

**Pembroke Planning Board
Meeting Minutes
(Approved October 13, 2020)
August 25, 2020**

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

MEMBERS EXCUSED: Kathy Cruson

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 Cafeteria, 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.

Chairman Seaworth stated that Member Germain would participate, but not vote on the Old Business cases, since she had not been on the board to when the previous hearings were held.

Old Business

- 1. Major Subdivision Plan Application #18-09, Jon Rokeh, Rokeh Consulting, LLC, acting as Applicant on behalf of San-Ken Homes, Inc. and SKRE Holdings, LLC, owners 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 48-lot subdivision, including a new roadway and improvements to Fourth Range Road and Flagg Robinson Road. All lots will be served by private on-site septic and well.

- **Special Use Permit Application SUP-WP #18-318**

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-DW #18-319**

The Applicant requests a Special Use Permit in accordance with Article 143-53, Driveways, to permit three shared driveways in the development.

Chairman Seaworth read Major Subdivision Application #18-09 in full. This plan is for a 48 lot conventional subdivision with new roadway. This is the plan we agreed to defer when the Board of Selectmen took their vote on the range roads. The applicant is requesting a 3 month extension to November 2020 to keep the plan viable while they work through the current plan. This would be the second continuance of plan #18-09. Member Crean asked where things stand on the court action for this case. Laura Spector Morgan stated that the appeal has been stayed while the Planning Board reviews the current plan. Vice Chairman Bourque asked if it is necessary to have two plans open at once. This plan should not keep going forward. In November, the applicant should withdraw the plan if no action is taken. Why would a plan be kept open? Laura Spector Morgan said the applicant is protected from needing to comply with any new zoning amendments approved

while the plan is pending. Chairman Seaworth stated it is understandable why the applicant would want a plan continued. However, this is the only time I can recall where we have done so. Usually an applicant would withdraw their plan and resubmit in a different form. I am open to thoughts from Board members. I agree with Vice Chairman Bourque that some kind of time limit should apply to a request for continuation. Selectmen's Rep Bond asked why we would have two applications on file. Chairman Seaworth stated both plans are for the same site, but they are two very different plans. Each is grandfathered to the zoning ordinance in effect at the point the application was submitted.

MOTION: Vice Chairman Bourque moved to approve to grant the request of the applicant, to extend the consideration period for this application to November 24, 2020. Member Hanson seconded.

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

MOTION TO GRANT APPLICANT'S REQUESTS PASSED ON A 5-0 VOTE.

2. 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 read the application in full. He noted that the public hearing was not open yet. For those following this application from home, a number of large pieces of information came into the board in the last two months. This is the first chance the board has had to discuss the hydrology report submitted by Aries Engineering, and response to the report from the applicant's experts. The Planning Board also needs to discuss road frontage on two variations of the plan. We do not have an intention of making a ruling on the Major Subdivision application tonight. He advised attendees that you have between now and the next meeting to review that information and submit written comments. We are fortunate to have this item as the last item on the agenda tonight. If you want to speak, please come up to the microphone, state your name and address for the record, and direct all comments to the board. Be efficient with time and focus on helping the board understand the new information. There will be not debate between members of the audience. We are trying to record this meeting so please have no side discussions that will disrupt the recording.

Planner Cronin provided an overview of some of the activity over the last two months. Aries Engineering submitted a hydrology report. On August 11, 2020, the applicant requested a meeting at town hall for a conceptual plan with lot lines removed. Pembroke Legal Counsel advised that the frontage of individual lots must meet the frontage of the underlying district. The plan was reconfigured to show 100 feet of frontage on each lot. The grading for firefighting water was approved up to July 20, 2020.

Member Crean noted a hard copy letter was received tonight at the table, and a number of abutter letters, all of which are in the file, were received. Anyone interested can request electronic copies from Planner Cronin. Member German noted that on August 19, 2020 Brian Mrazik requested that the hearing be continued due to all the information the board has received and has not had a chance to review.

Chairman Seaworth stated that past practice of the board when not prepared to discuss an application, was to set a future date to discuss by mutual agreement with the applicant. That happened a month ago. We received the hydrology report by our deadline. If new material show up on our table the night of the meeting, we are not ready to discuss that material. Member Germain would like more time to review all the material before we are asked to take action. Chairman Seaworth stated that it is very likely new information can be discussed tonight and the board can ask for explanations. Member Crean stated I am not going to make a motion to continue the hearing and extend the review time. Member Hanson said the applicant's request to extend the review time to September 30, 2020 allows us to have discussion tonight and defer action to the next business meeting. Chairman Seaworth clarified that with the state Executive Order in effect, and it not likely to be rescinded, the law on review time does not apply while we are in an emergency situation.

