

Town of Farmington  
Planning Board Meeting Minutes  
Wednesday, June 7, 2023  
Selectmen's Chambers  
356 Main Street-Farmington, NH 03835

**Board Members Present:**

Rick Pelkey, Chairman  
Bill Fisher, Vice Chairman  
Stephen Henry, Secretary  
Charlie King, Selectmen's Rep  
Jeremy Squires  
Mike Day  
Rebecca Patton-Sanderson

**Others Present:**

Kyle Pimental, Planning Director  
John Huckins

**1). Call to Order:**

Chairman Pelkey called the meeting to order at 6:01 p.m.

**2). Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**3). Review of Minutes:**

**May 17, 2023-Public Meeting Minutes-** No errors or omissions

**Motion:** (Henry, second Day) to approve the minutes as written passed 5-0-2 (Squires, Patton-Sanderson abstained).

**4). Public Comment:** None

**5). Old Business:**

**Review Land Use Application Disclaimer-** Mr. Pelkey said they have a new disclaimer that the Town would like the board to review and agree to and this is going to go on the applications not on the Notices of Decision.

Mr. Pimental said they felt that putting it on the NOD was not the most appropriate place to put it because it's the end of the process and the decision has already been made. He said putting it on the applications where an applicant is actually signing it acknowledging that they have read the disclaimer seemed to make a lot more sense than putting it on the NOD so that is what is being recommended. He said the Town's legal counsel changed the language a little bit and this would go on all land use applications moving forward on the same page as where they would be signing it.

Mr. Pelkey explained that the Town contracted for engineering services and during the course of their first use of them the question came up about liability for the completeness of a drawing

or when we ask them to make a comment they don't want to be held responsible that everything in the drawing is correct and conforms to all of the requirements. He said they were looking for a way to get some relief from that liability and originally they asked us to make it part of every NOD and the board didn't like the language either so this is coming back to them for a second time.

Mr. King said the proposed new language could be found on the document titled "Amendment One to Agreement for Consultant Engineering Services with DuBois & King, Inc." He said he and Mr. Pimental spoke to Att. Keriann Roman and worked through it and he asked her if there was another way to accomplish this without putting it on the NOD making it look like this big legal mess and the solution was to put it on the applications putting them on notice and also that they have a signed copy that they've been put on notice.

Mr. Pelkey said as soon as he saw it and read that it was going on the applications he was in favor of it as written.

Mr. King added when they hired them and the Town was trying to enter into the contract with them the Town Attorney didn't like some of the language in the contract so there was some back and forth on releasing them of liability. He said they reached an agreement so they could enter into the contract and that's how it came about because they wanted this notification on the NOD and when the board wasn't happy they renegotiated to do the same thing but to put it at the start of the application instead of at the end.

Mr. Henry said he was concerned with some the comma placements such as "not a representation, upon which the applicant...can rely, that the applicant's project is: fully compliant..." and asked if they are saying that they can't rely on the advice.

Mr. Pelkey said the applicant is not going to rely on our engineer to ensure that their application is complete.

Mr. Henry said if they are requiring them to get the third party review and then saying but you can't rely on what they tell you.

Mr. Pelkey said the third party review is being done for the board not for them.

Mr. King said part of their thing that they were stuck on is apparently they were/are involved in a legal dispute where they did a review of some sections on a plan and they were challenged saying they should have caught something else that was wrong and they are being taken to court over it so they were looking for relief saying they are not responsible for the things they don't review. It's reviewing for us to assess the correctness based upon what we asked he said.

Mr. Henry said the expectation is we rely on it but the applicant may not.

Mr. Pelkey said that was part of the discussion we weren't going to agree on language that said they weren't responsible for anything we're hiring them to give an engineering opinion on the scope of whatever it is we define for them and we wouldn't let them off the hook for that.

Mr. Henry said the drainage system gets reviewed, our engineer reviews it and says its good, the road gets washed out because the drainage system wasn't designed correctly and didn't

anticipate the right amount of rain and asked if the Town has recourse against our engineer because we relied on the engineer's advice saying that drainage system was correct but it washed out our road. He then asked or if the Town should go after the property owner who had the drainage system engineered that our engineer said was good.

Mr. King said that is question for Town counsel. He said we're paying them as licensed professionals and one thing that he and Att. Roman balked on was we are not releasing you from the things that we ask you to do saying we want you to review this and then you say I don't want to be held liable for it. He said we are paying them a professional rate for a professional opinion and there's some assumed liability they take as a professional and we're not waiving it.

Mr. Pelkey said the things that they tell us we're going to hold them to those.

Mr. Henry said he didn't expect them to be responsible for the entire thing if we ask them to look at 3 things.

Mr. Pelkey said not unless they asked them to review the entire thing which would probably be over burdensome on the applicant. Hearing no more comments he called for a motion.

**Motion:** (King, second Squires) to accept the amendment to our applications regarding putting the applicant on notice regarding liabilities passed 7-0.

#### **6). New Business:**

**Conceptual Consultation-Tax Map R02, Lot 54, Chestnut Hill Rd-** John Huckins came forward and said he didn't want to do abutter notifications about an existing thing and then gave the board copies of the subdivision site plan and related documents.

Mr. Pelkey asked the board to the review the notes from the Planning Dept. concerning the limitations of what they can get into as far as a conceptual discussion. He said this is more of a general discussion and a discussion of the things they might be concerned about not to get too deep into the weeds on it because if things get to that level then you should have the public available to make comments.

Mr. Pimental added that typically they don't allow for drawings but what they put in their packets is what was already approved in 2006 so these are not new drawings.

Mr. King said these are all part of the public records.

Mr. Huckins said he put the tax map as the top cover of the handout and pointed out his subdivision at the top of the page. He said the discussion really is he worked out a deal with the Natural Resources Conservation Service and he is going to put all of the back lots in conservation and he kept the 2 front lots. He said the 2 front lots are legally existing lots that he has been paying individual taxes on each lot for 15 years so they are legally vested lots.

Mr. King asked which 2 lots he was talking about.

Mr. Huckins said the 2 lots up front next to Chestnut Hill Road-R02, Lot 54-002 and Lot 54-018. He said the next page has a close-up of it so they could see exactly how the lot looked when it was subdivided. He said after that he included the regulations for access and driveways.

