

Town of Farmington  
Planning Board Meeting Minutes  
Wednesday, July 20, 2022  
356 Main Street-Farmington, NH

**Board Members Present:**

Rick Pelkey, Chairman  
Bill Fisher, Vice Chairman  
Stephen Henry, Secretary  
Charlie King, Selectmen's rep  
Jeremy Squires  
Mike Day

**Board Members Absent:**

Roger Mains

**Others Present:**

Kyle Pimental, Planning Director  
Raymond LaValley applicant, Karen  
LaValley, Ernest Leblanc, William McKay  
Brad Jones, Jones & Beach Engineers  
Brad Ligols, Farmington Self-Storage  
Arthur McCue, Jon Mahern

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**

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

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Review of Minutes:**

June 29, 2022- No errors or omissions

**Motion:** (Fisher, second Day) to accept the minutes as written passed 5-0-1(Squires abstained).

**Public Comment:** None

**PUBLIC HEARINGS:**

**NEW CASES:**

**Public Hearing and Possible Vote on a Site Plan for Farmington Self Storage, Tax Map R64, Lot 3.** The proposal is to expand the existing commercial use by adding two new proposed self-storage buildings. The first building is a proposed 9,200 square feet unit. The second building is a proposed 3,800 square feet unit. The expansion would also include paving the existing gravel lot, site grading, additional storm water management and landscaping. The parcel is in the Commercial Business Zoning District and will continue to be serviced by on-site well and septic.

Mr. Henry said he would not participate in the hearing because he is related to one of the abutters.

Brad Jones of Jones and Beach Engineers told the board they were here tonight for the hearing for the additional 2 buildings at the Farmington Self-Storage LLC which used to be the Nelson Storage Facility. He said the facility is located on the west side of Rte. 11 on the northern end of town. There is an existing building with office and business space and there is also one self-storage building and recently the owners added new doors and cleaned up that building and done some work to get it looking a little better he said.

Mr. Jones said the 2 buildings will be on the northwest side of the site and they will mimic the location of the existing building and line up and fit in with what they have at this point. He said the property consists of 3.4 acres and a portion of the property is wooded and a lot of the property in the front is developed and has gravel parking and most of the work is planned to be in the area that is cleared, developed and graveled at this point. He said the property is in the Commercial Business District so they are zoned for this particular use.

He said the project itself will not require any sewer or water so they don't intend to do any tie-ins or have a need for that for the storage buildings.

Mr. Jones said they have an existing NH Dept. of Transportation permit and the property currently has 2 access points. He said they are applying for a new updated DOT permit and one of the reasons is they would like to locate the northerly entrance a little further north so they can separate those 2 access points and put a little more room between them. He said currently there is 138 ft. between the 2 driveways and they are going to push it out to 195 ft. which will give them a straight shot coming into the site so you can go right between the buildings and navigate the site pretty well.

He said there is no wetland impact required for any of the site and all of the wetlands are delineated on the plan and they were able to avoid all of that. He said that quite a bit of the rear of the property has been left undisturbed and there are some wetland pockets back there and they are to remain undisturbed.

Mr. Jones said they went before the **Technical Review Committee** on May 31 and there was a list of comments that they addressed and responded to and sent that back to the Town.

He said they also met with the **Conservation Commission** on June 8 to discuss their Special Use Permit application and that was approved by the Con Com at that meeting.

He said they are requesting a waiver from Section 29 (A) for buffers and the way that regulation reads you're allowed to have roadways but the idea is to try to get some screening in there. He said the site is going to be excavated down so the building is going to down 8 ft. below the grade where it is now and there will be a retaining wall and a screen fence on top of that along the property line so that will create a screen for that abutting property so they have addressed that but they did apply for that waiver in the application.

Mr. Jones said they submitted a full application, the plans, the abutters and everything needed to the Town.

Mr. Pelkey asked if anyone had a question concerning the application itself.

There were no questions from the board and the following motion was made:

**Motion:** (Pelkey, second Fisher) that we determine that the application is substantially complete passed 5-0-1 (Henry abstained).

Mr. Pelkey said next the board must determine if this project has regional impact and then made the following motion:

**Motion:** (Pelkey, second King) that the board determines that this is not a project of regional impact passed 5-0-1 (Henry abstained).

Chairman Pelkey opened the hearing to public comments at 6:12 p.m.

Mr. Fisher said when they came before the Con Com they had 2 concerns which were in the southwest quadrant up in the top behind where they are going to put the new building there is a snow storage area and that's in the wetlands buffer area. He said they talked to them about possibly moving that and they said they had no problem with moving it.

He said that corner where that is will be higher than what it normally is when they get through grading and they could see that it's inside the buffer area which is going to cause all the run-off to drain down towards the front of the property and up to the top corner. He said it's actually making it better than what it was because currently it's all gravel back there and it's all draining off and pointed out the detention pond area and the wetland area and it's all just draining into there right now. So that will be changed and will be moving up to the new retention pond area for cleanup and based on that is why we recommended approval of his permit he said.

Mr. Pelkey said the back area behind the proposed building #3 is going to be lower than the existing grade is now and asked if there's going to be a berm back there.

Mr. Jones said one of the things that is going to change is there is going to be a paved parking lot and there will be a curb on the whole southern side so that will make sure none of the storm water travels off sight because there is a drainage path that runs down into the wetland in between the 2 southerly properties so that will protect all of that.

Mr. Pelkey asked if that little opening that he sees in the curbing is going to be the drainage path that goes down into that.

Mr. Jones said that's right and when they get down toward the entrance they are going to kick that water to the north and drop it on the other side of the entrance and that's going to give it a little time to filtrate and not go directly into that wetland. We've given a lot of grading in there to address that and this will be a better situation than what's out there now he said.

Planning Director Kyle Pimental clarified that while it's correct that there are no direct wetland impacts there are wetland buffer impacts which is why the Special Use Permit is needed and that the Con Com technically endorsed it and the Planning Board is the only entity that has the authority to approve the Special Use Permit.

