

**Pembroke Planning Board
Meeting Minutes
(Approved October 13, 2020)
September 22, 2020**

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

MEMBERS EXCUSED: Kathy Cruson; Holli Germain

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

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

Chairman Seaworth explained that this meeting is held in person at the Pembroke Academy auditorium, 209 Academy Road, Pembroke NH with masks and sanitizer available and social distancing in the meeting space.

Chairman Seaworth noted that a quorum is present and opened the meeting at 6:30 p.m. He noted that Legal Counsel Laura Spector-Morgan was present.

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.

Chairman Seaworth noted that the 65-day time clock for consideration of this application was extended to September 30, 2020. The applicant has not requested an additional extension. With a full agenda, we need to be more mindful of time. One of our members suggested setting a speaking time limit for applicants at 20 minutes and members of the public at 5 minutes per person. We will give one minute warnings and cut off testimony at the limit.

Planner Cronin noted that the applicant submitted a plan showing a homeowner's association version with condominium documents. Proposed conditions of approval have been drafted for the Special Use Permit applications and the Major Subdivision Application upon the applicant's request.

Chairman Seaworth noted that at the August 25, 2020 meeting several of the experts contradicted each other on the testing of wells. After the meeting, Aries Engineering and two abutters sent letters with concerns. Every member of the board received copies of the

letters. Selectmen's Rep Bond gave her copies of abutter letters to Jon Rokeh and Chris Guida to review.

At 6:43 p.m. Chairman Seaworth reopened the public hearing on Major Subdivision Application #18-09. If the application is not completed tonight, the application and public hearing will be continued to a future meeting and abutters will not be renoticed. Please check the town website and future meeting agendas.

Jon Rokeh, Rokeh Consulting, stated that at the August 25, 2020 meeting the Planning Board made a decision not to take up the 100-foot frontage issue and send it to the Zoning Board of Adjustment. The applicant has chosen to go with the condominium subdivision plan with regular common area and limited common area. The Condominium Association will take care of the roads, as they will be private. The well radii no longer overlap. The applicant will file to amend State approvals with a change to condominium form of ownership. Pembroke Town Counsel has reviewed the condominium documents.

Member Crean sought clarification on lots 19, 20 and 21. Dotted lines indicate limited common area. The circle is well radii. Laura Spector-Morgan stated that the units are being sold as "the land to build your home on".

Chairman Seaworth noted that the response from Aries Engineering corrected something was said in the last meeting. Jon Rokeh and Planner Cronin have had multiple conversations about well testing. Jon Rokeh stated that on the Pembroke town website there is a checklist for the Code Enforcement Officer that includes a well test before a certificate of occupancy is issued. Mr. Guida indicated inspection of a new well is a requirement. Ken Lehtonen stated that his firm does a full test on every new well, and that report is provided to the buyer and the town.

Chairman Seaworth wanted people to be aware of information that has gone into the file and is available upon request. Jon Rokeh is concerned about incorrect information in the copy of the minutes of the 8/25/20 Planning Board meeting. Sandra Lehtonen stated she receives copies of all pertinent emails from Jon Rokeh and did not receive a copy of the Aries Engineering letter. Laura Spector-Morgan noted an email at 11:37 a.m. on 9/22/20.

Chairman Seaworth stated the Planning Board can consider a continuance if the applicant wants more time to review new submitted letters. Planner Cronin stated she provides copies abutter letters by request. Ken Lehtonen asked to continue discussion and circle back to this item.

Member Crean would like to see a clause in the condominium documents allowing the Town to have standing to go to court to enforce any issues affecting town facilities. Chairman Seaworth noted that the Planning Board is able to enforce conditions of approval for the plan. The town had a situation where homeowners abandoned their association. Some of the provisions are critical to the town. Laura Spector-Morgan stated there is a difference between homeowners association and condominium form of ownership. Vice Chairman Bourque asked for clarification that each unit owner would have the tax burden of 1/56th of the land area. That is correct. In addition, each unit would be assessed for decks, shed or other improvements on their individual unit. If the

unit owner wanted an addition, they would have to go to the Homeowners Association for approval. Any disagreement would be a private dispute. Chairman Seaworth stated he does not want the town brought in to adjudicate. Laura Spector-Morgan said they may try, but it would ultimately be a private dispute.