He said when this subdivision was created the only thing these 2 lots are tied to in that subdivision is because they were all created at the same time because they are individual lots of record and he also put his NOD in there.

He said the only thing the NOD says about driveways is they have to be 100 ft. away from the intersection and other than that there are no requirements the driveways can go anywhere that is allowed on the road and the Planning Board didn't specify the exact locations for the subdivision. He asked if they rely on the Road Agent to do that.

Mr. King said typically they don't unless they feel there is a need.

Mr. Huckins said there was no specific layout required and there is nothing in there that says you have to use a subdivision road to take access. He said with those 2 front lots being legally existing lots of record and Lot 018 has 2 existing curb cuts on it. He said if they look on the subdivision plan they will see where the house used to be and it shows the existing driveway that came in and then it shows a dotted line that used to be a right-of-way going back and he made a deal with the guy out back so it is no longer a r-o-w and its gone. He said when they repaved the road they have the little turn things going in for both of those things so they maintain as existing curb cuts.

Mr. Huckins said both of those lots are long enough by the zoning and not only does it say that a legally existing lot is entitled to a curb cut it says he has enough frontage so he is entitled to 2 curb cuts. He said because he was going to put the rest of that land into conservation he was going to sell the road front lots using Chestnut Hill Rd. as his road frontage. He said Mr. Pimental determined he would have to revoke his whole subdivision and come back before the board because he would have merge all the back lots and come up with a new plan showing the road location and the whole bit so he could get his building permits. That's why I'm here because I want you to clarify that that's not what that NOD was, that because of those lots being existing lots and they have been for 15 years and by your own zoning I'm allowed to have those curb cuts and the only thing holding it up is the curb cuts because the rest of the lot all exists and it's all legal he said.

Mr. King said this is an approved subdivision and those lots are all created, the road is created on paper and asked to what extent it is in and if it was all the way down to the cemetery.

Mr. Huckins said the road has everything except for the finish gravel and the asphalt which is exactly where it was when he came here 7 years ago for his vesting. He said they put the entire road base in, all the drainage was done, everything with NH DES was all signed off, all the level spreaders all that stuff.

Mr. King said the lots were created, it's recorded, the infrastructure is basically in at the 50% level and it's fully vested.

Mr. Huckins said he wants to use Chestnut Hill Rd. for those 2 front lots and put the rest of it in conservation so instead of giving 25% open space he is giving closer to 85% open space.

Mr. King asked what is going to happen with the roadway.

Mr. Huckins said where the roadway sits now is not a lot of record when he went in to put them into Current Use and he was thinking about once he got everything all signed and documented he was willing to merge everything into the open space including the roadway.

Mr. Henry asked if he meant the roadway all the way up to Chestnut Hill Rd.

Mr. Huckins said yes and he has a plan on it but he was told he couldn't bring it in because it is a plan he has thru the NRCS and isn't something available at the Town level. Everything but those 2 lots is going to conservation and I have a contract all signed I just haven't closed on it he said.

Mr. Pelkey asked if the easement for the roadway would go away.

Mr. Huckins said if he merged it into the other lots it definitely would go away.

Mr. Pelkey asked about the 2 front lots.

Mr. Huckins said just wanted to have the 2 front lots to sell.

Mr. Squires asked if he was going to leave the access in between them.

Mr. Huckins said the access that's in between them is going to be part of the lot that's all conservation land.

Mr. Pelkey asked if that would be the access to the conservation land.

Mr. Huckins said that 50 ft. on that road is how those other lots can get access to get back and the NRCS required him to leave it from the area where the road comes in down to the cemetery and had him grant an easement because people have a legal right to get to that cemetery and they are not even sure it's a real cemetery. He said they found a broken rock with some scratching in it and when Norway Plains went out to do the survey they say they could find nothing and they think someone might have buried a dog there but just to be on the safe side they called it a cemetery when they did it.

Mr. Pelkey asked if the conservation group wants to have an easement to get back to the back lot.

Mr. Huckins said that whole road going back is all part of the easement and it's all part of the conservation easement so all of it would be non-developable, the road and everything else would have to be nothing but... He said basically he has this glorified woods road going back for a logging access road that has all kinds of drainage and culverts and everything else in it that's a really over built road for that purpose.

Mr. Pelkey asked Mr. Pimental if he had a problem with putting curb cuts in onto Chestnut Hill Rd. for these 2 lots.

Mr. Pimental said no and what the board needs to discuss is that his recommendation was with all of what the applicant is talking about would be done through an amended subdivision plan. He said in terms of the driveway entrances coming off of Chestnut Hill there is no issue with that but his recommendation was in order to do all of this to go through the amended subdivision process.

Mr. Pelkey asked why not just merge all the lots.

Mr. Huckins said he was considering it but he was not saying he is going to do it. He said he is

considering making it part of the open space because if you read RSA 674:39-a it says that he can choose to merge the lots and the municipality can't force him to. He said that's what his plan was to begin with but he doesn't want to have it contingent upon that because these are legal lots of record, they have legal frontage on the road, they have a legal right to get a driveway permit and to get a building permit the way they sit with him doing nothing. All I'm asking for is the 2 on Chestnut Hill Road I asked about getting permits on them and I was told I can't he said.

Mr. King said in the NOD the way it was worded because he was going to build the road first it either needed to be built or bonded. He said that was part of the subdivision and those lots even though those lots are frontage lots they're lumped into that decision and that roadway would service those lots and with the other lots the roadway needed to be...

Mr. Huckins said under RSA 674:36 it says a municipality shall require bonding in lieu of doing the work first so the RSA made it clear you could do the work first without bonding that is why all the work that has been done so far he did out of his own pocket without bonding. He said RSA 676:12 V says once its bonded even if the work is not done the municipality has no right to deny him a building permit so that's the reason why all that bonding stuff on that agreement was in there.

Mr. King said but it wasn't bonded.

Mr. Huckins said there is no requirement and that was in there so it would be bonded if he wanted building permits before it was in. He said he was not asking for any building permits for those and that is the point he is trying to make. He said all the stuff that comes off that road he is not asking for any building permits for.

Mr. King said these 2 lots are part of that subdivision and because they are part of the subdivision to pull a building permit that road either needed to be built or bonded. Now you don't to bond it and you want to do something different he said.