MOTION: Member Hanson moved to approve to grant the request of the applicant, to extend the consideration period for this application to September 30, 2020. Vice Chairman Bourque seconded.

VOTE: B. Seaworth – YES C. Hanson – YES R. Bean – YES
D. Crean – YES R. Bourque – YES

MOTION TO GRANT APPLICANT'S REQUEST PASSED ON A 5-0 VOTE.

At 7:02 p.m. Chairman Seaworth opened the public hearing on Major Subdivision Application #19-03 and associated Special Use Permit Applications. Chairman Seaworth noted that if this application is not completed tonight, the application and its public hearing will be continued to a future meeting and not renoticed.

Jon Rokeh stated that at the June meeting Member Crean asked to deny the application without a presentation from the applicant. Tonight Member Crean appears to have a bias on this application. Member Crean stated I do not have a bias on this application.

Sandra Lehtonen, San Ken Homes, stated that at tonight's meeting, Member Crean stated I have enough information now to make a decision tonight. Sandra Lehtonen, citing a Supreme court decision, requested that Dan Crean be removed from the Board for this application.

Chairman Seaworth declined to remove Member Crean from the board. He stated that is not a productive use of the applicant's and the board's time.

Jon Rokeh, Rokeh Consulting LLC, stated that at the June meeting we discussed that frontage of each lot should be reduced in the same manner all other dimensional elements. We feel this is an error of omission. With 100 foot frontage on every lot, it reduces the number of units to 52. The well radii, on both the 100 foot frontage plan and the no lot line plan, have no overlapping well radii. If the board decides it does not have the authority to set the lot frontage at 100 feet for this plan, we want to use the "no lot line" plan with 56 units, no well radii overlap, no town roads and a homeowner association in place.

Chairman Seaworth stated if the Pembroke Planning Board takes its Legal Counsel's advise that minimum frontage is 200 feet on a Class V or better road, and the ZBA needs to approve a variance to change the 200 feet to 100 feet frontage, then we would need to make any approval of a plan contingent on the Pembroke ZBA granting a variance to allow 100 foot frontage.

Jon Rokeh stated that if the Planning Board thinks they have jurisdiction to reduce lot frontage to 100 feet, we want to use the plan with 100 feet road frontage. A ZBA requirement for a variance is a show stopper.

At 7:16 p.m. Chairman Seaworth declared a short break to speak to Legal Counsel. At 7:22 p.m. Chairman Seaworth returned to the board. He indicated the question is, does the Planning Board have the authority to determine lot frontage on a cluster/open space ordinance INDEPENDENT of any application. Along the lines of the other dimensions, the applicant has stated courts have ruled the planning board has that authority. This is not a ruling on this plan, but would be for future plans submitted. Vice Chairman Bourque asked the Chair to read the definition of "open space". Chairman Seaworth stated the question is what the ordinance does not say. In any event, the Planning Board does not vote during public hearing. A vote would have to come after the public hearing is closed. Are we preferring lot lines with 100 feet of frontage.

Laura Spector Morgan state that the open space development ordinance as written does not allow the Planning Board to reduce lot frontage. The specifics of lot area and all other bulk dimensional requirements can be changed. What is the intent of the open space ordinance?

Selectmen's Rep Bond stated zoning has the authority to change frontage and setbacks. Chairman Seaworth stated the board allows an applicant to build on a smaller piece of land. The applicant proposed building on one half the land with one half of dimensional requirements. Vice Chairman Bourque took a closer look at frontage at a recent meeting. Vice Chairman Bourque stated we have the statement from the applicant that they want to halve all dimensions. Chairman Seaworth noted if the words "road frontage" were in the ordinance, there would be no discussion of ZBA involvement.

Jon Rokeh stated that in the old Pembroke cluster development ordinance, frontage is specifically reduced. When the open space ordinance was written road frontage is not mentioned. We would prefer to go with 100 foot frontage.

Chairman Seaworth stated that we have heard expressions of concern in a lot free development. It is a technical legal issue. The Planning Board does not vote during public hearing. I will ask board members to make a motion tonight. Jon Rokeh stated that specific to this plan, when we first sat down with Carolyn Cronin, we asked for clarification that there would be no zoning issues based on the preliminary plan. Chairman Seaworth stated this is the first use of the open space ordinance by this Planning Board to make what looks like a conventional subdivision.

