

**Pembroke Planning Board
Meeting Minutes
December 12, 2023**

(Approved January 9, 2024)

MEMBERS PRESENT: Brian Seaworth, Chairman; Rick Frederickson, Selectmen's Rep; Brent Edmonds, Clint Hanson, Bryan Christiansen

MEMBERS EXCUSED: Robert Bourque, Vice Chair; Kathy Cruson

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

Chairman Seaworth called the meeting to order at 6:30 pm. Five Planning Board members were present. Bryan Christiansen is now a full member. There are no alternate members currently.

New Business

- 1. Major Site Plan Application #23-105, Peter Holden, Holden Engineering & Surveying, Inc. acting as Applicant on behalf of EJ Realty Group, LLC, owner of Tax Map 632, Lots 15 and 16 located at 88 & 94 Sheep Davis Rd. in the Commercial/Light Industrial (C1) Zone and the Aquifer Conservation (AC) and Wetlands Protection (WP) Districts.**

The Applicant proposes to add 42,520 SF of gravel staging area for equipment and vehicles.

- **Special Use Permit Application SUP-AC #23-311** The Applicant requests a Special Use Permit in accordance with Article 143-68.E., Aquifer Conservation District, for equipment and vehicle storage over the aquifer.

Present: Peter Holden, Holden Engineering & Surveying, Inc., and Jason Cross on behalf of the owners.

Planner Cronin reported that Michel's requires more storage space for equipment and vehicles, so the property owner purchased the abutting lot, 88 Sheep Davis Road, and they plan to extend their storage area onto this lot. They propose a 42,520 SF gravel storage area with associated landscaping and stormwater management. This is a major site plan because the lot is undeveloped. Applicant provided a letter dated May 25, 2021 from Christopher Wilkes, Certified Wetland Scientist, in response to a request from staff to provide wetland delineation. The letter states there are no wetlands associated with the drainage ditch.

A TRC meeting was held on November 28, 2023. Addressing, sewer connection, wetlands, and stormwater were discussed. The Town Engineer issued comments on November 27th relative to the stormwater plan and wetlands. The Conservation Commission met on December 11th. The Conservation Commission voted that they are not in favor of the application as presented as they disagreed that the ravine is not a wetland.

The following waiver requests were submitted by the Applicant: Part A – General Information, Items: H. Security/fire alarm, I. Storage of hazardous materials, K. Potential hazards, L. Multifamily housing, Q. MSDS; Part B – Site Plan Information, Items: B.(6) Proposed buildings, B.(7) Open space, B.(11) Proposed streets, B.(16) Test pits, B.(20) Easements; and Part C – Construction Plans, Items: B. Roadway profiles and C. Roadway cross-sections.

Planner Cronin reported that the checklist waiver requests are appropriate as they are not applicable to the project. The proposed plan does not have any buildings, roadways, or residential use.

MOTION: Member Hanson moved to grant the waiver requests for checklist items: Part A. Items H, I, K, L, and Q; Part B. Items B.(6), B.(7), B.(11), B.(16), and B.(20); and Part C. Items B. and C as requested by the applicant. Seconded by Member Edmonds.

VOTE: B. Seaworth – Y C. Hanson – Y
 B. Edmonds – Y R. Frederickson – Y B. Christiansen - Y

MOTION TO GRANT THE WAIVER REQUESTS AS LISTED PASSED ON A 5-0 VOTE.

MOTION: Member Hanson moved to accept the application as complete. Seconded by Selectmen’s Rep Frederickson.

VOTE: B. Seaworth – Y C. Hanson – Y
 B. Edmonds – Y R. Frederickson – Y B. Christiansen - Y

MOTION TO ACCEPT THE APPLICATION AS COMPLETE PASSED ON A 5-0 VOTE.

At 6:37 p.m. Chairman Seaworth opened the public hearing on Major Site Plan Application #23-105 and Special Use Permit Application SUP-AC #23-311. If this business item is not resolved tonight, the application and the public hearing will be continued without being renoticed. Information will be on the town website for a future agenda item.