Mr. Huckins said he's not going to build the road that's the point.

Mr. King said but that's different than the approved subdivision because the approved subdivision says you're not going to get any building permits on those front 2 lots until...

Mr. Huckins said it doesn't say that. He said those are legally existing lots.

Mr. King said that's right but they were created in the subdivision and those lots didn't exist until the subdivision. He said part of the NOD was no permits were going to be issued on those lots created unless the infrastructure was built or they were bonded. Those lots were created by the subdivision and you're saying they're legally binding but they have the conditions of the NOD he said.

Mr. Henry said he sees the need for the amended site plan.

Mr. Huckins said that's why he is here as he believes he is 100% right. He said the company that did his surveys has been out of business for years and it is going to cost 10's of \$1,000's of dollars to get some other company to come in to survey that lot and represent it because

they're not going to take someone's plan that is out of business and if that's the case he is going to the building code board of review because he thinks he has a legal vested right because it doesn't dictate that road has to be on Chestnut Hill Road.

Mr. King said he respectfully disagreed but it's an interesting point. He asked Mr. Pimental if they have existing plans with meets and bounds and the pins were set why they would require him to fully survey it instead of coming back in with an amended plan that says...

Mr. Huckins asked how he could get an amended plan without going to a surveyor and the surveyor doesn't have this information. He said it's not like he can go back to his original surveyor and say put 2 driveway cuts in there.

Mr. Henry asked if they could accept the subdivision plans and an application for an amended site plan.

Mr. King asked if it would be an amended plan to remove all of those lots and to remove the vested rights.

Mr. Henry said he would say to just amend the plan to get driveway access off those and take those out of the NOD requirements on the other road.

Mr. King asked what prevents him from coming in to say he wants an amended subdivision plan and he is not going to do the infrastructure, he is not going to use that road for these lots and merge the rest of the lots, they approve it thus basically merging all the lots and removing the conditions of the NOD with the information that he supplied 7 years ago.

Mr. Pimental said he was fine with all of that.

Mr. Huckins said it would be a narrative not a plan because he can't give them a plan without paying 10's of \$1,000's of dollars.

Mr. Henry asked if the subdivision plan was recorded.

Mr. Huckins said it is recorded at the Registry of Deeds. He said to amend a plan you have to get a new plan and then asked if the board would accept an oral description because he can do that himself but he can't change the plan because he doesn't have the authority to do that.

Mr. King said they would have to amend the subdivision making those lots no longer exist.

Mr. Huckins said there would be the one big lot because it's got to be going back.

Mr. King said to amend it to say to leave the 2 lots in the front and all the other lots would be merged and record the NOD.

Mr. Huckins said he would have to make an application before the board to do that.

Mr. King said he could do it written with no revise to the plan all in writing saying these lots are going to cease to exist, be merged and put in conservation.

Mr. Huckins said if he did a merger under RSA 639-a he would fill out a paper asking for a merger it says the Planning Board or your agent but typically it goes to your staff and they go online to the Registry of Deeds, verify there are no liens on it, they record it and that recording gets to the Registry of Deeds and they change the tax card because of it.

Mr. King said because there are existing lots on an approved subdivision there needs to be a

new decision and if that new decision is a narrative to reference it in this plan.

Mr. Huckins said he would merge the lots and the roadway all as one and he will make sure that the language he uses says "and the roadway" so the tax card will show no roadway.

Mr. King said they will have to run that by Att. Roman.

Mr. Pimental said yes because he was still going to have a right-of-way.

Mr. Huckins said no it would be part of the lot. He said it would be like a 40 acre rear lot and because of his conservation easement he would be breaking his easement to try to get a building permit.

Mr. King said its access to the easement.

Mr. Huckins said its part of the easement and the conservation goes right to the road.

Mr. Henry said it would let people get to the 40 acres to enjoy them.

Mr. King said and to provide access to the potential cemetery which they are making a requirement.

Mr. Pimental said at the back of the merged lot you're creating a lot that only has that tiny bit of frontage.

Mr. Pelkey said its 50 ft. which is more than the minimum required for a back lot subdivision. He said it's kind of a reverse process but the end result is a back lot subdivision.

Mr. King said the subdivision application or change is potentially a change to make all those lots a rear lot through a merger with 50 ft. access so it would be a conforming rear lot and issue a decision referencing the plans that all these lots are now combined into one.

Mr. Huckins said he would merge the 16 building lots and the road.

Mr. Pelkey said he thought that would work for him.

Mr. Henry said they have accepted plans or given waivers for people that have come to them with site plans based on tax maps for fairly simple things.

Mr. Huckins said they asked him to supply a recorded plan that's in the Registry of Deeds the existing one.

Mr. Henry said they have approved plans with less than that.

Mr. King said in the past they have accepted where you take your original document, cover up the engineering stamp, mark it up and note that you marked it up and we have accepted that whether that's applicable here or we should just do it for all in writing.

Mr. Huckins said it would be cleaner to do it in writing because that's a recorded plan with their stamp on it and that would be an infringement on their...

Mr. King said he would not be using their stamp he would cover it.

Mr. Huckins asked if you can use their plan if you just cover their stamp legally.

Mr. Henry asked if this was a recorded tax map.

Mr. Huckins said he use the tax map by right because they are public records.

Mr. King said they're not going to record that.

Mr. Huckins said they wouldn't record any plan his subdivision plan is already included and if he

does a merger and an explanation and show those lots all merged then it's going to become 3 lots just by doing the merger and he doesn't have to have another subdivision plan recorded because the merger is going to make it 3 lots.

Mr. King said if he gives us marked up drawings the Registry won't record that.

Mr. Henry asked if the Registry would only record something from an engineer.

Mr. King said it has to meet all their qualifications and it would never pass the sniff test for them because they are so picky on what it has to be like. He said if he supplied us that what goes to the Registry has to answer the question the paperwork is not going to be there so the recorded plan he gives them to amend this is not going to get recorded so the documents verbally have to communicate 100% what's going on. He could supply it but it's not going to be the document that's recorded at the Registry he said.

Mr. Pelkey said he could reference the recorded document and use all of his descriptions off of the recorded document.

Mr. Henry said our tax map drawings with the narrative for somebody that wants to come back and look at it in 10 years to see what happened.