He returned to the access management piece on the 2 existing driveways that come off Rt. 11 and said that the Town has regulations within its zoning for properties along Rt. 11 that state for highway speeds that are 50 mph or above they need to be 275 ft. apart from each other

however this is already an existing non-conforming lot where the applicant said right now the space is only 138 ft. and they are proposing to move that to 195 ft. He said it's not coming into compliance but it's coming into more compliance than if you were to leave it the way it is now. He said they are going to need DOT's driveway permit as part of this application and if they are okay with that the Planning Dept. is okay with it because it's making the existing conditions safer than what they are currently.

Mr. Pimental said there was a note that the applicant was looking to see if there were any slope and drainage easements that DOT owns and that the regulations require that if there are any slope and drainage easements they should be referenced on the plan and asked if that was resolved yet.

Mr. Jones said they haven't found any yet but they will research that and confirm it with the DOT. He said the DOT driveway permit will go in either tomorrow or Monday so that will start the dialogue with DOT for that. We have all the highway plans and we didn't see anything on that but we want to make sure there's not something we're not aware of he said.

Mr. Pimental then turned to Sheet C-3 showing the existing wetlands in the back and pointed out the yellow dotted line for the existing stream and wetlands on the eastern side of the site. He said there is no 50 ft. buffer for the existing detention pond because the wetlands scientist found that that was a Class 3 wetland. He said but within the write-up from Gove Environmental Services it says that wetland was assessed in Dec. 2021 and again in March 2022 and that pond area in the back was assessed and found to be an active vernal pool with 60 wood frog egg masses. He said the Town doesn't regulate vernal pools but they do recognize that those are very sensitive eco-systems and they don't exist everywhere.

He said what was written into the responses from the TRC was that there will be some additional run-off that is being directed toward that existing detention basin and it will not receive any credit for the treatment of pollutants because there is no filtration or infiltration component like there is on the front part of the site. He said the staff's recommendation is that the drainage analysis be reviewed by a third party with some recommendations on potential treatment for that basin to ensure that water quality and quantity is not going to impact that vernal pool. That could be part of the third party review for the drainage which is our recommendation anyway but to specifically look at the filtration options for that back part of the detention pond he said.

Mr. King asked if it was reasonable to require that there be pre-treatment of that instead of going out to third party engineering which may come back and say it's going to need some pre-treatment and why they just couldn't require it.

Mr. Pimental said if the board feels because this is going from gravel to a lot of pavement and they want to see the drainage analysis reviewed for something this size the staff cannot review this as they don't have the expertise to determine if the existing drainage plan is adequate. He said if the board feels that is appropriate he would add to seek some recommendations or

considerations for some sort of treatment for the vernal pool. If the board doesn't want to require a third party review for the drainage then I don't know if it's reasonable to go out for a third party review just for the pre-treatment of the vernal pool he said.

Mr. King said they could say because it's going into the vernal pool pre-treatment is required.

Mr. Pimental said it would be more that they would tie it to the Special Use Permit. He said there is nothing in the regulations that say that they have to do that unless it's found that because they are contributing more water to that existing detention pond that they would like to see treatment and that they could probably say.

Mr. Jones said they didn't have a problem with the pre-treatment and it's not shown on this plan but one of their thoughts was there are 2 cutouts in the parking lot where the storm water is going to go down through. He said that detention pond was something that was put in for the original site so this never existed until the site was developed and they considered that their detention pond. He said they made a lot of effort to not disturb that and they haven't touched any of the banks and whether they can or not they just stayed away from it. The state does allow a detention pond to be re-worked and re-graded by law but rather than go there we left that alone he said.

He said his thought was they could put a level spreader system so when it comes in it has to run along the side and then have a level spreader and then treat that storm water not necessarily a structure but to just do that with a treatment swale to take out the sediment and they can put some stone in. We could develop that and get that on the plan and we have no problem doing that he said.

Mr. Pelkey said they have a manmade detention pond that has become a vernal pool.

Mr. Pimental said he agreed with the applicant that he would rather see some form of pre-treatment than going in there and trying to disturb and re-work that and he would leave it alone. He said if there can be some pre-treatment to ensure that the increased run-off is not going to have a negative impact on that and it sounds like they are willing to do that he would recommend that the board make that as a condition of approval.

Mr. Pelkey said he was leaning toward having them add pre-treatment because it's a structure that was created by us and is not a natural feature that we're trying to protect.

Mr. Fisher said plus they're re-sloping that area too and the way it was explained to the Con Com it's all sloping towards the northeast end of the property so most of the run-off is going to go that way. He said some will go back to the previous retention pond but it looks like most of it is being skirted away. I think pre-treatment is the way to go he said.

Mr. Pimental said Mr. Fisher is right that most of the run-off is being directed toward the new detention system that's being created but there is going to be a slight increase in run-off to the back part of that and their biggest concern is to address that.

Mr. King said if they were to send it out for on-site engineering it's likely to come back with a recommendation to do some pre-treatment so they would be adding cost and time to get to

the recommendation to us that the applicant is willing to do which is to add pre-treatment to that run-off before it goes into that vernal pool.

Mr. Pimental said if the board is comfortable with accepting the drainage plan as it is-again the staff does not have the expertise to say that the drainage plan for the new system is adequate and they would be relying solely on the applicant's design for that. He said that is entirely up to the board but he is comfortable with not adding any revision or additional work for a third party to look at the vernal pool it would just be to look at the drainage analysis.

Mr. King asked for the soil types in the area of the new storm water detention.

Mr. Jones said they did quite a few test pits throughout the site and they found some overburdened areas and that when they built the site they must have pushed the material to fill in that area where they had modular homes for sale and then down below that they found clean gravel and that's also true at the rear of the site where they found very clean gravel. He said there was a small portion of ledge and that is shown on building #3. We did 7 or 8 test pits, some of them were more probes to see what we were up against for materials in ledge and that type of thing he said.

He said their pond is all designed out front in a low spot and that's a fairly big pond and then the storm water runs back across Rt. 11 as it did before but at a reduced rate.

Mr. King asked if the storm water retention pond area is gravel.

Mr. Jones said it is at the lower section.

Mr. Pelkey said he was good with just adding a requirement for additional filtration at those openings and looking at the drawing and understanding how it is laid out for them not being an engineer but he can read the numbers and it looks like it slopes forward to him.