Vice Chairman Bourque said that the open space description prohibits creating trails and limited cutting in the wetlands is not allowed by the Conservation Commission. Chairman Seaworth stated there is a difference between open space land and conservation land. Laura Spector-Morgan stated that designated open space must be kept undisturbed in its natural state. Trails and cutting trees would not be allowed on open space. Jon Rokeh stated open space can be maintained according to a management plan created by a professional. Vice Chairman Bourque noted item #5 is not allowed. There can be no view easements or walking trails, but these could be allowed as a condition of approval. Chairman Seaworth stated that additional uses with a plan for maintenance of those uses could be approved. Ken Lehtonen stated that the condominium documents are a first draft and do not contain final language. Chairman Seaworth understands this, and the final version needs town legal approval. Selectmen's Rep Bond saw no reference to wetlands in the documents. Laura Spector-Morgan advised that state law address wetlands. Selectmen's Rep Bond asked for clarification of what is considered open space. Jon Rokeh stated that the protected 95 acres is the open space. No pesticides can be used in the open space. Jon Rokeh stated the detention ponds and road are common area maintained by the condominium association. For example, the condominium association would be responsible for the wetland medallions being maintained properly. The condominium documents could require an annual report be submitted to the Code Enforcement Officer after an annual inventory of medallion wetland markers.

Sandra Lehtonen stated we still do not have the Aries letter. Chris Guida stated he misspoke at the August meeting about community wells versus private wells. Testing of a new private well is not a state requirement. Chris Guida stated it is common practice for the well driller to test for a standard suite of parameters for water quality. Those parameters are provided by the State of NH.

Chairman Seaworth opened discussion to the public.

Joanne Gelinas, 4th Range Road, stated that she is bringing in tanks of water as two of her wells have gone dry. My concern is not having enough water for livestock and the house.

Kim Carter, 4th Range Road, sent several letters and is speaking publicly to request that if more than 20 homes are proposed, the town request a bond from the applicant to bring town water and sewer to the project if needed and hold it for ten years after the last home in the development is built.

Paul Simick, 4th Range Road, asked what roads will be used to bring in heavy construction equipment.

Carol Bertsimas, Cross Country Road, Conservation Commission member, noted that the last hydrology report suggested use of a community well. Members of the Conservation Commission are unclear on the benefit to the town of this development. Concerns are

density, wetland effects, management plan for open space, and can the public use the open space.

Member Crean stated that limited common area is referred to in the declaration “as shown on plan”. Chairman Seaworth noted that all of the land will forever remain as a single lot. If the application is approved, no further subdivision will be allowed. Private ownership of open space means allowing public access is up to the owner. Conservation land is different. Sometimes there are easements to Conservation land to allow public use.

Bill Conde, 496 4th Range Road, stated that 4th Range Road cannot withstand heavy equipment. The town needs to obtain a bond to cover potential damages to 4th Range Road. Installation of 56 private wells causes me to have water table concern.

Sally Croft, 337 Pembroke Hill Road, stated that narrow roads in the area cannot accommodate extra traffic.

Chairman Seaworth asked for detail on the intersection where the development meets existing roads. Jon Roken stated he provided a large plan of the intersection to the town engineer for review, and will add that sheet to the plan set. There is a 4-way intersection proposed at Pembroke Hill Road and 4th Range Road. 4th Range Road is a dirt road, and there will be a 3-way STOP. Chairman Seaworth asked do we want a condition to provide an as built, or is it sufficient to hold developer to the plan. Is there an easement to the town to make the road connection later to improve the safety of the intersection?

Selectmen’s Rep Bond stated that information is provided in the original packet. Bonding may be considered to extend public water to this development. Water lines do not run up Pembroke Hill Road. Member Crean stated if public water passes within a certain distance, application is made to the Public Utilities Commission. Chairman Seaworth asked what responsibility is borne by individuals in uses of public road. Laura Spector-Morgan stated if damage can be tied to a certain vehicle, and posted weight limit is exceeded, it is possible to make a claim for road damages.

Chairman Seaworth asked members to look at the draft copies of conditional approval for the major subdivision. Vice Chairman Bourque referenced #16. The baseline survey performed by an independent contractor at applicant’s expense is mandated for all wells within 200 feet of the development area. I would like that pushed out to within 1,000 feet. Chairman Seaworth asked how many wells are included in the 200-foot distance. Jon Rokeh stated both experts recommend a preexisting study of wells within 200 feet from the property in their hydrology reports. There are approximately 4 wells within 200 feet. One of the 56 wells is more likely to influence another well within the development. Chairman Seaworth stated that, in the past, we have asked commercial entities to drill test wells. You want enough wells tested prior to construction to have a baseline. Ken Lehtonen stated we have heard testimony that area wells have gone dry this year due to weather conditions and drought. This may be a year of unique weather conditions. The 200-foot radius was the specific recommendation of two hydrologists hired by San Ken Homes. Selectmen’s Rep Bond stated at the last meeting, I recall that about 4 wells are located within 200 feet of the development. Vice Chairman Bourque stated I do not feel that testing four wells is adequate. Ken Lehtonen stated, again we paid for two hydrology

studies and both professional recommendations were to test wells 200 feet from the property prior to construction.