Mr. Huckins said it would be their package but not recorded in the Registry of Deeds.

Mr. Henry said he would like to see something that includes the tax maps with the narrative so somebody can get a visual of it.

Mr. Huckins said this could be made very simply if he brings something in to Mr. Pimental that merges the other 16 building lots and the roadway which they said the staff could take care of so that roadway and stuff all goes away and it's just those 2 lots left in the front and asked if he could do that instead of having to make an application back to the board.

Mr. King said no because the roadway exists on this approved plan so the only way to get rid of the roadway is to have an amended decision and he could merge it but it's still a road on paper.

Mr. Huckins said he wasn't merging anything until he has an agreement.

Mr. Pelkey said that's a change from the approved subdivision when you make the rear lots a subdivision of its own so they have to come back and say he's merging that.

Mr. Henry said it's not a rear lot subdivision it's a merger.

Mr. Huckins said if you read the stuff on the merger it says no plans required and it's just documentation that there's no lien on the property. He said he is merging the existing subdivision and merging the road too.

Mr. Squires said it just happens to be a conforming rear lot in the end.

Mr. Pimental said merging that together is creating a lot that is not conforming unless you use the rear lot subdivision clause.

Mr. King said the only way a rear lot is created is by approval of this board and you merge it and the board hasn't approved it because rear lots have restrictions.

Mr. Huckins gave an example where he merged 2 regular lots and the frontage on those lots doesn't change they just a merged lot together it's going to be a legally existing non-conforming

lot.

Mr. Pelkey said in the development of rear lots the first words are upon subdivision approval by the Planning Board so it has to come before them.

Mr. Huckins said it would meet the design standards so therefore it's a conforming lot no matter how it's created.

Mr. Henry asked if that was creation of the rear lot or development of the rear lot because this land isn't going to be developed.

Mr. Pelkey said it's still creating a rear lot.

Mr. King said they could debate this all night it's his land.

Mr. Huckins said the bottom line is they want him to make an application, do a narrative on how he is combining those lots and wants to take his frontage off his existing frontage on Chestnut Hill Road.

Mr. King said and what is happening to the land and that the roadway is going away.

Mr. Huckins said he would write in the narrative that he is going to merge the 16 other building lots with the roadway as one lot of record and he is keeping 2 lots of record that are taking access off of Chestnut Hill Rd. He asked if he could do that as a narrative without a plan because once it gets recorded and the board is approving it they are approving it as that.

Mr. King said he would have to reference this plan.

Mr. Huckins asked if he could just give them a small copy of that recorded plan just like what he gave them tonight.

Mr. Pelkey said if Mr. Pimental looks at it and thinks it doesn't meet the requirements they can write an exception and run it by the board. He said they're not here to approve anything today.

Mr. Henry asked if it would be easier to exempt those 2 lots from the requirement that the road be bonded and be able to get Chestnut Hill Rd. frontage and forget all the mergers and everything else. He said it's still an amendment to the plan but it's a simple amendment for those 2 lots you don't have to build or bond the road.

Mr. King said that doesn't get rid of the road.

Mr. Huckins said if it doesn't get rid of the road so what.

Mr. Henry said if the scenario was different and an applicant said they didn't have the money to build all that all out unless they sell the 2 lots out front and they want to be able to get access to Chestnut Hill Rd. so they can sell the lots and then they would have the money to build the rest of the lots and asked if they would tell the applicant no.

Mr. Pelkey said they would tell the applicant to come back and ask for a change in the decision.

Mr. Huckins asked if he came back and asked to put the driveways on Chestnut Hill Rd. and do nothing else just that simple change if they would approve that if he did it.

Mr. Pelkey said they can't take a vote on things but he wouldn't have a problem with that question either those 2 lots sitting on Chestnut Hill Rd with adequate frontage he didn't have an issue with that and that he understood that's what the NOD for the subdivision says.

Mr. Huckins said it doesn't define that he can't use Chestnut Hill Rd. for his access it just says the infrastructure has to go in. I can still use Chestnut Hill Rd for my access if I put the road in he said.

Mr. Henry said he was suggesting that the amendment say those 2 lots don't require the infrastructure to be built or bonded for the building permits on those lots. He said it would be an amendment but it's a real simple amendment.

Mr. Huckins said that would be a simple write up with no plan.

Mr. King said what he is proposing to do is what should be proposed in an amendment and approved.

Mr. Pelkey said it's the same process.

Mr. Huckins said if he decides to merge them all afterwards to make them one lot of record he can do that by his own rights.

Mr. King said he was not approving any changes to this plan where that lot is still there because if any of these lots still exist that roadway needs to be there.

Mr. Pelkey said that's why it would be good to put the merger and the area in the NOD.

Mr. King said every lot here has a vested right on that road so if any of those lots still exist the roadway has to stay at least to that lot.

Mr. Huckins said if he said he was not building the roadway right now and he just wanted to sell those 2 lots in the front and he wants to take his access off of Chestnut Hill Rd. that would be something that would be legitimate for him to ask for but because he is going to protect that land he is going to pay a penalty.

Mr. King said he is not paying a penalty he still has to come back for an amended subdivision.

Mr. Huckins said it would be a simple to amend the subdivision to take access off Chestnut Hill Rd. without the road infrastructure being in. It could be a simple little letter he said.

Mr. King said they could consider that but that's really not what he is trying to do. He asked why he wouldn't come back with an application explaining what he wants to do, have that as a change, have it approved so when he does that that is all tied back to the Registry with what happened.

Mr. Pelkey said if he doesn't do that he would be back here talking to them about merging all those lots eventually.

Mr. Huckins said he doesn't have to come to the board to merge lots.

Mr. Pelkey said that's a back lot and he didn't know if that's the case because it would be a non-conforming lot unless they approve it because back lots have to be approved by the board.

Mr. Henry said they can't stop him from merging the lots.

Mr. Huckins said at any time he chooses to merge those lots he has a legal right to do so.

Mr. King said he didn't need to discuss this anymore and that Mr. Huckins could do it whatever way he wants. He said he would do it the way he planned to do it and propose it that way and come in and take his chances with the board.