Mr. Jones said they also use a hydro-cad program and Ian MacKinnon did the drainage analysis and they do this for all big jobs and it goes to Alteration Of Terrain so he feels confident in that report. A lot of engineering companies if they are not big enough don't have a person with the expertise to do that drainage and has that knack he said.

Mr. Pelkey asked if they have ever done third party drainage reviews for other projects.

Mr. Jones said they don't do a lot of it- they're the Town engineer for Hampton Falls and some engineers that's their niche but they only do it for Hampton Falls.

Mr. King said if the applicant is willing to do pre-treatment into that existing detention pond that has turned into a vernal pool that would satisfy his concerns.

Mr. Pimental said if the applicant wasn't willing to make any pre-treatment they could tie it to the Special Use Permit but it's a moot point.

Mr. Pelkey asked if it's a condition of signing on the drawings.

Mr. Pimental said it would be a condition of approval and should be in their conditions check list (Staff Memo, page 7, Conditions of Approval Checklist-Signing of Plans).

Chairman Pelkey asked if there were any public comments on this plan and hearing none closed the public comment portion of the hearing at 6:31 p.m.

Mr. Pimental then requested that the applicant go over a little bit in more detail the plan for the area where the proposed stockade fence abuts Lot 4 because that will be a waiver for the vegetative buffer. He said for commercial properties that abut residential properties there's a 25 ft. vegetative buffer required and this would not have that which is why they are seeking a waiver and asked for more information on the difference in the grading and what they are planning to do to ensure there is separation between the development of this site and the residential home on Lot 4.

Mr. Jones asked the board to turn to Sheet C-2 and said there is a retaining wall planned for the northwest side of the property that will be 8 ft. high at the highest point and then it tapers off in the front and in the back. He said above that wall they will have a 6 ft. stockade fence and the fence will just be on their side of the property line and that will protect anyone from falling off the wall and will act as a barrier and a screen. He said the closest point is 9 ft. from the pavement to the property line so they have enough room to build in there.

He said there are a lot of boulders on site and the owner may try to do that with a boulder wall but they also looked at a block wall and haven't decided the exact configuration. He said that wall is going to be built with crushed stone behind it and will have under drains and there shouldn't be any kind of drainage issues. When the wall is built and the fence is up if you're on the abutting property you won't even see the roof tops of the buildings that are going to be down below and that's the best we can do with the screening he said.

Mr. Pelkey asked about the snow storage at the southwest corner of the property as mentioned earlier by Mr. Fisher and if anyone else had a concern there.

Mr. King said they have to put the snow somewhere and he wasn't as concerned if there was some plan for pre-treatment for where it is going to run into those wetlands. He said otherwise it may need to be located towards the front but that may not suit what they planned for but especially with the concern of the rear vernal pool and he didn't know if the slopes are leading that way or to the wetland to the south side.

He returned to the retaining wall and asked Mr. Pimental if he received any comments or concerns from the abutter regarding this.

Mr. Pimental said they did not receive any written testimony or any e-mails and if there are any abutters present he would encourage them to speak at the public hearing.

Chairman Pelkey re-opened the public comment portion of the hearing and recognized Ernest Leblanc.

Mr. Leblanc said he lives on the opposite side of where they are doing the retaining wall and the fence at 1166 NH Rt. 11 (Lot 2). He said he and Brad (Ligols) have talked a number of times and he understood what he is planning to do but asked for clarification on where the fence is on that side as to it's not going to be encroaching into the wetland area. He said when he bought his home there was a portion of where his shelter logic is that is actually Mr. Ligols' property and they are working on something to try to deal with that. He said he just wanted to

be comfortable that nothing is being disturbed as far as the wetlands that would affect water coming into his property and where the fence and where the fence area might be.

Mr. Ligols said there is a river that separates it that is on their property and there will be a Cape Cod berm so there won't be anything and it's actually an improvement. He said when they plow and they come around the buildings stuff spills into the river so it looks like gravel that has been building up over time so this will cure that problem coming around that building.

Mr. Leblanc asked if there would be no fence there.

Mr. Ligols said he didn't believe there would be any fence there at this point and the river is something they can't disturb.

Mr. Jones said they looked into that and wanted to clean that up because it was a channel that was created when they did the first site but they were told with that type of wetlands they should try not to disturb that. He said it is wooded and it does work and it drains so they will leave it as is. There is quite a buffer so there is no intention of a fence he said.

Mr. Ligols said there is a heavy buffer of trees and they are not planning on taking any trees down and if they were and were not going to do a fence it would be behind the Cape Cod berm. He said they are still working on resolving the issue of the land swap.

Mr. King said his question regarding the retaining wall was on the other side that's in the waiver request and asked if they had any contact from that abutter.

Mr. Pimental said no and that they didn't receive any comments from any abutters.

Mr. King said they are requesting a waiver of that buffer to that residence and at no time they've been contacted and asked if that abutter was present.

William McKay said he lives at 1184 NH Rt. 11, Lot 4 and they had spoken and they had mentioned taking down some trees and putting up a fence because as it stands right now from their backyard if you're looking from their deck you can look straight behind their shed right onto their property. He said taking out some of the trees will take away even more privacy and they mentioned putting up a wall or privacy shrubbery and he didn't care which and he just wanted something in that area to keep their privacy.

He said moving forward with a new building coming in it's going to put more people going in and out of their sheds closer to their property and having enough privacy is all they want to hear about.

Mr. Ligols said when they raise it up 8 ft. they won't have headlights shining into his yard and they were proactive in making sure about that.

Mr. McKay said that's perfect and they discussed it and that he and his wife were okay with all of this.

Mr. Pelkey said to hear in favor from the abutters is more valuable to him than to hear against sometimes because they often wonder how the people next door feel about it if they don't hear from them. He asked Mr. Leblanc if he was satisfied with the responses he received.

Mr. Leblanc said he was satisfied and that it is nice to see local businesses grow. He said if



everything is in accordance with the Town and the state he has no objection to him making his business bigger and better. It sounds like he's spoken to a bunch of us about making sure we're not looking at an eyesore he said.

