LISTED ON THE PLAN.**
2. **THE ORIGINAL SIGNATURES OF ALL PROPERTY OWNERS SHALL BE PROVIDED ON THE FINAL PLAN.**
3. **THE SITE PLAN REVIEW NOTICE OF DECISION SHALL BE RECORDED AT THE MERRIMACK COUNTY REGISTRY OF DEEDS.**
4. **APPROVAL IS SUBJECT TO COMPLIANCE WITH ALL PROVISIONS OF ZONING SECTION 143-44.B. FARM STAND.**
5. **A BUILDING PERMIT IS REQUIRED FOR THE SALES SHED.**
6. **THE SITE PLAN WILL NOT BE CONSIDERED AS RECEIVING FINAL APPROVAL UNTIL ALL CONDITIONS OF APPROVAL ARE MET.**
7. **MSDS FOR EACH CHEMICAL USED IN ASSOCIATION WITH THE FARM STAND AND ITS OPERATIONS SHALL BE SUBMITTED TO THE TOWN.**
8. **ALL PLANTING BEDS AND STRUCTURES SHALL MEET ALL SETBACK REQUIREMENTS.**
9. **A VEGETATED BUFFER IS REQUIRED BETWEEN THE FARM STAND OPERATIONS AND THE ABUTTER AT 205 CENTER ROAD.**

MOTION: Vice Chairman Bourque moved to waive the remaining business on the agenda to the March 24, 2020 meeting. Seconded by Selectmen's Rep Bond. Unanimously approved.

Minutes February 18, 2020

Miscellaneous

1. Correspondence
2. Committee Reports
3. Other Business
4. Planner Items
5. Board Member Items
6. Audience Items

MOTION: Member Crean moved to adjourn the meeting. Seconded by Vice Chairman Bourque. Unanimously approved.

The meeting was adjourned at 9:57 p.m.

Respectfully submitted,
Susan Gifford, Recording Secretary