Mr. Henry said if somebody said they can't afford to develop the whole thing right now or they have to sell these lots to build the road and they want to get their access this way so they are asking for this amendment for those 2 lots because those 2 lots don't depend on that road and this lot back here if it stays existing it can't be built without that road. He said that still has the build/bond requirement attached to it its these 2 lots he would want taken out of the requirement.

Mr. Huckins asked if the lots were all there and existing for 100 years, who would care. He said they are all in conservation and couldn't be built on so what if they are lots of record.

Mr. Pelkey asked if there is anything in the regulations that says when they merge a lot and they create a non-conforming lot that they can do that.

Mr. Squires said they wouldn't be merging anything and he is going to do it on his own and they won't know the difference.

Mr. Pimental said he would have to look at the Town regulations and the state RSA doesn't line up perfectly because this is not necessarily restoring them to their pre-merger status but RSA 674:39 says the restoration of the lots to pre-merger status shall not be deemed to cure any nonconformity with existing land use ordinances.

Mr. King said they may have to ask for a legal opinion but that roadway is created on this plan you could merge the lots but asked how he could merge the roadway.

Mr. Huckins said that's why if they leave it all alone and he just asks for the fix to have the 2 road front lots not have to have the infrastructure in place to build on those 2 road front lots it's done deal and that whole road is sitting there it's a paper road and all the lots are going to be in conservation and so what if it's on a piece of paper. It doesn't change anything they'll never be built on but they're still legally existing he said.

Mr. Henry said something owns the road.

Mr. Huckins said he owns the underlying land.

Mr. Pelkey asked if that would give him more tax liability because he has more lots.

Mr. Huckins said he put it into Current Use and he got his tax this year for Current Use and it was like \$1 per lot and whether he pays 16 tax bills at \$1 each or pay \$16 on one its irrelevant.

Mr. Henry asked if he does merge the lots where the road would go as it's not part of any of those lots.

Mr. King said that's why if he comes back and amends the subdivision plan and say he wants to remove the roadway, put this in conservation, eliminate these lots of record and they approve it and its in the narrative it's a done deal its one lot and he's putting in an easement. He said there is another scenario here where he comes back to the board and proposes that he is going to put it in conservation, they give him the front 2 lots access off of Chestnut Hill Rd., they are still individual lots of record, he doesn't put in into conservation or something happens to him and the people he gives it to goes bust and all of a sudden they have an approved subdivision that didn't end up in conservation and then all these vested lots somehow start getting

disbursed by a sale.

Mr. Huckins said they are legal lots that can be sold today. He said they are individual lots of record and he has the right to sell them as individual lots. He said he can't get building permits on them until the infrastructure is in and that's a totally different thing. He said the scenario Mr. King brought up he can do right now.

Mr. King said say in 10-15 years they're all gone, the lots are still floating around and the infrastructure that was approved was not built because it was conditionally for people...

Mr. Huckins said if he still owned the land and they wanted to come in and build the road up and he never put it into conservation they would have a legal right to do so.

Mr. Squires said they could still take it out of the conservation easement.

Mr. Huckins said they can't because he is doing a permanent thing and it's a signed contract with the USDA.

Mr. Pelkey said if they made an exception for those 2 lots and somebody decided to develop a rear lot it's a current lot and the infrastructure would have to be put in before they could draw a building permit because that's what the current NOD says.

Mr. Henry said we're not looking to change that for anything except those 2 lots.

Mr. Huckins said to get access to any of the lots they would have to build a road. He said that was the point he was trying to make and then with all this stuff about non-conforming and this might not comply if they just took that out and said the infrastructure doesn't have to be built for those 2 lots all those issues go away.

Mr. Pelkey said that sounds like the easiest way to him and they are still covered on those rear lots nobody is going to build on them without putting the infrastructure in like the NOD says. He said if they make an amendment to it those 2 front lots with access to Chestnut Hill Rd. can be developed without the infrastructure being put in and that's the change to the NOD then that would solve his problem and that would be the simplest step forward.

Mr. Henry said he didn't care what happens to the back. He said his approval of or support for letting those 2 lots get access from Chestnut Hill Rd. is completely independent of whether the rear land goes into conservation or they find ways to subdivide it more he didn't care.

Mr. Huckins said he has been around long enough that he has had deals on land transfers before and it's not done until you close. He said even though he has an agreement with the NRCS and he is moving towards it something could still fall apart and break so he is not making any agreement on anything until he closes on that for sure because it could not happen. He asked why he should be held up on those 2 lots on that infrastructure until he closes on that so he can't do anything with the 2 lots in front.

Mr. King said until he gets an amended subdivision because that's based on the conditions of the approval.

Mr. Huckins said if asked to amend the subdivision to say he doesn't have to build the infrastructure for the 2 front lots because they have access off the road front and he was

looking for a consensus on which way to go.

Mr. King said this discussion is non-binding.

Mr. Henry said to him that's enough and he didn't want to say because he is going to put it in conservation then they will cut him some slack. He said his decision has nothing to do with what happens with the rear land.

Mr. Huckins said he planned to do that and that's what opened his can of worms and if he had kept his mouth shut about that he could have come in and asked for that saying he has road frontage so why is he being held from getting a building permit. I was trying to be straight forward with everybody and let you know what my plans were. It's like I'm being held to a different standard he said.

Mr. King disagreed and said if he came in and asked for a waiver for the those 2 front lots and he is not going to build the back he would say no because he proposed what he did, they approved it and he would stick to the original decision. He said the way it was proposed and the restrictions that were put on he still believes he would stick with because...

Mr. Huckins said he believes a judge would say he has 2 legally road front lots he has been paying taxes on for the last 15 years and he would win.

Mr. King said why don't they put down \$20,000 a piece and go find out.

Mr. Huckins said he doesn't want to do that and he was looking for something that would be amenable to everybody and he thought by saying that he is planning on preserving that would help him not hurt him.

Mr. Pelkey said thinking it through if they made an exception for those 2 lots he still couldn't develop anything else without putting in the infrastructure.

Mrs. Patton-Sanderson said what he said made sense.

Mr. Fisher said an amendment for those 2 lots to allow access off of Chestnut Hill Rd and the rest just sits there and figure out what to do with it later.

Mr. Henry said there are concerns over curb cuts.

Mr. Huckins said there is a wicked amount of road frontage there that is straight and the sight distance is unbelievable on that whole section of the road.