Vice Chairman Bourque referred to item #17. Installation will be consistent with 40 foot well casing 10 feet into bedrock. I would like to add, "Private well testing will occur thirty days prior to occupancy, and that water quality mitigation will occur at sale to provide potable water to the homeowner." Applicant's rep stated we work closely with our customers. They receive a copy of the water quality report. As stated by Laura Spector-Morgan, Vice Chairman Bourque would like an annual wetland medallion audit provided to the Town Code Enforcement Officer. Chairman Seaworth referred to item #9, review and approval of condominium documents prior to recording. I would like to add "with the Planning Department in consultation with legal counsel". Planner Cronin and Laura Spector-Morgan are in agreement with this. Sandra Lehtonen stated we sent edits and concerns on the draft conditions. Ken Lehtonen referred to item #16 I suggest language that the applicant will hire an independent contractor approved by the town to conduct a well survey 200 feet from the property prior to construction. #23 no driveway permits will be applied for until after the road is built. Items #1-16 are conditions before approval. Ken would like conditions precedent (before recording) and after approval identified separately.

At 8:15 pm Chairman Seaworth closed the public hearing on Major Subdivision application #19-03 and associated permit applications. If this application is not completed tonight, the public hearing will not be renoticed. Check the town website for future meeting agendas.

Chairman Seaworth stated we have two different Special Use Permits to talk about first. Member Hanson suggested all motions be in the affirmative.

MOTION: Vice Chairman Bourque moved to approve **Special Use Permit Application SUP-WP #19-310** with the following conditions:

1. This Special Use Permit is in accordance with Article 143-72.D.(2), Wetlands Protection District, for construction of roadway resulting in impacts to the wetlands. It includes work within a wetland and wetland buffer and shall be constructed according to the submitted plans and the NHDES Wetlands Permit conditions of approval.
2. SUP-WP #19-310, San Ken Homes, is approved in conjunction with Major Subdivision Plan #19-03. If at any time Major Subdivision Plan #19-03 is revoked or final approval is not received, this Special Use Permit becomes invalid.

Seconded by Member Hanson.

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

MOTION TO APPROVE SPECIAL USE PERMIT APPLICATION SUP-WP #19-310 WITH CONDITIONS PASSED ON A 4-1 VOTE.

MOTION: Vice Chairman Bourque moved to approve **Special Use Permit Application SUP-OSD #19-311** with the following conditions:

1. SUP-OSD #19-311, San Ken Homes, was approved in conjunction with Major Subdivision Plan #19-03. If at any time Major Subdivision Plan #19-03 is revoked or final approval is not received, this Special Use Permit becomes invalid.
2. Superelevation of the roadway, as required by the Subdivision Regulations 205-41 Design Standards, Section E.(3)., is waived per §143-77.C.(1)(c).
3. 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)., is waived per §143-77.C.(1)(c).
4. Curbing within 1 mile of a school, in areas where required, as required by the Subdivision Regulations 205-41 Design Standards, Section E.(20)., is waived per §143-77.C.(1)(c).
5. 94.986 acres of land are permanently protected as designated open space.
6. 56 building lots are approved and no further subdivision of land shall be permitted.

Seconded by Member Hanson.

Chairman Seaworth said that conditions #2, #3, and #4 reflect a roll call vote from early on in regard to the waivers requested by the applicant. This is where we formally approve those waivers from superelevation, sidewalks within 1 mile of a school, and curbing associated with those sidewalks. There is some curbing proposed to protect the wetlands. We agreed that will be sloped granite curbing.

Selectmen's Rep Bond expressed concern if sidewalks aren't provided and this is now going to be private road, the students will have to meet the bus on the public road. Students will be walking a considerable distance in the road to get to their bus stop. Member Crean stated that waiving sidewalks where 56 residences will be located puts students at risk.

Chairman Seaworth said that a board member can propose an amendment or Vice Chairman Bourque can reword his motion. Member Hanson stated that an amendment would require sidewalks on the part of the development within one mile of a school. We cannot mandate sidewalks in the entire development. Chairman Seaworth stated Selectmen's Rep Bond expects that the school bus will stop on a public road. Member Crean stated that most students would still not have a sidewalk. Member Hanson stated that we can't mandate sidewalks throughout the entire development, but providing at least some sidewalk would give students someplace to wait for the bus.

Chairman Seaworth stated that an appropriate amendment would be to strike condition #3 and renumber the remaining conditions. Member Crean stated that the prior vote was a preliminary vote based on having public roads in the development. Chairman Seaworth stated we previously considered waivers to the Special Use Permit. If someone makes an amendment and it passes, we would have to reconsider our earlier vote. I don't recall its wording exactly.

MOTION: Vice Chairman Bourque moved to **amend the motion** to approve **Special Use Permit Application SUP-OSD #19-311**, by removing Item #3 and renumbering the remaining conditions.

Seconded by Member Hanson.

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

Chairman Seaworth suspended action on the Special Use Permit motion and asked if someone who voted in favor of the waiver would motion to reconsider that vote.

MOTION: Member Hanson moved to reconsider the March vote to include all requested waivers: superelevation, sidewalks, and curbing related to sidewalks, as part of the OSD SUP, in light of the fact that the road will now be private rather than public.