Jon Rokeh stated we thought the Planning Board has the authority to reduce frontage while working with the applicant. We will proceed with our plan for open space development. All of our State of NH permits stay on file. We just need to notify them that the development is under condominium ownership. Maintenance of roads and retention ponds, trash pick up would all be private. All of the recommendations in the Aries report having to do with lot lines and well radii go away. Steve Permaw wrote a report on cul de sac with one entrance. Clarification was made that Member Hanson had that concern, not Vice Chairman Bourque. Our plan does not change per Eric Thomas at NH DES. Once we turn in condominium documents, they will issue updated approvals.

Chairman Seaworth stated I am surprised that the state does not look differently at a house that does not own its own leach field. Selectmen's Rep Bond asked for clarification that the 20 lots at the end of the cul de sac were accessible by one direction roads. They are. The Aries report recommended either a community water system or better casing on the wells for 40 feet minimum. Jon Rokeh stated applicant would pick extra casing on the wells.

Wetland buffer plaques will be installed. We have already addressed many of the Aries report recommendations. Our experts Fred and Chris Guida are her to answer any questions. Chairman Seaworth asked if applicant would mind if George Holt, Aries Engineering, presented first as we had not had an opportunity to meet with him yet.

George Holt, Aries Engineering, stated he is on the Planning Board in Dunbarton, the energy committee, and its Conservation Commission so he understands how towns run. He was asked to make an independent review of the subdivision with the goal of everything water related – wells, quantity and quality of water, wetlands etc. In general he agreed with many of the findings of the applicant report. Potential for arsenic is common in NH wells and you can drill useful wells in the area of source water. He differs on impacts from pumping. On site septic conventional subdivision acreage is substandard on 7 lots (did not meet 20,000 square feet per lot). Five other lots did not meet percolation of type C soils. Reducing lots to 52 from 56 increased the average lot size by 7%. Removing lot lines would do the same thing. Eric Thomas, NH DES, noted that as a conventional subdivision, this plan would not be approved. There is a lot of intensity in use. The applicant has not changed the density or the potential impacts. With a common water system, wells are put at a distance from septic systems in an area not developed. As a fall back 40 foot casement of wells is needed. The applicant should do a survey of area wells

up to 200 feet from the property boundary lines. This survey helps protect abutter wells by showing pre existing conditions. Common ownership of wetlands without proper monumentation is not recommended.

Chairman Seaworth noted that George Holt shows preference for community water system, but as John Rokeh pointed out the applicant has all their State approvals. The Hydrosorce response objects to a community water system, with good well capacity in the area. A number of wells in the area have higher yields than required. 10 to 18% of wells average 40 gallons per minute. George Holt noted that 23 gallons per minute minimum times two for a community water system equals 46 gallons per minute needed for a community water system. Vice Chairman Bourque said that 56 new wells would be quite a draw on the aquifer. How large of an area would the water come from? When you install 56 wells in a small area you create a drawdown that needs precipitation to equal the recharge. George Holt said the highest impact would be to wells around the subdivision. The water table would likely go lower due to glacial till. The cone of depression extends further out. You would need to monitor peripheral wells because contamination in the well is a greater probability. Chairman Seaworth stated I am concerned about a large recharge area that could go far outside the development. George Holt said the recharge could come from both developed and undeveloped source water. It was discussed that the water shed could be 177 acres, 60 acres from the subdivision itself.

Selectmen's Rep Bond asked what monitoring the surrounding wells would look like. George Holt said it would include a baseline study, elevation for a week, putting a transducer in the well and looking at the water table changes and water quality periodically. Chairman Seaworth stated we have done a monitoring program for commercial property where a firm was contracted and reported results to Pembroke Water Works. Selectmen's Rep Bond stated that a lot of residents are concerned about their wells. George Holt said a permit is needed for a community water system and there are regulations to meet. Member Crean asked if there are plans to convey the open space area to some entity. Jon Rokeh said the homeowners association would own the open space. It would be set aside as natural areas to protect the wells. Again, there would be 56 units removing the lot lines under homeowner association as one property, and 52 units if the Planning Board owns lot frontage reduction.

Vice Chairman Bourque asked about sewage output dilution and possible contamination of wells. Hydrosorce Rep said he was engaged to give an opinion on surveying individual wells. He never had a mandate to look at community water system or aquifer impact. We have monitored other wells but leach fields are not my area of expertise. NH DES has already approved the plan. The wells are bedrock, not sand and gravel on top of bedrock. The covering is glacial till with low permeability. Surface water cannot soak in and till also prevents treated wastewater from going into wells. Surface water will travel laterally for a distance and then overall, down slopes to emerge in wetlands, evaporate, or stay in the fracture system in bedrock. Leach fields have a job to do, treat water, mix with rainfall and snow melt, and runoff. Construction specifications for wells, including 40 foot casing and grouting will prevent any contamination from getting into wells.