Peter Holden, Holden Engineering & Surveying, Inc., stated Mr. Cross was present tonight representing the owners. Peter Holden stated that Nichole’s Greenhouse is across from the lots in this proposal. There employees work on power lines and transmission lines, but no people will be working on poles on the property. No Michel’s employees will park on the proposed storage lot. The employees go to the job site. Equipment is stored in this area. The previous lot owner sold snowmobiles and moved to Hopkinton, NH. Michel’s bought the lot, took the house down, and kept the existing driveway for occasional use to reach equipment, if desired. The plan shows both lots with a gravel surface. Peter Holden stated there is a big ravine existing on the lot. Water flows from Borough Road to the Soucook River. The applicant plans to put a pipe in and fill the area. The snow plow people moved to Pembroke in 2007. Peter

Holden stated that he is a Certified Wetland Scientist and went to the site in 2007. Peter Holden provided a report that there were no wetlands on site because the criteria are not met.

1. There is no wetland vegetation.
2. There is not a continuous source of water.
3. There is no hydric soil within eight inches of the ground.

Peter Holden stated that rusty soil becomes gray. Unaware of the 2007 report, the owner engaged VHB to go to the site and inspect for wetlands. VHB provided a written letter in 2021 with the same conclusions.

Peter Holden stated that the applicant plans to put a manhole on his property. Owners will maintain the manhole. The State of NH will not be responsible for anything. There will be drainage in the back to a catch basin, then on to a second catch basin. There will be a ten foot dry well with ten feet of stone around it. This dry well is the same design currently used at Concord Nissan. The dry well will seldom overflow. Chairman Seaworth asked if there would be any ongoing maintenance. Peter Holden stated we do not want any eroded soil. Employees will watch the catch basins to be sure the drywell does not fill up. There will be drainage fabric around the outside of the dry well. Concord Nissan has an outside maintenance firm that come in once a year. Member Edmonds asked if the ditch was natural. The ditch is natural. Member Edmonds asked if Peter Holden received correspondence from the Conservation Commission Chair stating that a Natural Resource Inventory (NRI) report dated 2018 showed wetland layers on GIS maps in the area. Member Edmonds stated that he agreed with evidence of no hydric activity on the site. NRI mentioned wetland consideration at one time, but Member Edmonds cannot speak to the relevance of that report. Member Edmonds stated he does not consider the impact severe and is willing to defer my vote on this matter tonight.

Selectmen's Rep Frederickson asked how Mr. Holden sized the pipe. Peter Holden stated he looked at the drainage up Borough Road behind the manholes. We sized it like the pipe under the road was not there. We wanted the appropriate size pipe so NH DOT would not have an issue. The pipe covers 216 feet with two separate pipes. The first section is thirty inch diameter pipe, and a smaller length thirty-six inch diameter pipe is located downstream at the point where the drywells would enter the pipe. Member Christiansen asked if the existing culvert is being connected to the new culvert. Yes, this is the case. Chairman Seaworth asked about the Town Engineer comments. Planner Cronin stated the comments were on minor details like maintenance procedures and catch basin design. No revised plans have been received yet.

Planner Cronin reviewed the eight draft conditions of approval which were also sent to the applicant this afternoon. Chairman Seaworth stated that the issue the Conservation Commission brought up is a case where the Planning Board would get a second opinion. It turns out, we do have the opinion of two Certified Wetland Scientists dated 2007 and 2021 which have the same conclusion that no wetlands exist in the ravine based on the specifics of the ditch. Member Edmonds stated absent any more

descriptive information in the NRI report, and without contested activity, I believe we can go forward. Member Edmonds stated he is prepared to abstain on the vote. Member Christiansen stated that with a VHB letter dated only two years ago, and having observed the ditch yesterday, I am prepared to go forward.

There being no further input Chairman Seaworth closed the public hearing at 7:00 p.m. for tonight. 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.

Chairman Seaworth discussed Findings of Fact for Major Site Plan Application #23-105 and Special Use Permit Application SUP-AC #23-311. The application was complete after waivers requested from the checklist were approved by the board. The project met all zoning ordinances and site plan regulations. Water Works and the Health Officer noted that where the use is not changing on the new lot, they have no concerns with a special use permit. Two Certified Wetland Scientist opinions stated the ravine does not meet wetland criteria.