Mr. Fisher said he was looking at the snow storage area and the elevations and noted there is one little pocket that drops down about 2 ft. and its 203 ft. above all the way around it so there might be a little pooling as the snow melts and then it will go away. He said he didn't see much of it running back off and if anything it's going to run the other way across the pavement down towards the front so he didn't think there would be a problem with the snow storage right where it's at.

Mr. Ligols said if we get into crazy storms that we haven't seen in a while they will truck it if it's going to be in the way or be a safety hazard and they don't want to mound anything that's going to impede anybody's line of sight on Rt. 11.

Chairman Pelkey then closed the hearing to public comment again and asked the board to discuss the waiver request. He read "The applicant is requesting the board grant a waiver for relief from Section 29 (A) of the Town's Site Plan Regulations to allow relief from buffer area requirements specifically the 25 foot vegetated buffer required for portions of the development abutting a residential property (Lot 4). A retaining wall and stockade fence is being proposed along the boundary." He said they had a pretty good discussion about that and did not hear anything from the abutters.

**Motion:** (King, second Squires) to grant the waiver based upon the applicant meeting the concerns of the abutters;

**Discussion:** Mr. Pelkey said he thought it was fantastic that they all had a meeting of the minds on this.

Mr. Jones said that's how you should do it and Mr. Ligols did that on his own and that's exactly what should happen.

**Vote:** The motion passed 5-0-1 (Henry abstained).

**Special Use Permit-** Chairman Pelkey read aloud from the staff memo (page 4) that "Special Use Permits are a permit for a use not otherwise permitted which may be granted by the Planning Board (as authorized by RSA 674:21 II) and by the Town's zoning ordinance provided it meets the criteria set forth in the applicable sections of the zoning. In this case a Special Use Permit is being requested to allow for the construction of a proposed roadway through wetlands and associated storm water management and lot development within the 50' buffer zone.

Section 4.02 (J) of the Town's Wetland Conservation Overlay District which was established to regulate the uses of lands subject to standing water, flooding or high water tables for extended periods of time states the following use may be granted with a Special Use Permit: Streets, roads and other access ways and utility rights-of-way easements including power lines and pipelines, docks, piers and other water related structures if essential to the productive use of

land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands.

This development will result in no direct wetland impacts. The existing impervious coverage, which includes gravel parking, buildings and some asphalt pavement within the 50' buffer is 8,190 sq. ft. with a proposed increase of 160 sq. ft. (approximately 2%). The design will improve storm water management on the site by proposing new curbing along the perimeter of the site to direct runoff towards areas where flow is collected by the existing & proposed storm water areas and prevent direct runoff into the seasonal stream/wetland.

The storm water management system will be designed to be consistent with the current Town of Farmington Site Plan Regulations and Best Management Practices developed by the State of New Hampshire have been utilized in the design of this system and their application will be enforced with regular inspections throughout the construction process. There is no need for an Alteration of Terrain Permit or Wetlands Dredge and Fill Permit from NHDES. In addition to the Con Com, the Code Enforcement Officer was also sent this application and was given the opportunity to review and comment prior to the public hearing with the Planning Board.

The applicant has provided a written narrative explaining how they meet the criteria of the Special Use Permit for the Wetlands Conservation Overlay District including adequately demonstrating that need, avoidance, minimization and mitigation of wetlands are being met. At their meeting on June 8, 2022 the Conservation (Commission) voted to endorse the Special Use Permit with a recommendation that the snow storage area at the southeast corner of the proposed building no. 3 be moved out of the buffer. There were no comments from the Code Enforcement Officer.

The Planning Board in accordance with RSA 676:4 shall process requests for Special Use Permits using the procedures contained in Section 4.02 of the Farmington Zoning Ordinance and after proper public notice and public hearing provided that the proposed project complies with the following standards:

The environmental impact of the proposed action, including (1) the effects on the wetlands capacity to support fish and wildlife, (2) the prevention of flooding, (3) the supply and protection of ground waters, (4) the control of sediment, (5) the facilitation of drainage, (6) the control of pollution, (7) the support of recreational activities, (8) the promotion of public health and safety.

The character and degree of injury to or interference with safety, health or the reasonable use of property, including downstream property, which would be caused or threatened by the proposed activity or the creation of conditions which may do so. This includes recognition of potential damage from: (1) erosion, (2) turbidity, (3) siltation, (4) loss of fish and wildlife and their habitat, (5) loss of habitat having demonstrable natural, scientific or educational value, (6) loss or diminution of beneficial aquatic organisms and wetland plants, (7) the dangers of flooding and pollution and (8) the destruction of the economic, aesthetic, recreational and

other public and private uses and values of wetlands to the community.

The Planning Department recommends the Planning Board accept the application, open the public hearing and vote to approve the Special Use Permit.”

Mr. Pimental clarified that the Special Use Permit has its own public hearing and the board should open the public hearing specific to the Special Use Permit.

Chairman Pelkey opened the hearing on the Special Use Permit for public comment.

He asked if there were any comments from the public and explained that the reason they have to do this is because this project is within the 50 ft. buffer and they need to make sure it is not going to affect any of these things.

Mr. King said the Con Com reviewed it and recommended they approve the Special Use Permit.

Chairman Pelkey said seeing there were no comments from the public he would close the public comment portion of the hearing.

**Motion:** (King, second Day) to grant the Special Use Permit passed 5-0-1 (Henry abstained).

**Conditions of Approval-** Mr. Pelkey then read aloud from the conditions of approval checklist (staff memo, page 7) which included the following: approval of the Special Use Permit, approved NH DOT driveway permit, plan copies with professional stamps & signatures, changes to the plat as detailed in the minutes and this report: add a Planning Board signature block, add a note stating the waivers were approved and the date of approval, add any existing NH DOT slope and drainage easements and incorporate treatment design to protect vernal pool located in “wetland A”.