Chris Guida, certified septic specialist, stated that the plan has state subdivision approval. Each septic system will be individually approved. All of the leach fields are larger than they need to be. The system may fail at 50 years and the owner will be required to replace it. Surface runoff goes through four feet of sand and gets to till layer that is impermeable. In response to board questions on whether leach fields will be raised above grade, Chris Guida responded that the bottom of the bed will be at seasonal high water table. Each system has a pumping interval that also depends on usage and number of residents. A condominium document could address proper leach field maintenance. A homeowner association could enforce care of septic systems.

Chairman Seaworth opened the public hearing to comments from the public. Please be succinct and talk about material from tonight's hearing.

Paula Heath, 429 4th Range Road, stated that the Gelinas farm is currently pumping in water. My artesian well is pumping slower due to drought conditions. As someone who is looking at mounds for leach fields, I am not happy to see more. I am concerned about well water in general. I have cut back on laundry, use in sheep farm and apple orchard. Hay has been cut in the area proposed for development, usually once per year in September because the ground is too wet with surface water.

Brian Mrazik, Pembroke Hill Road, stated his concern was the uncertainty of water availability. I read both hydrologist's reviews, and I am concerned about potential interaction between well and septic. Hydrosources measures the watershed area at 144 acres and Aries Engineering measures the watershed area at 177 acres. The wells are proposed at the top of a hill. A USGS 2002 study of bedrock well yields, which I supervised, shows lower water yields at the top of a hill. Six wells at the top of a hill have gone dry. Water is available for future development downhill. A community water system provides more public health protection. It is regulated, and has periodic testing and treatment of the water. There are additional costs associated with long term operation that could be the responsibility of a homeowners association.

Ayn Whytemare, Pembroke Street, stated she is the author of a letter from Pembroke Conservation Commission. Aries Engineering reported drilled wells are capable of 2 gallons per minute. I had a well that pumped 6 gallons per minute on Borough Road. The recommended rate is 4 gallons per minute. Additional drilling would impact other water sources in the area. The frontage footage should be 100 feet minimum on average. If the homeowners association takes care of failed septic systems, there is no impetus on individual unit owners to treat their septic system kindly. If people have problems with shared driveways, what will happen with shared septic systems? Wetland protection would fall apart. If open space is now within the homeowners association how does it stay open space? Who determines its use?

Chairman Seaworth asked do we encourage open space to stay as part of a homeowners association, or do we encourage it to be turned over to the Conservation Commission? Ayn Whytemare, Pembroke Street, said she googled San Ken Homes and found a court case with Town of Sharon in 2013 challenging the towns wetland rules.

Ami Heiser, Buck Street, Chair of Conservation Commission, said I agree with Ayn. We monitor all town conservation lands annually and find that people move the wetlands tags and redirect streams. There are wetlands in every back yard. We don't have funds to go after violaters. We depend on volunteerism. I question the quality of having leach field and wells so close together. We need to take care of and protect our open space. This is not the role of a homeowners association in my opinion.

Jon Rokeh stated that San Ken Homes was mischaracterized in the Sharon case comment. It was an Administrative Appeal regarding 75 foot v 35 foot wetland setbacks. There were no wetland issues.

Chairman Seaworth stated we have two plans, one with set with houses on lots with 100 foot frontage, and the other lot line free run by a homeowners association. The primary recommendation of the Aries report was to have a community water system or implement ways to mitigate regulations of NH DES. At a minimum there needs to be a testing program to test wells outside of the subdivision development. Who is responsible for the testing and the cost? What requirements does the board have for the next meeting? Vice Chairman Bourque would like to compare the cost of 56 individual wells and a community water system. Jon Rokeh stated that a community water system is not on the table for this development. The State of NH has approved our wells and septic system plan.

Selectmen's Rep Bond asked who would own the open space. They are relying on that property to feed the wells. Chairman Seaworth said that with the no lot line plan, the entire parcel is one lot. It is very helpful to have all these analyses of where the water will come from. Estimates are not absolute factors to balance.

Member Germain left the meeting at 9:10 p.m.