MOTION: Member Christiansen moved to approve Special Use Permit SUP-AC #23-311 conditionally until Major Site Plan #23-105 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.

Seconded by Member Hanson.

VOTE: B. Seaworth – Y C. Hanson – Y K. Cruson - Y
B. Edmonds – ABSTAIN R. Frederickson – Y
B. Christiansen - Y

MOTION TO CONDITIONALLY APPROVE SPECIAL USE PERMIT PASSED ON A 4-0-1 ABSTAIN VOTE.

MOTION: Member Christiansen moved to approve Major Site Plan Application #23-105 with the following conditions:

1. All waivers and the date granted shall be listed on the plan.
2. All conditions of approval shall be listed on the plan.
3. Prior to signature, the plans shall be revised to address all review comments from the Town Engineer and any applicable concerns and issues.
4. The original signatures of all property owners shall be provided on the final plan.
5. The Site Plan Review and Special Use Permit Notices of Decision are to be recorded at the Merrimack County Registry of Deeds and recording fees paid to Town of Pembroke.
6. DOT Driveway Permits are required for Lots 15 and 16.
7. DOT approval for pipe connection is required.

8. The site plan will not be considered as receiving final approval until all conditions of approval are met.

Seconded by Member Hanson.

VOTE: B. Seaworth – Y B. Edmonds – ABSTAIN
C. Hanson – Y R. Frederickson – Y B. Christiansen - Y

MOTION TO APPROVE MAJOR SITE PLAN APPLICATION #23-105 WITH CONDITIONS PASSED ON A 4-0-1 ABSTAIN VOTE

1. ALL WAIVERS AND THE DATE GRANTED SHALL BE LISTED ON THE PLAN.
2. ALL CONDITIONS OF APPROVAL SHALL BE LISTED ON THE PLAN.
3. PRIOR TO SIGNATURE, THE PLANS SHALL BE REVISED TO ADDRESS ALL REVIEW COMMENTS FROM THE TOWN ENGINEER AND ANY APPLICABLE CONCERNS AND ISSUES.
4. THE ORIGINAL SIGNATURES OF ALL PROPERTY OWNERS SHALL BE PROVIDED ON THE FINAL PLAN.
5. THE SITE PLAN REVIEW AND SPECIAL USE PERMIT NOTICES OF DECISION ARE TO BE RECORDED AT THE MERRIMACK COUNTY REGISTRY OF DEEDS AND RECORDING FEES PAID TO TOWN OF PEMBROKE.
6. DOT DRIVEWAY PERMITS ARE REQUIRED FOR LOTS 15 AND 16.
7. DOT APPROVAL FOR PIPE CONNECTION IS REQUIRED.
8. THE SITE PLAN WILL NOT BE CONSIDERED AS RECEIVING FINAL APPROVAL UNTIL ALL CONDITIONS OF APPROVAL ARE MET.

Minutes

November 28, 2023

MOTION: Member Hanson moved to approve the November 28, 2023 minutes as amended (page 18 at the top, typo “an” not “and”). Selectmen’s Rep Frederickson seconded.

VOTE: B. Seaworth - Y B. Edmonds - Y C. Hanson
B. Christiansen – Y R. Frederickson - Y

MOTION TO APPROVE NOVEMBER 28, 2023 MINUTES AS AMENDED PASSED ON A 5-0 VOTE.

Planner Cronin provided typed Findings of Facts from the November 28, 2023 meeting which will accompany the written approval on file. As always, Planner Cronin has done an excellent job.

Miscellaneous

1. Correspondence
2. Committee Reports – Conservation Commission – Member Edmonds reported that Conservation Commission met last night and discussed the proposal the board had before us tonight. The commission also received an update on the Phipps estate. If funds are available, the commission is in discussion with the Stanley Grimes family