Mr. King said condition C as recommended by Mr. Pimental is a condition to be met prior to the signing of the plans which is to provide an approved NH DOT driveway permit and the applicant’s engineer said that he has not made that application. He said based upon being in that position in the last couple of years hopefully he has a better timely response than he received and he would recommend that that be removed and put as a condition of either occupancy or the building permit. I would say occupancy because he has existing 2 accesses now and he’s looking to change to it for the betterment of the plan and it’s somewhat of our purview anyways and he could be waiting 3 to 9 months before he gets that. I wouldn’t want to see the signing of the plan held up by NH DOT he said.

Mr. Pimental said he was okay with moving the driveway permit out of the signing of the plans. He advised the board not to make it a Certificate of Occupancy and recommended they make it a condition of a building permit because if they have comments that come back to the applicant that is going to change their site plan they would need to come back for an amendment. He said staff could make a determination on anything the DOT comes back with and if they believe it is substantial enough they will recommend that the applicant come back for an amended plan but he would make it a condition of a building permit not the CO.

Mr. Pelkey agreed and said that you would want to have this before you do your construction.

Mr. King said that is better than what was originally recommended because he could be waiting

6 months before he signed the plan.

Mr. Henry said he struggles with being quiet and asked if you get CO's for storage.

Mr. Jones said yes.

Mr. Pimental said he thought that they have gotten one before.

Mr. King said for a business venture you would have to have a sign off before you can start business so he assumed they would need one.

Mr. Henry said his assumption would be their approval was not conditional upon the driveways being moved so if DOT says no they are not going to let him move the driveways they are still going to build it out pretty much the way it is with the driveways where they are.

Mr. Ligols said his question was going to be what if the DOT says no.

Mr. Pelkey said that could be a substantial or not a substantial change to the plan. He said the staff would look at it and if they came to the board saying they felt it was a substantial change to the plan they would have to back before the board for that change.

Mr. Pimental said yes and in that case they probably would not recommend that it come back for an amendment because they're telling them to stay with the existing. He said he thought where it would be substantial is if they changed turning lanes or make them do something like that coming off of Rt. 11. If they determine that they don't want you to move it over and I don't see why they wouldn't because it's making it safer the staff would not recommend that that be a reason for an amended site plan he said.

Mr. Pelkey said in his opinion if DOT wouldn't approve them moving the driveway 30 ft. to the north it would not be a substantial change.

Mr. King said if they hold them up for the issuance of a building permit and it takes 9 months then he can't start this year. Then DOT comes back 9 months from now, snow is on the ground and says they don't want him to move it, the staff just said they're probably not going to recommend it to this board so the applicant has just been held up an additional 6 months because of the season for something the staff wouldn't recommend that they come back here for anyways. Pushing it back to a CO for it to be resolved is a little bit better because he can't even get started until DOT comes back to say possibly nothing he said.

Mr. Pelkey asked if there is a risk to the applicant if he goes ahead and starts to build it out that way and then when DOT finally gets back to him and says they don't want him to do that.

Mr. King said the choices are the DOT approves the improvement to the site, they say they don't want them to change it or they come up with another scenario where they want something different. He said that would fall into the category where it may need to come back here depending on what it is. He asked if they are saying they really don't want them back here then why would they hold them up on it unless there's something they require in excess of what they proposed like a turn off lane or something.

Mr. Pelkey said he was okay with either configuration so whether DOT approves it or doesn't approve it he would be okay with approving the plan and he didn't have an issue with pushing

out to the CO.

Mr. King asked about not having it as a requirement.

Mr. Pelkey said they want it on the plan whatever the final decision is.

Mr. King said the last chance is the CO and after that the Town doesn't really have any control over it. He said the first one is signing the plan, the next one is issuing the building permit and then the CO so the CO is the last chance. He said if they don't require it at all and if the DOT comes back with a change that screws it up it's already too late for the Town to say we have to look at this.

Mr. Pelkey said it should be on the CO in case there is some major change they haven't seen.

Mr. Henry said nothing that they are building is likely to be impacted by any decision DOT makes so they are holding up all the construction. He asked if they need a building permit for all the parking lot work.

Mr. Ligols said no and Mr. Pimental said he didn't think so.

Mr. Henry said all the building permit stuff is pretty far away from anything DOT would have a say about.

Mr. Ligols said the site work would be #1, #2 would be the foundation slabs are in and then they would build the buildings and the last time he checked they were about 3-4 months out.

Mr. Henry asked if the slabs still need a building permit.

Mr. Pimental said yes and recommended they play it more conservative and make it a condition of a building permit but if the applicant understands that if he decides to move forward he is running the risk that DOT decides to change something and he would have to come to this board if it's determined by staff. I think if the board is comfortable with moving it to a CO, I'm okay with that I just want the applicant to understand there is somewhat of a risk.

Mr. Ligols said he is also a Planning Board member and they always caution their applicants that they're exposed to that risk. He said the worst case scenario is DOT is going to say to leave it alone.

Mr. King said the worst case scenario would be the DOT says they want a streetlight.

Mr. Ligols said it is a low impact use and the impact is when people start moving in but once the doors are shut you maybe see 4 cars in day would be excessive. He said if they say because of the use they decide not to allow them to move the curb cuts which any logical person would say it's a lot safer by spreading them out but they're back with the state so they don't know. He said the at risk portion of this is always he would rather wait.

Mr. Pelkey said he would too if it was him and those are existing paved areas so it's not like they're going to...

Mr. Ligols said the one they're looking to move is paved. He said the other issue is where the detail shop is now the reason they want to separate this is because it pretty much comes right in to where Red's Detail Shop is and the other one is off to the south. The northerly one they want to pull away and no matter where you are in that particular area of Rt. 11 the line of sight

is really well it's flat with no hills and the line of sight is perfect. He said if it would be amenable to the board because of the line of sight issues to get started and maybe move it to the CO instead of tying it to a building permit.

Mr. Fisher said looking at what the DOT has done in the past few years he didn't see them having an objection to what he is doing now. He said he doesn't speak for the DOT but looking at what they improved at the Farmer's Kitchen and Aroma Joe's you've got 4 entrances and exits all within about 250 ft. of each other on one of the worst corners on Rt. 11 with no turning lanes and if they approved that he couldn't see them disapproving this.