Mr. Henry asked if that was anything that came up in the original plan that sight distance was a concern so they had to get access from this (roadway).

Mr. King said that wasn't spoken about.

Mr. Huckins said the driveway had to be 100 ft. from an intersection per the regulations.

Mr. Pelkey said if you could put a road in there servicing however many lots that is you could probably put a couple of driveways in.

Mr. Huckins said if he put the infrastructure in he could still apply and get the driveways anyway off of Chestnut Hill Rd. because there is no restriction that he has to use the subdivision road.

Mr. Squires said he knows which way he has to go.

Mr. Huckins said to be clear he writes a narrative asking to have those 2 front lots released from the infrastructure requirement so they can take their access off of Chestnut Hill Rd.

Mr. Henry said not being an expert on the mergers and all the other stuff to be able to get building permits for those lots that's the easiest way. He said he didn't know why in a lot merger you can't include the road if you own the road too and asked if the road gets treated like a lot.

Mr. Squires asked if that would pass through legal review.

Mr. Huckins said they have a right to amend a subdivision at any time as a board.

Mr. Henry asked if they could dissolve a road and if it's a private road how do they take it back.

Mr. Day asked if lot 54-1 is going to go with the merger.

Mr. Huckins said the Town had a moratorium on when he first got the property and you were allowed to take one lot off that whole year and a half so he took that one lot and sold it and then he had to wait a year and a half to get the subdivision brought forward because of that moratorium.

Mr. Pimental said the other concern he has about this is if you look at lots 54-2 and 54-18 he would guess that the reason that the driveways would come off of Morgan's Way is because of the contiguous upland area in both of those parcels. He said on lot 54-2 the contiguous upland is 40,000 sq. ft. and on lot 54-18 the contiguous upland is 40,023 sq. ft. and you don't have that upland area off of Chestnut Hill Rd. because of the wetland so by changing your driveway access you're not going to be compliant with the subdivision regulation of having the contiguous area. He asked if the board was okay with that.

Mr. Huckins said across the street on (Tax Map R16, lot 7-2) he built a house on that that had the same issues, small up front and big in the back and your requirement is 35,000 sq. ft. of uplands so the upland was created in the back. He said the guy he built the house for didn't want to go through the cost of a long driveway going back and the maintenance of a long driveway and if you look at your building requirements if he can get a state approved septic system and meet the setbacks he is allowed to build there it doesn't say he has to build in that upland area. He said even though it has that, both of those lots have room to put a septic in the front, put a house up next to the septic like you normally would, do a walkout basement where it drops back and then you can do a drive under garage on the low side or a garage level with the house on the high side.

Mr. King said he didn't disagree with that but he was confused. He said the lots were surveyed they met the requirements and asked how putting a driveway off of Chestnut Hill Rd. affects the contiguous uplands.

Mr. Huckins said Mr. Pimental thought he had to put the house in the contiguous uplands.

Mr. King said that may have been the underlying intent.

Mr. Huckins said it was to prove the lot would be buildable but the builder/seller has the right to build the house where they want.

Mr. King said it may have been the intent to have high quality building areas but they never put in the regulations that they were required to build there.

Mr. Huckins said he would come in to fill out an application and bring in a narrative and thanked the board.

**7). Member Comments:**

**Rt. 11 Corridor Zoning**-Mr. Henry said he has mentioned this during the last couple of election cycles and they really need to consider it now because most of that land is currently zoned residential and it is not zoned to allow commercial/industrial development and all of that land is easily accessible from Rt. 11. He asked if they want to expand the amount of land available for commercial/industrial development along the Rt. 11 corridor.

He said that land is well situated to expand industrial/commercial development and they need to look at how it is zoned especially where it is likely to change hands and something will probably happen with it. He said it appears Pike is winding down based on the fact they subdivided and sold their building out front and that makes him think the gravel operations in that vicinity are coming to an end and they need to think about what's going to happen with that land. He asked if they want to leave it zoned the way it is or do they want to look at changing it.

Mr. Squires asked where they landed when they went down this rabbit hole with the Pike property and if they ever finished that.

Mr. Henry said they took the can and they kicked it that way (down the road).

Mr. Pelkey said Mr. Henry was making a good point and that the Rt. 11 corridor is even in the Town's Master Plan.

Mr. King said he didn't disagree but they need to make sure they put adequate protections on top of the aquifer. He said this is a deeper discussion regarding the permitted uses, the types of businesses and industries and everyone is going to have an opinion and they probably all going to disagree on it.

Mrs. Patton-Sanderson asked what the greater value is- making sure we have a water supply or our tax base.

Mr. King said hopefully we will find a balance.

Mr. Henry said it's not one or the other but if that all turns into subdivisions and houses we are going to see our taxes go up quite a bit.

Mr. Pelkey said a topic coming up would address some of Mr. Henry's concerns.

Mr. King said Farmington has lost 3 wells and 2 of those were lost due to industrial pollution. He said the other one is being lost thru attrition and it's placement too close to a natural peat bog so when they talk about this aquifer which is the main producing well and they also have to consider the regional impact of development down there because Rochester has two 1 million gallon a day wells placed below ours so there are currently 3 well heads in that aquifer area.

Mr. Pelkey said they always have to be careful with what they do to make sure it's not going to affect that aquifer because it's not just our liability there's an even bigger liability.

Mr. King said he thought Rochester could say depending on how close we are that's a regional impact to them and they want to be at the table as an abutter.

Mrs. Patton-Sanderson said ideally if the Town were to win the bids at the auction they could decide what they want to do and if they want to make any part of it available.

Mr. King said there is a protective well radius there so there is very limited development there already and he would have to look at the overlay and its already restricted because of the lease. He said chances are on the Town property they would do nothing except for protect it but he was not saying that future boards wouldn't do it but this Select Board isn't saying if they buy it they're going to put an industrial park there.

Mr. Henry said the Town isn't looking to buy all of it they are looking at a piece of it.

Mr. Fisher said the Town is looking to buy approx. 94 acres (out of 288 acres) and it would make a nice park.

#### **8). Any Other Business before the Board:**

**Potential Purchase of Property**-Mr. Pelkey said he was asked by the Town Administrator to have the board review and make a recommendation concerning some property the Town is looking to purchase. He said Mr. King has the details on it and asked him to speak to board about it.