regarding land on Buck Street. The family would like to keep the land in current use or conservation status to honor the outstanding stewardship of the land practiced by Stanley Grimes. Member Edmonds reported that Mark West, West Associates, attended the meeting to present information to the Conservation Commission about the sidewalk on Whittemore Road that is being paid for by Mr. McCormack. The area has significant drainage issues. The curbing will need to be of a greater slope than usual because there is turtle activity at the location. The Chair of the Conservation Commission signed the NH DES Wetlands Permit as is the usual practice. Board of Selectmen – Selectmen’s Rep Frederickson reported that the Board of Selectmen met on December 6, 2023 and approved a change order for Merrill to finish the Main Street project in spring. The board approved their 2024 meeting schedule. The board supports whatever change is needed to match up Town Meeting and School Meeting start times in the future. KV Partners will prepare RFP detail for the bridge replacement bid to be ready in spring. The request for an electric trash truck is moving on to the Governor and Council meeting. The town will need to first outlay the money for the electric truck. The cost is under \$800,000 and 90-95% of the cost will be reimbursed to the town. Charging station upgrades will be needed to charge the electric truck. The town is using credit for old equipment to purchase new fire hose. The board entered into a contract for tax lien and deed notification services. The Board of Selectmen approved Bryan Christiansen as a full Planning Board member. Paul Bacon, Code Enforcement, was appointed Deputy Health Officer. A local roofer has offered to reroof the gazebo in Memorial Park for free next spring. Roads Committee - Chairman Seaworth report that Roads Committee met last week. The remaining funds from 2023, approximately \$37,000, were encumbered toward projects in 2024. This year’s paving award will be done next spring. Department of Public Works has been working with Central NH Regional Planning to get the bid package ready so it can go out after the Town Meeting. Renarl Avenue needs reconstruction and has drainage issues. The Town Engineer is evaluating what can be done, given that the Main Street bond is still being paid in 2024. The Town Engineer will present the scope of the project in February 2024. The Roads Committee is taking January 2024 off.

3. Other Business

A. 2024 Zoning Amendments for January Public Hearing

Planner Cronin reviewed the 2024 Zoning Amendments for January Public Hearing. Legal had minor wording and language changes that Planner Cronin made to the documents. Two items under the Soucook River Development Special Use Permit need board discussion. Legal recommends that the board add a reference to mixed use added by special use permit. Legal questioned deed restrictions on future subdivision of land developed in the Soucook River District under mixed use and warned against fiscal impact studies. The criteria lists the types of studies the Board “may” request which the applicant “may provide.” The board may be able to leave the language more general if they do not wish to name specific studies. After discussion is complete the Board needs to vote on which articles to send to public hearing on January 9, 2024. Most of the articles except Soucook River Development mixed use

have been completed at work sessions and are ready to send to public hearing as is. Chairman Seaworth stated my suggestion is to discuss each legal comment and put the article forward. I do not see that this special use permit for mixed use needs to be delayed from this year's town meeting.

Planner Cronin relayed the legal concern if the Soucook River area gets changed to residential zoning in the future. Chairman Seaworth stated I understand the issue legal brings up. Vice Chair Bourque had similar concerns that under a special use permit for mixed use, a lot could still be subdivided. One positive is that the entire plan for the parcel is presented and considered at one time. The board could allow creation of commercial and residential lots along the riverfront. If the planned commercial part falls through, there is no mixed use. Language for deed restriction would hold the developer to a commitment outside of what happens in zoning. Selectmen's Rep Frederickson stated that residential use in the Soucook River District uses B1 zoning requirements which allow higher density. There is no ability to subdivide unless applicant goes to the ZBA for a variance.

Planner Cronin stated that the Soucook River Special Use Permit for mixed use is similar to the Open Space Development Special Use Permit used at Pembroke Pines, which must come back to the Planning Board to amend its overall plan. To amend any lots, the applicant must come back to the Planning Board. Planner Cronin stated that a deed restriction is a more involved process. A future subdivision would have to come back to the Planning Board for approval. Chairman Seaworth stated that the dedicated commercial area must be 50%. Selectmen's Rep Frederickson asked is that meant to be 50% of square footage or 50% of floor area of the proposed mixed use development? Member Christiansen asked if it is square footage of buildings or land use. Chairman Seaworth stated that to enforce percentage as a deed restriction may not be needed. All the details are tied together. Member Christiansen asked does the board need to put in a figure? If the developer proposes a 50/50 development, the Planning Board can change or waive the requirement for the best interest of the town. Planner Cronin stated the intent is that if you do residential, some of the project is commercial. Chairman Seaworth is comfortable with the vagueness. Most applicants will want a request a design review session to discuss the requirements before working on a submittal. Member Christiansen said I would prefer that the 50% be square footage of buildings. A deed restriction would be more complicated legally. Planner Cronin stated that the difficulty of adding a deed restriction is that forty years from now, a future owner of a property will want to know why, for example, they have a deed restriction that no farm animals are allowed. Once a restriction is in a deed, it is not a town issue. Chairman Seaworth asked what would make a single family homeowner think to review a Special Use Permit and come back to the Planning Board. The proposed Soucook River Development is meant to remain as large lots long term once a development is approved. This is different than a business owner coming back in five