Mr. King said being an applicant before this board a couple of years ago on the other side of Rt. 11 he waited almost 9 months for DOT to say they don't have a problem and that is a problem because the applicant would like to pursue his plan and the unknown is when they are going to decide to say they're okay with it or they want something and that timeline can be problematic. He said in his case he took the option where if DOT came back with any requirement that was substantially different he would have to come back before the board because he was being held up on basic construction because it wasn't a priority for them.

Mr. Pelkey said because the applicant has stated that he understands the impact of moving it to the CO and is more than willing to accept that he is in favor of putting it there.

Mr. Squires said he didn't think anyone was not in agreement.

Mr. Pimental said he was a little "iffy" on it because if they allow the site to be built out all the way to the CO and you still don't have your driveway permit from the state and then all of a sudden they say you can't do that and asked what happens if they've already moved it.

Mr. King said the applicant is at risk to moving that entrance until he has the DOT comment. He said as far as for the rest of the site development there is no reason to hold him up on the back. He suggested that he could wait to do the final paving until he has the results from DOT.

Mr. Pimental said they may want to make that a condition and if they are going to allow for them to move forward and not need an approved driveway permit until the CO they may want to put in a stipulation that they're not to do anything with the driveway until that driveway permit is approved. He said they could still get the building permits and still do a lot of the site design work but the driveways are not to be moved or paved until that permit and that's the only thing they could wait on.

He said that could be something you put as a condition if you're going to move the driveway permit all the way down to CO and it could be just a note that's added to the plan that says the proposed driveway that is going to be moved cannot be done until the driveway permit is approved. He said that could be a condition of approval for the signing of the plans that it's just a note that is added to the plan.

Mr. King said that means it could be after the occupancy of the building.

Mr. Pelkey said he could be up and running and then DOT comes back and says they're good to go and he can go finish up that piece of it.

Mr. Ligols said it would be crazy to move the driveway without knowing where to move the driveway.

Mr. Pelkey said he could have his CO and be in business and be renting spaces and they are trying to help him get there.

Mr. Pimental then read aloud the revised conditions of approval as follows:

1. Conditions to be met prior to the signing of plans:

- a. The board approves the Special Use permit
- b. The applicant will provide copies of the final plan set with a stamp and signature of the LLS and CWS
- c. Revise the plat as detailed in the minutes and in this report:
  - i. Add a Planning Board signature block
  - ii. Add a note stating the waiver was approved and the date of the approval
  - iii. Add any existing NH DOT slope and drainage easements
  - iv. Incorporate pre-treatment design to protect the vernal pool located in "wetland A"
  - v. Add a note to the plan stating that the proposed relocation of the driveway and paving shall not commence until a revised NH DOT driveway permit is approved.

2. Conditions to be met prior to the issuance of a Certificate of Occupancy:

- a. Submit as-built plans stamped by a Certified New Hampshire Professional Engineer.
- b. Provide an approved NH DOT driveway permit

Mr. King said it should be amended to say a "revised" or "updated" DOT permit because he already has a permit for the access or it's grandfathered.

Mr. Pimental amended item v to state the site needs to have an "approved revised DOT driveway permit". He then repeated so they are aware if DOT comes back and there are substantial changes it will be staff's job to determine whether or not that needs to come back to the board for an amended plan.

**Motion:** (King, second Day) to approve the site plan as presented with the conditions listed and revised in staff's memo passed 5-0-1 (Henry abstained).

**Haywagon Road Class VI Road Recommendations:**

Mr. Pelkey read from Mr. Pimental's 7/19/22 memo that the Planning Dept. has received an application for a driveway and building permit for a proposed new home located at 149 Haywagon Road. He said this is a class VI road so the permit application process is required to be reviewed pursuant to RSA 674:41 which requires in part that the erection of a proposed building placed on a class VI road is allowed provided that:

1. The local governing body after review and comment by the Planning Board has voted to authorize the issuance of building permits for the erection of buildings on said class VI highway or portion thereof and
2. The municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from use thereof and

3. Prior to issuance of a building permit the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county Registry of Deeds. Mr. Pelkey asked if the DPW Director went out to take a look at this.

Mr. Pimental summarized that historically with Haywagon Road the Board of Selectmen has made some conditions that have been improvements and maintenance for that road and those conditions were set by the Public Works Director in the past. He said in this current circumstance the Public Works Dept. wasn't able to provide them with comments or any feedback so they decided to have the Building Inspector do a site visit and has the following conditions to be met for this board's recommendation to the Selectmen:

Conditions to be met prior to the issuance of a Building Permit:

- a. The owner shall submit an engineered plan to the Planning Dept. which is deemed acceptable by staff and showing the proposed traveling surface and swale with riprap to be installed to prevent road washout
- b. The relevant portion of Haywagon Road, starting from approx. 530 ft. from Meaderboro Road to a point extending approx. 2,100 linear ft. to the entrance of the driveway for 149 Haywagon Road, shall be upgraded to contain 16 ft. of a gravel, traveling surface and required swale

Conditions to be met prior to the issuance of a Certificate of Occupancy:

- a. The owner shall submit a document from an engineer certifying that the road improvements including the swale and traveling surface are properly installed and maintained

Mr. Pimental said the Planning Dept. is looking for a motion from the board to accept, revise or remove any of these recommendations before it is forwarded to the Selectmen.

Mr. Pelkey said they once had an applicant in here looking to put a home off of Haywagon Road and one of the conditions they recommended be put on it at the time was an upgrade to that bridge.

Mr. Henry said or at least an engineer's review of it.

Mr. Pelkey said that bridge was in total disrepair at one time and apparently when they did some logging out there they did some repair to it. He asked if any of those actions were taken on that road.

Mr. Pimental said Mahern and Huckins were two that were brought to the board and there were several conditions. He said Mahern had conducting the bridge analysis, providing engineered plans and the relevant portions having 16 ft. of travel width with 2 ft. on both sides for a total width of 20 ft. He said the only thing that was done for that property owner was the bridge analysis.

He said for the Huckins' conditions there was a drainage swale, a 12" culvert and 4" of ¾" gravel that needed to be added to the road from Meaderboro Road to 20 ft. beyond the driveway entrance to 5 Haywagon Road and none of those conditions were completed.