Seconded by Vice Chairman Bourque.

Discussion: Chairman Seaworth stated that the Planning Board likes curbing where there is sidewalk. Member Hanson stated the intent is to provide a safe place for kids to be picked up by the school bus. The policy of the School Board is to only pick up students on public roads. Students could stand on sidewalks on a section of the private road while waiting until the bus arrives. Member Crean asked who is going to maintain the sidewalks. Laura Spector-Morgan stated that maintenance of sidewalks would be the responsibility of the condo association.

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

MOTION TO RECONSIDER EARLIER MOTION PASSED ON A 5-0 VOTE.

MOTION: Member Hanson moved to amend the March vote to not grant the waiver from sidewalks and curbing, and to grant the waiver from superelevation, as part of the OSD SUP.

Chairman Seaworth expressed concern about including curbing in the motion as it should only be relevant to where there are sidewalks. Laura Spector-Morgan stated that curbing is there to protect the sidewalks' sidewalks are there to protect the children.

Member Hanson withdrew his motion.

MOTION: Member Hanson moved to amend the March vote, to not grant the waiver from sidewalks, and to grant the waivers from superelevation and curbing, as part of the OSD SUP.

Seconded by Member Bourque.

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

MOTION TO AMEND EARLIER VOTE PASSED ON A 5-0 VOTE.

MOTION: Vice Chairman Bourque moved to amend the motion to approve **Special Use Permit Application SUP-OSD #19-311** with five conditions #1, #2, #4, #5, and #6, in

conjunction with Major Subdivision Plan #19-03. If at any time Major Subdivision Plan #19-03 is revoked or final approval is not received, this Special Use Permit becomes invalid.

Seconded by Member Hanson.

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

**MOTION TO AMEND THE MOTION TO APPROVE SPECIAL USE PERMIT
APPLICATION SUP OSD #19-311 WITH FIVE CONDITIONS PASSED ON A 5-0 VOTE.**

Chairman Seaworth stated that with the approval of SUP-OSD #19-311 the plan does not meet open space ordinance requirements. The Board could create another condition of approval requiring that sidewalks be added within a mile of a school. Laura Spector-Morgan suggested that language be added to the conditions of approval to require “Final plan reflecting all conditions of approval be submitted within x number of days.” Language for amendments to conditions were discussed.

Laura Spector-Morgan summarized language changes discussed this evening. #9, add “the Planning Department in conjunction with legal counsel”, and change “Homeowners Association” to “Condominium Association”. Add “sidewalks” to #9.. #16, Vice Chairman Bourque proposes changing within 200 feet to within 1,000 feet. Member Crean noted we have no idea of the magnitude of that change. Two hydrology studies recommend testing wells within 200 feet of the property pre-construction. 200 feet seems minimal but that is the recommendation of professionals. Vice Chairman Bourque stated we need a larger baseline than four wells. Chairman Seaworth stated we do not have the number of wells within 1,000 feet so let’s leave that condition at 200 feet. The applicant shall hire at their expense an independent contractor approved by the town to perform the well survey.

Member Crean suggested that the town control the preexisting well survey. Laura Spector-Morgan noted that if the survey is not performed as required, the applicant will not get final approval. Chairman Seaworth stated that conditions #1-16 and #20 are subsequent to recording. The plan will not be considered as having final approval until conditions #1-16 and #20 are fulfilled. Vice Chairman Bourque’s suggested condition about the condo association shall perform an annual inventory of wetland medallion markers and provide an audit report to the Pembroke Code Enforcement Officer by June 1st each year will be added.

Condition #26, a final plan reflecting all conditions of approval shall be provided within 30 days.

Condition #17, add a requirement that water testing is conducted 30 days prior to owner occupancy and potable water shall be provided.

Language for conditions #9, 16, 17, 23, 24 and new 26 was discussed.

MOTION: Vice Chairman Bourque moved to approve Major Subdivision Plan Application #19-03 with the following conditions:

1. Major Subdivision Plan #19-03, San Ken Homes, was approved in conjunction with Special Use Permit SUP-OSD #19-311. If at any time Special Use Permit SUP-OSD #19-311 is revoked or final approval is not received, this Subdivision Plan becomes invalid.
2. Prior to signature, the plan shall be revised to include all conditions of approval.
3. Prior to signature, the plans shall be revised to address all review comments from the Town Engineer and any applicable concerns and issues discussed in KV Partners' review letter dated February 9, 2020.
4. Prior to signature, Note 14 on Sheet 2 shall be revised to strike "and October 2019," since this plan is still under the October 2019 application.
5. Prior to signature, the plans shall be revised to include NHDES AOT, Wetland, and Subdivision Approval permit numbers.
6. Prior to recording, a lot merger between Map 262, Lots 43 and 45 shall be executed.
7. Prior to recording, all engineering review fees and all recording fees to be paid in full to the Town of Pembroke.
8. Prior to recording, Town Counsel shall review and approve the easement language for the intersection of the proposed road with Robinson Road/Fourth Range Road/Pembroke Hill Road.
9. Prior to recording, the Planning Department, in consultation with Town Counsel, shall review and approve the condominium association documents, which will designate the following responsibilities to the association, at a minimum: street maintenance, sidewalk maintenance, snow plowing, street lights, drainage infrastructure, trash removal, maintenance of firefighting water supply infrastructure, and open space management.
10. Prior to recording, the original signatures of all property owners shall be provided on the final plat.
11. The Special Use Permit Notices of Decision for SUP-WP #19-310 and SUP-OSD #19-311 are to be recorded at the Merrimack County Registry of Deeds.
12. The final plan is to be recorded at the Merrimack County Registry of Deeds. LCHIP check to accompany the final plan.
13. All proposed street names are subject to approval by the Board of Selectmen.
14. The Applicant is responsible for obtaining any and all other federal, state, and local approvals.
15. Prior to issuance of building permits, all firefighting water cisterns and ponds shall be constructed in accordance with Section 4.4.1. of the Fire Prevention Ordinance.
16. Prior to installation and operation of the proposed site wells, baseline survey of all existing water wells within approximately 200 feet of the development area shall be conducted for testing water quality and quantity. The Applicant shall retain an independent contractor, approved by the Town, to conduct the survey at the Applicant's expense.
17. Installation of the on-site water wells shall be consistent with NH Water Well Rules, Part We 602.14 and shall include installation of no less than 40 feet of well casing that extends a minimum of 10 feet into competent bedrock, and grouting the casing annulus. The Applicant shall conduct testing of the water quality at least 30 days prior to occupancy of the property and shall provide whatever mitigation necessary for providing potable water.

18. Pre-construction and construction requirements and procedures, including provisions for surety, shall comply with the Town of Pembroke Subdivision Regulations.
19. Prior to construction, the Applicant shall provide escrow for site monitoring and inspections by the Town Engineer in an amount to be determined by the Town Engineer.
20. A bond is required for firefighting water infrastructure.
21. Town Driveway Permits for the proposed lots are required.
22. Applicant is notified through this notice that no site work shall begin and building permits will not be issued until the final plan is signed and recorded, the Notices of Decision are recorded, and a pre-construction meeting is held with the Town.
23. The plan will not be considered as receiving final approval until conditions precedent #1 through #16, #20, and #26 are met. The rest of the items are considered conditions subsequent.
24. Prior to occupancy of each phase, wetland medallions or other method of wetland demarcation, to be approved by the Town, shall be installed at the edge of wetland areas. The condominium association shall provide annual monitoring of the wetland medallions and other wetland demarcation, and provide an audit to the Code Enforcement Officer by June 1st of every year.
25. Prior to occupancy, house numbering shall be in a similar location on each house and visible from the street for the lot seeking occupancy at that time.
26. A final plan reflecting conditions of approval, include sidewalks in accordance with Subdivision Regulations 205-41 Design Standards, Section E.(20), shall be submitted to the Town within 30 days.

Seconded by Member Hanson.

Discussion: Member Crean stated he will be voting against the application based on the provisions of the Subdivision Regulations and the Open Space Ordinance. The size of this development is premature and scattered, including water supply, drainage, transportation, fire protection, and police protection. It is not harmonious development. There is no connection to any existing public streets. There is no coordination in fire protection. There are issues with road maintenance, even if they are private roads. There are issues with school transportation. It's developing uninhabitable area. There has been no discussion of the use of the open space or who is going to own it. It has poorly drained soils. There is no pedestrian safety for 56 housing units. There is no improvement proposed for Pembroke Hill Road. The access is from limited roads. There are no sidewalks for 56 lots. There is no provision for recreational facilities for the development. I'm not sure that road maintenance will be done well. There are concerns about school traffic with Pembroke Hill School and with traffic at the intersection of Route 3. For all those reasons, I will vote against approving this application.

Chairman Seaworth thanked Member Crean. Under state law, if an application is not approved, we must provide the reasons why. The motion is to approve the subdivision with 26 conditions.

Vice Chairman Bourque stated he will also vote no on this application for the following reasons. 1. Buildable Area - Zoning Definitions Article II, 143:8, page 7, reads that all soils