Member Crean stated that we need legal review of any proposed condominium documents, and town standing in enforcement. Chairman Seaworth said these are good points. What is feasible? Laura Spector Morgan said that a homeowners association can own the land, and grant a conservation easement to the town. Chairman Seaworth said some kind of well monitoring by an outside organization could be included in homeowner association documents. Chris Guida stated that private wells are required to be tested. New wells must meet state regulations. A community water system puts all the eggs in one basket, relying on wells capable of pumping 23 gallons per minute. Individual wells provide storage in the casing. Chris Guida said ninety percent of homes in New Hampshire have individual wells.

Vice Chairman Bourque noted there is no well testing require after it is built.

Chris Guida stated he tests his home well periodically.

Chairman Seaworth summarized the information that the applicant needs to know tonight: 1) that the applicant prefers the 52 total lot plan with 100 feet frontage (or go to ZBA) and 2) the water supply issue needs to be resolved.

There being no further input Chairman Seaworth closed the public hearing at 9:21 p.m. If this application is not completed tonight, the public hearing will be continued with the application and not renoticed to abutters. Check the agenda online.

Chairman Seaworth noted that if the Planning Board is anticipating making a decision at the September 22, 2020 meeting, we will need to conform to strict time limits for both the presentation and comments. If residents have lengthier comments, please provide them to us in writing ahead of the meeting. We need motions regarding the items the applicant needs to know tonight. Vice Chairman Bourque stated that he supports the Aries Engineering recommendation that the individual wells have 40 foot casing and that wells within 200 feet outside the subdivision be tested for pre existing conditions. Chairman Seaworth asked what is appropriate and what works best? We are not setting conditions of approval. We are suggesting to the applicant what we would like to see

MOTION: Vice Chairman Bourque moved to support the second Aries Engineering recommendation that the individual private well water system have expanded 40 foot casing, and wells within 200 feet outside the subdivision will be tested to establish pre existing conditions

Seconded by Member Hanson.

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

MOTION PASSED ON A 5-0 VOTE.

MOTION: Vice Chairman Bourque moved that the Pembroke Planning Board has authority to set the lot frontage of an open space development as part of the underlying district dimensional waivers. Seconded by Member Hanson.

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

MOTION FAILS ON A 2-3 VOTE.

MOTION: Vice Chairman Bourque moved to continue Major Subdivision Application #19-03 and associated permits to September 22, 2020. Member Crean seconded.

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

MOTION TO CONTINUE MAJOR SUBDIVISION APPLICATION #19-03 TO SEPTEMBER 22, 2020 PASSED ON A 5-0 VOTE.

Minutes

August 11, 2020

MOTION: Vice Chairman Bourque moved to table action on the minutes of August 11, 2020 to September 22, 2020. Member Hanson seconded.

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

MOTION TO TABLE ACTION ON THE MINUTES OF AUGUST 11, 2020 TO SEPTEMBER 22, 2020 PASSED ON A 5-0 VOTE.

Miscellaneous

1. Correspondence – Planner Cronin reported that Center NH Regional Planning Commission is looking for information to send to the State of NH for its 10 year road plan. The list of projects was sent to the Board of Selectmen. The Planning Board would like to see a Route 3 Corridor Study undertaken as a regional/State project. BOS will discuss at future meeting.

2. Committee Reports-

Tri Town EMS – Vice Chairman Bourque reported that Tri Town met at the beginning of August. They approved their 2020-21 budget.

Zoning Board of Adjustment – Vice Chairman Bourque reported that ZBA met August 24, 2020 and approved a waiver of rear setback for an attached garage.

Board of Selectmen – Selectmen's Rep Bond reported that CIP is up and running. Budget Committee has been meeting every Thursday. Concerns about residents being unable to pay their taxes were not an issue. All revenue is down. Future tax payments may be worrisome with remote schooling and parents unable to work.

3. Other Business – **September 8, 2020 workshop** – Selectmen's Rep Bond will be at the polls.

MOTION: Vice Chairman Bourque moved to cancel the September 8, 2020 workshop due to Primary voting. Seconded by Member Hanson.

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

MOTION PASSED ON A 5-0 VOTE.

Subcommittee – Chairman Seaworth noted that Vice Chairman Bourque would like to form a subcommittee to review existing open space ordinance and look at language issues. Please let Carolyn or Bob know of interest.

4. Planner Business – Planner Cronin provided TRC meeting minutes regarding moving the club house. Every application involves ZBA action. Discussion of possible rezoning in R1 or LO district.

5. Board Member Items - none

6. Audience Items - none

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

Without objection the meeting was adjourned at 9:41p.m.

Respectfully submitted,
Susan Gifford, Recording Secretary