Mr. Henry asked if they didn't complete it as in they didn't build the houses or they didn't



complete the conditions.

Mr. Pimental said Huckins didn't complete the conditions.

Mr. King asked if the other resident completed his conditions.

Mr. Pimental said no and the only thing they did was to conduct the bridge analysis. He said the reason why they were making this a condition prior to the issuance of building permit is that wasn't done prior it was stipulations but they didn't tie it to anything so building permits were issued for those 2 lots and they have done work. They have not been issued a CO but they were able to do work he said.

He said the Building Inspector said if there are road maintenance issues that need to be done I don't think that you want to have heavy equipment up there building a home without the work being done to the road first so our recommendations now is that these conditions be prior to the issuance of a building permit and that they are certifying that all the road improvements are being installed and maintained prior to the final CO. That seems to be not what happened prior which allowed for the owners to not complete all the conditions and still have building permits and start to build homes on those 2 lots and we're trying to avoid that again he said.

Mr. King asked if no CO's have been issued on those 2 constructions if they are being occupied.

Mr. Pimental said he didn't think so.

Mr. Pelkey recalled one of the conditions was the Fire Chief wanted was a water system.

Mr. Pimental said the Building Inspector did a lot of research on this and that did not come up.

Mr. Squires asked about the results of the bridge analysis.

Mr. Pimental said it was okay.

Mr. King said Haywagon is an old class VI road and asked for the width of the right-of-way. He said that affects the ability of the applicant to do improvements in it based upon its width and their recommendation is a 16 ft. travel right-of-way with swales and riprap which should be accommodated in a two rod r-o-w.

Mr. Pelkey asked if he knew what they did back in the day and there are old houses out there that look like they date from the 1960's.

Mr. King said it varies and asked if there are houses on Haywagon that are currently occupied. Discussion then included the locations of the existing houses on Haywagon Rd. and the location of the applicant's property.

Mr. Pimental said he didn't have the information on the r-o-w and that the Building Inspector has that information.

Mr. King asked the applicant if there was anything he would like to say regarding his request for a building permit on a class VI road. He said some of these requirements require outside engineering input that they have found to be problematic for applicants to get people to use the word certify and to review.

Raymond LaValley said he bought a piece of land off of Haywagon Rd. and the previous owner had a camp that he had lived in so there is a building on that lot already. He said he wants to

build a home on the lower end of that lot which is at the base of that hill just before it goes up to Jon Mahern at the top and it's on the other side of the bridge.

He said the engineered drawing came from Jon Mahern about that bridge so he's fulfilled that part of that and he's had somebody look at the roadway to design where the culverts need to be, had wash bars installed to keep the road from washing out, done ditching on both sides where they can do it, there's stone walls on both sides going down the whole road and John has done a great job there. He said he helped him out a few times with a dozer pushing fresh  $\frac{3}{4}$  inch stone down the road to help fill in the low spots and bring it back up.

Mr. LaValley said when the loggers came in Mr. Mahern cut his own special deal with them and they put 3 inch stone all the way up the hill and that was a murderous road if you were on it before that. He said he has graded the road and contoured it so the water runs off instead of just tearing up the road the whole time. He said that portion of the road was built enormously and he will be helping him out to the bridge. There's a low spot just before the bridge where the loggers didn't put any stone so we will probably add to that to improve that he said.

He said it is just him and Mr. Mahern creating this road that the board wants and it's an expense for 2 or 3 guys to do but they are willing to do what they can to it. He said it's come a long way but they are not done and are willing to go at it.

Mr. Day asked if they measured the road width now and what is that width.

Mr. Mahern said it depends on where you are and there are some areas that are narrow because of the ledge and the stone walls.

Mr. Pelkey asked if the applicant had seen the conditions the Planning Dept. is asking for.

Mr. Pimental said he didn't know if the Building Inspector sent them to him or not.

Mr. King said they were the conditions for the issuance of a building permit and gave Mr. LaValley his copy of Mr. Pimental's memo containing the conditions.

Mr. LaValley said the Building Inspector told him about the conditions over the phone.

Mr. Henry said they are asking them to require that he submit an engineered plan that's acceptable by staff that shows a proposed traveling surface and swale with riprap to be installed to prevent washout and that the relevant portion of Haywagon Rd. starting from approx. 530 ft. from Meaderboro Rd. extending 2,100 ft. to the entrance of the driveway at 149 Haywagon Rd. will be upgraded to a 16 ft. gravel traveling surface with the required swale.

Mr. Pelkey said they are asking him to put in a 16 ft. wide gravel road from 530 ft. from Meaderboro Rd out to his driveway.

Mr. LaValley said he thought it would be from the bridge to where his driveway is going to be about 1,600 ft. is what they told him.

Mr. Pelkey said that's about right and the math is about 1,600 ft. He said there are two pieces to this, they want him to do the work and the other piece of it is the drawings.

Mr. LaValley asked how many people are supposed to provide drawings because Mr. Mahern was already given that task and asked how many they need and what they were looking for.

Mr. Mahern said he was supposed to have the drawings for the road as part of his CO which is why he hasn't gotten too far with it because he has been busy. He said he intended to go from his property all the way past the bridge at least up to Huckins because those were his conditions. He said if Mr. LaValley has to follow the same conditions for part of his he is already laying the ground work for that which he is going to be using anyway and he can hop right on it. Mr. Pelkey said he now understood that Mr. LaValley has people ahead of him and he just wanted to piggy-back on what is already being done and Mr. Mahern is agreeing that he has the piece up to where he wants to start back doing his property.

Mr. Mahern said it covers the area he is being asked to cover because it's part of his requirements and his were ahead of time so it's going to happen anyway because he needs it to happen.

Mr. King asked Mr. Mahern when he thought he would apply for his CO.

Mr. Mahern said he was hoping it would be by the end of summer-middle of fall.

Mr. King said by the end of fall he felt he would furnish that requirement of the documentation for the improvements he was tasked with and his request for a CO.

Mr. Mahern said that is his intent.

Mr. King said that may address some of the concerns and the recommendations here but he didn't know if that would cover all of them or what the details were.