identified as poorly drained or very poorly drained must be excluded. This site has such soil conditions. 2. Number of Homes - the Original subdivision application presented to this board was for 48 homes in the same area. When the Board of Selectman turned down the request to open 4th Range Rd. and Flagg Robinson Rd., the applicant presented a new Open Space plan to the Planning Board and increased the number of homes from 48 to 56. All requests from the planning board to reduce the number of homes or other site changes were rejected by the applicant. 3. Water Quantity - Water quantity in the Pembroke Hill Rd./4th Range Rd. area is not the best. The addition of 56 new wells will decrease the water quantity for the surrounding neighbors. In doing so, neighbors would have to drill new and deeper wells at their own expense. Recharge of the aquifer in this area has various opinions. 4. High Water Table - this area has a high water table and remains wet for long periods of time. Poorly drained soils keep this area from percolating into the ground. 5. Runoff - because of poorly drained soils, waste water such as bacteria from sewage, lawn chemicals and fertilizers, etc. will flow on the surface and just below the surface to wetlands and off the property to other off site properties. 6. Citizens Oppose - Many citizens from the Pembroke Hill Rd. area have expressed opposition to this project for a variety of reasons. Some of those reasons include overbuilding the lot, increased traffic on Pembroke Hill Rd. & 4th Range Rd. and water quantity and quality. 7. Conservation Commission - The Conservation Commission main concerns are protection of the surrounding wetlands by direct and indirect interference by the residents, protection of the species habitat as identified by the NH Fish & Game, and the wet soils on the property that support amphibians and other small species.

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

MOTION TO APPROVE MAJOR SUBDIVISION PLAN #19-03 WITH CONDITIONS PASSED ON A 3-2 VOTE.

Chairman Seaworth stated this was a difficult vote for me to take, especially as the final vote. Many of our votes show a consensus from the Board and on this we were split. Among Vice Chairman Bourque's and Member Crean's concerns listed in detail, there are things that didn't sit well with me. For one, the scattered and premature development. This is an extremely large number of homes at the end of a rural road network. We heard lots of testimony from abutters that the road network, as it exists, has issues. As we tried to get data on that, we heard from the very opening of this that there were lawsuits forthcoming from most of the people who were before us. This makes it very difficult to have a reasonable hearing on the application. When we tried to discuss the roads, we heard there were road problems but who pays for it? We did not get a good discussion about road network at the beginning. Nothing came out of our expert testimony about if the road network is suitable for what's there now and what will be added. We took the path of least resistance in terms of the letter of our ordinance and I think we completely forgot the spirit of the ordinance. It bothers me that an open space ordinance that was designed to produce innovative solutions instead made an R1 development in the R3 Zone. It bothers me that this wasn't even the best proposal that was brought forth during the process. We went with the plan that caused the fewest issues with the language, not the best plan for the town. Many people will be leaving here unhappy tonight and I'm very sorry that's the way it turned out.

Member Crean excused himself at 9:25 p.m. from the meeting due to the late hour.

In the event that a meeting approaches 9:00 p.m., the Board may take a vote on whether to proceed with the agenda or to continue the remaining hearings to the next business meeting.

MOTION: Vice Chairman Bourque moved to continue the Planning Board meeting.

VOTE: B. Seaworth – YES C. Hanson – YES A. Bond - YES
R. Bourque – YES

MOTION TO CONTINUE PLANNING BOARD MEETING PASSED ON A 4-0 VOTE.

New Business

2. **Major Subdivision Plan Conditional Approval Extension Request, Subdivision Plan #18-06, Special Use Permit SUP-AC #18-307, and Special Use Permit SUP-WP #18-308. Steven Keach, PE of Keach-Nordstrom Associates, Inc., acting as Applicant on behalf of Cole Family Trust, owner of Tax Map 565, Lot 55 located at 354-356 Pembroke Street in the Medium Density (R1) Residential Zone, the Aquifer Conservation (AC) District, the Wetlands Protection (WP) District, and the Architectural Design (AD) District.**

Extension Request for Time Limits of Conditional Approval –The Applicant requests a one-year extension of the conditional approval granted on September 25, 2018 and extended for a period of one-year on September 24, 2019 for the subdivision of Map 565, Lot 55 into sixteen single-family residential lots on a proposed roadway.

Chairman Seaworth read the first item of New Business. At 9:31 p.m. Chairman Seaworth opened the public hearing on Major Subdivision Plan #18-16 Conditional Approval Extension Request.

Steven Keach, Keach-Nordstrom Associates, Inc. spoke present on behalf of Cole Family Trust. The request for a one-year extension has to do with obtaining sewer capacity for sixteen single-family lots. There is no timeline for resolution of the situation between Pembroke and Allentown on this matter. Unless and until we get sewer capacity, we are unable to meet that condition. This is beyond the control of my client. Selectmen's Rep Bond asked if the applicant is able to build with septic and put in less lots. Steven Keach responded that would require a new application submittal. They are not interested in putting in less lots.

There being no further input, Chairman Seaworth closed the public hearing at 9:34 pm.

MOTION: Vice Chairman Bourque moved to approve a second, one-year extension of **Major Subdivision Plan #18-06, Special Use Permit SUP-AC #18-307, and Special Use Permit SUP-WP #18-308 to September 30, 2021.**

Seconded by Vice Chairman Bourque.