years to request increased manufacturing space. Chairman Seaworth proposed putting an end to Soucook River discussion for now and moving on to legal comments.

Item J. 'may include' versus 'shall include' a fiscal impact study. The Planning Board took the language from a Newmarket document. Chairman Seaworth stated we are implying the development have a positive impact to the town. Timing will affect what comes in with the application. Once the Planning Board has looked at a proposal, it can request additional reports from the applicant if needed. Member Christiansen said lack of a report cannot be a reason for denial. Planner Cronin stated that it feeds into the applicant proving that adequate services are provided, then the Board can consider the study. If the barrier is the reference to fiscal study, board consensus is to remove that language. Member Hanson said a report could also show a proposed development has a negative fiscal impact to the town. Chairman Seaworth noted we can always ask for an analysis. The last thing to consider tonight is whether we are overloading the ballot by including the article for mixed use. Planner Cronin stated one motion to move all seven articles to public hearing is needed. The board discussed whether the order of the articles conveys a priority.

MOTION: Member Christiansen moved to send all seven proposed zoning amendment articles to a public hearing on January 9, 2024. Seconded by Member Hanson.

VOTE: B. Seaworth – Y C. Hanson – Y
B. Edmonds – Y R. Frederickson – Y B. Christiansen - Y

MOTION TO SEND SEVEN ARTICLES TO PUBLIC HEARING PASSED ON A 5-0 VOTE.

4. Planner Items –

Planner Cronin noted that tomorrow is the last day that a citizen petition amendment article can be filed. Planner Cronin reported two local business changes. The space at 285 Pembroke Street is being taken over by a new salon called Ascend Wellness. The Little Vintage Venue downtown is expanding into adjacent space. Planner Cronin reported that January 23, 2024 is the Planning Board business meeting and the date for any articles that may need a second public hearing. Planner Cronin stated that the business item continued from the November 28, 2023 meeting to January 23, 2024 will be kept on that agenda.

It was noted that January 23, 2024 is a national voting day. For all residents to exercise their right to vote, the Planning Board meeting will begin at 6:30 p.m. at Town Hall as noticed but members will take care of other business until the polls close at 7:00 p.m. Due to DRI notices of the public hearing and timeframes, the item remains on the January 23 agenda. The board will not open the public hearing until after 7:00 p.m. The Deputy Fire Chief had concerns about exceeding Town Hall building capacity at the November 28, 2023 meeting. Because individuals at the November 28 meeting were interested in different applications, at no time was capacity exceeded. Because Town Hall is the noticed location for January 23, there is a possibility that interested parties

may exceed building capacity. In case of larger turnout, Planner Cronin has reserved space at Pembroke Academy auditorium if the January 23, 2024 Planning Board meeting needs to recess and reconvene at a second location. Planner Cronin has reserved space at the high school auditorium for the January and February 2024 business meetings should it be necessary. On a side note, the meeting room upstairs in town hall is currently closed to public meetings while a project is going on. There could be more or less people attending any Planning Board meeting than anticipated.

5. Board Member Items –

Chairman Seaworth has heard of possible movement on the sewer issue through a Memo of Understanding. Selectman's Rep Frederickson stated capacity is needed at Pembroke Pines. Allentown plant has unused capacity and there are issues at City of Concord sewer plant. Pembroke must have a solution.

6. Audience Items - none

MOTION: Member Hanson moved to adjourn the meeting. Seconded by Member Christiansen. Without objection the meeting was adjourned at 8:23 p.m.

Respectfully submitted, Susan Gifford, Recording Secretary