Mr. King said Malcolm Bradsher who was the owner of some property on Rt. 11 has passed away and his property is being put up for auction. He said there are 6 parcels and 2 of the parcels, on one of the parcels the Town has a lease for Town Well #6 and there is a pump house on one lot and a wellhead on the other lot. We have a 50 year lease and there is about 25 years left on the lease he said.

He said the Selectmen intend if they follow all the rules to be at the auction and potentially bid on those properties to buy them instead of continuing the lease for 25 years. He said the process needs to follow a certain RSA, there needs to be review and comment considering the purchase of this property by the Planning Board, the Conservation Commission and the Historic District Commission (but we don't have one) and have some public hearings that are posted.

Mr. King said they are old gravel pits and that he didn't know how long Well #6 has been on there but probably for 25 years.

Mr. Fisher said he thought it was installed in 1995.

Mr. King said it currently serves as the Town's major producing well it produces most of the water being consumed in town and they are seeking through the last Town Meeting for an additional well to replace Wells #4 and #5 and the Selectmen feel it is in the best interest of the town in the long term to potentially buy that land and not just continue with the lease.

Mr. Henry asked if this is the well that won the award.

Mr. King said yes.

Mr. Pelkey asked if this property is on the Cocheco River side of Rt. 11.

Mr. King said yes and one parcel is on one side of the river and the other parcel is on the other side of the river so the access from the pump house to the well head is across the river.

Mr. Pelkey said part of the process is to have the Planning Board whether they are in favor or opposed to the purchase of the land.

Mr. King said the Selectmen can ignore their recommendations and say they are going to do it anyway if they didn't think it was a good idea but they are obliged to ask the question.

Mr. Squires said he thinks it's a great idea.

Mr. Henry said the well is on one lot and the pump house is on another lot and asked if they are looking at a third lot.

Mr. King said the way the auction is structured these 3 lots are grouped together and that's probably because there is no good access to the 3<sup>rd</sup> lot except for across these other 2 parcels. We don't have control of how they're doing the bidding he said.

Mr. Henry said they structured the bidding so they get the most money.

Mr. Pelkey said they had one lot that wasn't saleable unless they bundled it with the other 2.

Mr. Henry said he looked at the auction listing and there are going to auction every lot by itself.

Mr. King said they are auctioning tracts of land and the first lot (A) controls 3 parcels, B is one parcel, C is one parcel and D is one parcel.

Mr. Pelkey said he couldn't come up with an objection to it.

Mr. Henry said if the highest bid is for all of the property somebody gets all of it all at once they don't necessarily have to be the highest bidder on each individual parcel.

Mrs. Patton-Sanderson asked how we are going to pay for that.

Mr. King said we have some funds in capital reserve and some funds that were approved at Town Meeting for the purchase of land for wells so there is some money the Selectmen can draw from. He said we just approved \$7.2 million and in there was money to acquire land for wells so they are working with legal counsel on what money they have available to see what they can pull together.

Mr. Squires said it wouldn't be a tax hike.

Mr. King said no.

Mr. Henry asked if the Town keeps the lease if someone else buys the land or they don't know.

Mr. King said we keep the lease and that property has changed hands once or twice since the inception of that lease.

Mr. Fisher said he would abstain from commenting on it because he will make his comments with the Conservation Commission.

Mr. Henry asked if the new well they want to build is to replace Well #4 and if it would be on this land.

Mr. King said the new well would replace Wells #4 and #5 behind Rite Aid. He said there were some test wells done down there that have promise and the reason why they are going up on

the north side of town is to balance our water delivery system and if they put another well head down there they still don't fix the infrastructure and issues on this side of town.

Mr. Squires asked if they have ruled out putting another well head on the newly acquired property up off of Bay Rd. and Spring St.

Mr. Fisher they haven't acquired it yet and until they do acquire it they can't really say.

Mr. King said based upon an initial comment by Emery & Garrett (Groundwater Investigations) they didn't see anything that looked good initially based on what they've already done but he was not saying it's not possible. That would maybe be an artesian well that would take quite a lot of money just to explore he said.

**Motion:** (Henry, second Squires) per RSA 41:14-a the Planning Board supports the Board of Selectmen's proposal to acquire land for the town's future drinking water supply;

**Discussion:** Mrs. Patton-Sanderson asked about someone else possibly having an interest in the property and if there was a use for it.

Mr. Henry said he was going to talk about that after.

Mr. Fisher said in 25 years they could say no more lease and we lose a well and we've lost 3 wells in the past 20 years.

Mr. King said the abutters could want it for the land and some of that land may fall under the grandfather status of the gravel pit permit.

Mr. Pelkey said there may still be some gravel they could get out of that pit.

Mr. Pimental said they wouldn't be able to expand and they would still have to meet RSA 155-E.

Mr. King said just like anything it has value to someone and it has value to the town.

**Vote:** the motion passed 5-0-2 (King, Fisher abstained).

Mr. Henry then asked to return to the Member Comments agenda item as he had something he would like to discuss. (See item #7).

**Housing Opportunity Planning Grant-** Mr. Pimental said last year they put the brakes on looking at Rt. 11 to see if they could look at it more holistically so in their packets they'll see the application they put forth and they received notice last week that we are receiving \$135,740. He said this was an application that our Housing Navigator helped put together with his help and other dept. staff.

He said it is to get to their point to really do an in-depth analysis on Rt. 11 looking at what some of the challenges are, what some of the existing land uses are and they can look through the scope of work and the timeline starting in July to next summer. He said they would not only look at Rt. 11 but they would also update the Tax Increment Financing plan which is not reflective of costs to bring water and sewer out to Rt. 11. He said they will be able to hire a consultant along with the SRPC to help with some of the outreach that would be needed but with a heavy focus on Rt. 11.

Mr. Pimental said they will be looking at commercial/industrial development opportunities but the way they were able to sell this is mixed use which is allowed on Rt. 11 and the NH Housing

Authority would not have funded this if there wasn't at least some component to housing. He said he didn't know what that would like for Rt. 11 but over the next year they will have a much better sense and much more data in front of them to make some decisions based on the work that is going to be done with this consultant.