VOTE: B. Seaworth – YES C. Hanson – YES A. Bond - YES
R. Bourque – YES

MOTION TO APPROVE A ONE YEAR CONDITIONAL APPROVAL EXTENSION TO MAJOR SUBDIVISION PLAN #18-06 TO SEPTEMBER 30, 2021 AS REQUESTED BY THE APPLICANT PASSED ON A 4-0 VOTE.

Selectmen's Rep Bond stated that Pembroke is in a discussion with Town of Allentown on sewer issues. By the time we get to a resolution it may be years. I would recommend that the applicant come back with a new plan for subdividing lots on septic. Steve Keach stated his client did not want to submit a new plan.

Chairman Seaworth stated that the Planning Board does not like to grant extensions perpetually. There have been no applicable zoning changes that affect this lot. Other things can happen over time, and the owner may get a buyer.

Vice Chairman Bourque noted that RSA 676:4A places a 5-year time limit on an approved site plan for substantial development. It is not unreasonable to grant a one year extension of conditional approval. At the five-year mark, approval goes away. Selectmen's Rep Bond noted that final approval was just given to Pembroke Pines and asked where the applicant is on the Pembroke Sewer Commission waiting list for sewer capacity? Vice Chairman Bourque noted that the application is going into year three.

3. Minor Subdivision Application #20-03, Mark Sargent, Richard D. Bartlett & Associates, LLC, acting as Applicant on behalf of Adam Gelinis, owner of Tax Map VW, Lot 221 located at 7 Exchange Street in the Business/Residential (B1) Zone and the Aquifer Conservation (AC) District.

The Applicant proposes a subdivision to create one new residential lot to be served by municipal water and sewer.

➤ **Special Use Permit Application SUP-AC #20-303.**

The Applicant requests a Special Use Permit in accordance with Article 143-68.E., Aquifer Conservation District, for residential use over the aquifer.

Chairman Seaworth read the second item of New Business.

Planner Cronin provided an overview. The Applicant proposes to create one new lot from Lot 221, which has an existing home. The new lot will be serviced by municipal water and sewer. A landscape easement is proposed to address an encroaching deck, retaining wall, and plantings from the abutter at Lot 219 over the existing property line.

The properties appear to meet the dimensional standards for lot size, frontage, and depth. In the B1 Zone, setbacks are determined by the average setback of the dwellings on either side of the lot (Note 5 in the Table of Dimension and Density Requirements).

In this case, based on the location of the existing abutting dwellings, the average front setback is 14.5 ft. The Applicant is proposing 20 ft. The average rear setback is 31 ft. The Applicant is proposing 32 ft. The side yard meets the 15 ft. required in the zone.

The Checklist waiver requests are appropriate because they are not applicable.

The water line was not shown on the plan. It was pointed out at TRC and the Applicant was unable to get the data from Pembroke Water Works in time for revisions due to PWW's limited hours. This is a simple addition to the plan and may be appropriate as a condition of approval. Also the Natural Heritage Database check is pending.

MOTION: Vice Chairman Bourque moved to approve the waivers (C, O, R, and U) as requested by the applicant. Seconded by Member Hanson.

VOTE: B. Seaworth – YES C. Hanson – YES A. Bond - YES
R. Bourque – YES

MOTION TO APPROVE WAIVERS AS REQUESTED BY APPLICANT PASSED ON A 4-0 VOTE

MOTION: Vice Chairman Bourque moved to accept Minor Subdivision Application #20-03 as complete. Seconded by Member Hanson.

VOTE: B. Seaworth – YES C. Hanson – YES A. Bond - YES
R. Bourque – YES

MOTION TO ACCEPT MINOR SUBDIVISION APPLICATION AS COMPLETE PASSED ON A 4-0 VOTE

Chairman Seaworth noted that an item arrived by email today regarding this application. Planning Board practice is not to read and include items placed on the table at the meeting.

At 9:37 p.m. Chairman Seaworth opened the public hearing on Minor Subdivision Application #20-03.

Mark Sargent, Richard Bartlett and Associates, representing Adam Gelinis, explained that 7 Exchange Street is .092 acres and has an existing 3-family home. Applicant is proposing one additional lot fronting on Bridge Street. New lot will be .032 acres with 175 feet of frontage.

There being no further discussion, Chairman Seaworth closed the public hearing at 9:55 p.m.

MOTION: Vice Chairman Bourque moved to approve Special Use Permit SUP-AC-#20-303 in conjunction with Minor Subdivision Application #20-03. If at any time Minor Subdivision Application #20-03 is revoked or final approval is not received, this Special Use Permit becomes invalid. Seconded by Member Hanson.

VOTE: B. Seaworth – YES C. Hanson – YES A. Bond - YES
R. Bourque – YES

MOTION TO APPROVE SPECIAL USE PERMIT APPLICATION SUP-AC #20-303 WITH CONDITIONS PASSED ON A 4-0 VOTE.

MOTION: Vice Chairman Bourque moved to approve Minor Subdivision Application #20-03 with conditions 1-8 and 10-13. Seconded by Member Hanson.

1. Prior to signature, the plan shall be revised to show the water line.
2. Prior to signature, all waivers and the date granted shall be listed on the plan.
3. All conditions of approval shall be listed on the plan.

4. The original signatures of all property owners shall be provided on the final plan.
5. The plan will not be considered as receiving final approval until all conditions of approval are met.
6. Prior to recording, Town Counsel shall review and approve the language of the landscape easement
7. The landscape easement shall be recorded at the Merrimack County Registry of Deeds.
8. The plan and Aquifer Special Use Permit Notice of Decision shall be recorded at the Merrimack County Registry of Deeds, accompanied by a LCHIP check.
9. NH Natural Heritage Bureau Inventory data is required and any concerns from NHB must be addressed.
10. Town Driveway Permit from DPW is required.
11. Approval for sewer connection is required.
12. Approval for water connection is required.

VOTE: B. Seaworth – YES C. Hanson – YES A. Bond - YES
R. Bourque – YES

MOTION TO APPROVE MINOR SUBDIVISION APPLICATION WITH CONDITIONS PASSED ON A 4-0 VOTE

1. PRIOR TO SIGNATURE, THE PLAN SHALL BE REVISED TO SHOW THE WATER LINE.
2. PRIOR TO SIGNATURE, ALL WAIVERS AND THE DATE GRANTED SHALL BE LISTED ON THE PLAN.
3. ALL CONDITIONS OF APPROVAL SHALL BE LISTED ON THE PLAN.
4. THE ORIGINAL SIGNATURES OF ALL PROPERTY OWNERS SHALL BE PROVIDED ON THE FINAL PLAN.
5. THE PLAN WILL NOT BE CONSIDERED AS RECEIVING FINAL APPROVAL UNTIL ALL CONDITIONS OF APPROVAL ARE MET.
6. PRIOR TO RECORDING, TOWN COUNSEL SHALL REVIEW AND APPROVE THE LANGUAGE OF THE LANDSCAPE EASEMENT
7. THE LANDSCAPE EASEMENT SHALL BE RECORDED AT THE MERRIMACK COUNTY REGISTRY OF DEEDS.
8. THE PLAN AND AQUIFER SPECIAL USE PERMIT NOTICE OF DECISION SHALL BE RECORDED AT THE MERRIMACK COUNTY REGISTRY OF DEEDS, ACCOMPANIED BY A LCHIP CHECK.
9. NH NATURAL HERITAGE BUREAU INVENTORY DATA IS REQUIRED AND ANY CONCERNS FROM NHB MUST BE ADDRESSED.
10. TOWN DRIVEWAY PERMIT FROM DPW IS REQUIRED.
11. APPROVAL FOR SEWER CONNECTION IS REQUIRED.
12. APPROVAL FOR WATER CONNECTION IS REQUIRED.

MOTION: Vice Chairman Bourque moved to continue all remaining hearings on tonight's agenda to October 27, 2020. Member Hanson seconded.

VOTE: B. Seaworth – YES C. Hanson – YES A. Bond - YES
R. Bourque – YES

MOTION TO CONTINUE ALL REMAINING HEARINGS CONTINUED TO OCTOBER 27, 2020 PASSED ON A 4-0 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.

Minutes

August 11, 2020 and August 25, 2020

MOTION: Vice Chairman Bourque moved to table action on the minutes of August 11, 2020 and August 25, 2020 to October 13, 2020. Member Hanson seconded.

VOTE: B. Seaworth – YES C. Hanson – YES A. Bond – YES
R. Bourque – YES

MOTION TO TABLE ACTION ON THE MINUTES OF AUGUST 11, 2020 AND AUGUST 25, 2020 TO OCTOBER 13, 2020 PASSED ON A 4-0 VOTE.

Miscellaneous

1. Correspondence

- CNHRPC Project Proposals for NHDOT Ten-Year Plan- Planning Board consensus was to defer to the Roads Committee.
- DRI notice from City of Concord – Planner Cronin explained the DRI is for an auto sales and service facility on Integrity Drive. Auto repair is a prohibited use in the Aquifer District. Planning Board consensus was to check if Pembroke Water Works received a copy of the DRI notice. If not, Planner Cronin will provide a copy to them. The Planning Board affirms any comment Pembroke Water Works may want to submit to City of Concord regarding this proposal.
- Notice from Allenstown ZBA- Planner Cronin explained that the China Mill project is seeking a variance to reduce the size of parking spaces from 10 feet wide to 9 feet wide. Planning Board is neutral on this proposal and has no comment.

2. Committee Reports

3. Other Business

4. Planner Items

5. Board Member Items

6. Audience Items

MOTION: Vice Chairman Bourque moved to adjourn the meeting. Seconded by Selectmen's Rep Bond.

Without objection the meeting was adjourned at 10:07 p.m.

Respectfully submitted,
Susan Gifford, Recording Secretary