**Phase II Environmental Site Assessment-** Mr. Pimental said the other funding they received was for the Phase II assessment for the former fire station. He said after the Phase I assessment was done they found a couple of environmental issues on the site and they applied for the EPA Brownfields Grant for close to \$80,000 for them to come in and do a full Phase II that will start this summer.

He said they were planning on having an event last Friday at the old fire station to announce it for all of the EPA Brownfields grants awardees in NH but it was canceled because of the vote in Congress on the debt ceiling. He said the EPA is looking to reschedule that but he didn't know if they are still going to do it in Farmington.

He said the study would be done by the Nobis Group which is the same group that did the Phase I assessment as they are the contractors that EPA is using. He said it would not hold anything up with the RFP that's currently out there and they have asked the state Planning Office and the CDBG to share it and they've sent it out to developers so they are hoping by mid-July to have some applications from interested parties.

Mr. Henry asked if they have had any inquiries on that or anybody seeking clarification.

Mr. Pimental said they have not gotten anything yet and it was released on May 5 so it has been out a little over a month and hopefully they will hear from folks in the next few weeks.

**Proposed Solar Farm-** He said on May 18 the Zoning Board approved the Special Exception for the proposed 20 MW solar farm off of Chestnut Hill Rd and he guessed that they will see some preliminary plans that will go through the Technical Review Committee maybe by the end of summer/beginning of fall.

Mr. Squires asked for the proposed location for the solar farm.

Mr. Pimental said it would be from Dodge Cross Rd. on one end and there are 5 large parcels that are there.

**Site Plan Amendment-** Mr. Pimental said the 1172 NH Rt. 11 the former Farmington Self Storage has been sold and the new owner wants to do something a little bit different so they are coming in for an amended plan for that.

Mr. Squires asked if that is the one they just approved.

Mr. Pimental said it was recently approved but it was sold to another storage company and they want to tear down the existing building and put in a 4<sup>th</sup> storage unit. He said it's a small amendment but it needs to come back to the board and they will see that at the next meeting.

**Housing Opportunity Planning Grant-** Mr. Pelkey returned to the HOP Grant and asked Mr. Henry if he had taken a look at the timeline for the plan.

Mr. Henry said he thinks it is too long.

Mr. Pelkey said he wanted to point out to him that the regulatory changes for development in there would be out in 2024. He said they were talking about looking at that this year but they should also take advantage of expert advice.

Mrs. Patton-Sanderson asked who the solar farm would be serving.

Mr. Henry said they are going to sell it on the grid.

Mr. Pimental said it's a utility scale.

Mr. Pelkey said its off of Chestnut Hill Rd. behind lots with access up into (Milton).

Mr. Fisher said the solar farm would be on about 200 acres out of the 500 acres and this room was full of people who had a lot of concerns and the ZBA granted their Special Exception.

Mr. Henry asked what they needed a Special Exception for.

Mr. Pimental said it was for a utility use not specified as we don't have something like that in the Table of Permitted Uses. He said the difference with the previous proposed solar farm was that one was smaller so it was a commercial use not specified and this one is a utility so they couched it under a utility use not specified.

Mr. Pelkey asked if there was information about that on the Town's website.

Mr. Pimental said yes.

Mr. Pelkey said they held a public meeting over at the Town Hall and showed us drawings, etc.

Mrs. Patton-Sanderson asked if they alleviated all of those people's concerns.

Mr. Pelkey said he didn't think so.

Mr. Fisher said he had some concerns and they did a great job presenting what is going to happen out there. He said they are trying to go above and beyond what the requirements are and one of the requirements is a 50 ft. setback and they are going with a 100 ft. setback to keep it further away from residential homes. They are going to do a lot of screening and stuff and they are trying to work with everybody but you can't make everyone happy he said.

Mr. Pelkey said they will be in to see this board eventually.

**USDA Grant**-Mr. Pimental said Milton is applying for a USDA Rural Development opportunity for help with some of their municipal facilities. He said they have chosen 3 buildings that need a lot of work and that this building as well as the Town Hall need some work so they are going to partner with Milton on a Rural Development Planning Grant to have a consultant look at this building and the Town Hall. He said he didn't know when they would actually get to writing it but Milton brought it to our attention and they had a call with a USDA rep last week and they recommended that they do it together as it would strengthen the application. He said there was support from Milton so he brought it to Town Administrator today and he gave him the okay to move forward with it so when they find the time they will get that application in.

**Community Development Block Grant**- He said there is some CDBG money to do a feasibility study for the downtown so the 3 pieces they talked about that came out of the Master Plan were water and sewer capacity within the Village Center and the urban residential areas surrounding that, some pedestrian safety improvements and landscaping but the grant is for

\$25,000 so they are not going to be able to do all 3 pieces. He said he may come back to the board to ask for their highest priority if they can get that money and what they would like them to apply for and start to move those 3 pieces in the downtown forward. He said he has a call with the folks at CDBG/CDFA next week and hopefully he will have some direction on what to do there.

Mr. Fisher said the plans are still on track to put in the sidewalk from Lone Star to Main St but that's not due to start until 2025 or 2026 and its in the state's Ten Year Plan.

Mr. Pimental said the design for that is out a little bit.

Mr. Pelkey said he saw them surveying the Hornetown Rd. Bridge so that is about to kick off. Discussion also included the damage done to the roads and the ravines that were put on the roadsides caused by the weather.

Mr. King said they determined there was approx. \$199,000 worth of damage but there was no FEMA relief for this area.

Mr. Pelkey said the Highway Dept. guys we have are working hard but there isn't enough of them unfortunately.

**Kodiak Group Update**-Mrs. Patton-Sanderson asked if anything has happened with the guys that were building on Town property.

Mr. King said currently there has been a Notice of Violation.

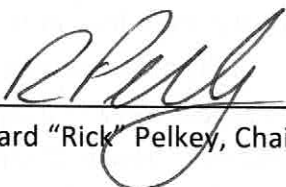
Mr. Pimental said they've been served but that would be the property behind them and the Kodiak Group has not been served yet. He said they have not found a physical address or get them the information so his understanding is they're not working on it.

Mr. King said he was not aware of that and he would see if he could help out with that.

**9). Adjournment:**

**Motion:** (Squires, second Day) to adjourn the meeting passed 7-0 at 7:31 p.m.

Kathleen Magoon  
Recording Secretary

  
Richard "Rick" Pelkey, Chairman