Mr. LaValley asked how much expense they would put on two people for that road. He said 4" rock isn't cheap and asked if there is a tax abatement or tax break if they're putting all this money and work into the road.

Mr. King said there is no mechanism for that. He said it's a class VI road subject to gates and bars and he understood what he is being requested as an applicant and he is going to abstain from this because he is the Selectmen's rep so he will be sitting on that board when this application comes before the Selectmen. He said these recommendations are from staff and he has multiple choices he can accept them fully and do all the requirements whether he feels they are reasonable or not, he can say he is going to do nothing and apply for the building permit or he could say this is what I feel is reasonable to satisfy your concerns that may be less than what the recommendation is. You are the one looking for the building permit that will be granted by the Selectmen based on addressing the staff's concerns, that board will consider the reasonableness of those requests and what you propose to do he said.

He said the Town does grant building permits on a class VI road and they have done it on other roads over the years and because it's a Town road they try to require that its brought up to a reasonable standard so that's it's passable for fire safety, etc. He said that reasonable standard is always in flux and the staff is going to make recommendations what they feel is most conservative because that's how they're going to come out.

He said for example the recommendations on the front part of that were made part of his CO and those have not been completed by Mr. Huckins. These are things where we get into

predicaments where we say you can do it and you agree to do this and then the improvements aren't done and the Town is left to say it was supposed to be improved to a reasonable standard and trying to ensure that it gets done.

Mr. LaValley asked if they were looking for an engineered drawing.

Mr. King said that is the recommendation by staff.

Mr. Henry said that is not by this board as of yet.

Mr. Pimental said the two things left in terms of the conditions that were set as part of Mr. Mahern's approval are the engineered plan for the installation of a swale to prevent and reduce road washout and that the relevant portion of Haywagon Rd. from his property to the property line between Raymond LaValley and James Knolls for a distance of approx. 3,700 linear ft. to be 16 ft. with an additional 2 ft. on both sides and a total width of 20 ft.

He asked Mr. Mahern if that 3,700 linear ft. from the Mahern property all the way between his property and James Knolls would cover what the Building Inspector has put for Mr. LaValley's condition.

Mr. LaValley and Mr. Mahern both said yes.

Mr. Pelkey said yes as Mr. Mahern's property is further down the road than Mr. LaValley's property is. He said they have already set conditions for that road that Mr. Mahern is supposed to meet to get his CO.

Mr. King said this applicant is saying he wants to get a recommendation for a building permit but the requirement for Mr. Mahern hasn't been met yet which would potentially satisfy this requirement.

Mr. Henry said the possibility also exists that he stops and doesn't finish his project and they can't rely on that Mr. LaValley builds and completes his project but the other one doesn't get completed. He said it comes down to we don't care who does it we just care that it gets done. So whether he (Mr. Mahern) provides the drawing or he does (Mr. LaValley) it has to be done at least as far as Mr. LaValley's driveway no matter who does it he said.

Mr. Pelkey said if they make the same requirement of Mr. LaValley as they made previously then they are being equitable.

Mr. Squires asked if they would tie the road work to the CO.

Mr. Henry said engineering on file is a requirement no matter who submits it to put it on file.

Mr. King said it is up to the Selectmen whether they could give the building permit and tie the CO to the completion of the improvements which is being done by both of these gentlemen and this board could make that recommendation. He said if the same requirements are placed on both gentlemen it would be consistent and reasonable and it would be up to them to complete that to the best of their ability so he thought that made sense.

Mr. Fisher said they need engineering plans and they don't care who does it and asked if they could say in conjunction with these 2 gentlemen provide engineering plans and that way it relies on either one of them or both together.

Mr. Henry said he was happy saying there are plans on file not tying it to who gives them to us as long as we can reference them.

Mr. Pelkey said Mr. Mahern's recommendation said 16 ft. of roadway and a 2 ft. swale.

Mr. King said it was 16 ft. of roadway with 2 ft. shoulders on both sides for a total of 20 ft.

Mr. Mahern said they need to take into consideration the narrowness of the road in some areas because of the stone walls.

Mr. King said if there are issues that prevent that in certain areas he should provide that as part of his argument in making the case that he has done the best that he could. He asked if he has ever paced off or measured the distance between the stone walls.

Mr. Mahern said not all of it and it varies.

Mr. King said that a lot of the time the distance between the stone walls matches the r-o-w width. He said it may be a 2 rod r-o-w which would be 33 ft. and for what he needs to do for improvements which is up to 20 ft. a 16 ft. travel way with 2 ft. shoulders certainly falls within that. He said he was not aware of any 1 rod rights-of-way which would be 16.5 ft. but there are deeded rights-of-way in common that are used for residential traffic in town that are only 16'.

Mr. Pelkey said he didn't know if 16 ft. meets the Town's road standards but he wanted to stay with the same requirements they put on Mr. Mahern.

Mr. Pimental said that is what the Building Inspector was trying to do and he was trying to mimic the previous two approvals to be fair and consistent.

Mr. Henry asked if it said "engineered" or mentioned an engineer in the other two.

Mr. Pimental said that Mr. Mahern was to provide an engineered plan for the installation of the swale and Mr. Huckins conditions didn't have any engineering but there were 2 culverts and the gravel installation.

Mr. Pelkey asked if anybody had any issues with the conditions. He then read the conditions again and questioned the use of the word "maintained" as maintenance is a lifelong thing.

Mr. King said that's pretty boilerplate and it puts the applicant on notice that he is required to maintain it.

Mr. Pelkey asked if the board felt they needed to change any of the conditions because what they are looking for from them is if they concur with them and make a recommendation that the Selectmen accept these conditions or change them in some way based on their feelings.

Mr. Henry asked Mr. LaValley if he was comfortable with the requirements.

Mr. LaValley said as far as to bring the road up to where they want it yes but to continue maintenance there ought to be something else in there. He said if they're going to put out all the money all the time shouldn't there be a tax break for the people that are doing this.

Mr. Pelkey said that's a Selectmen question not a Planning Board question. He said he can't speak for the Selectmen and this is a Town road that the Town has abandoned maintenance on and they assume the requirement of maintaining the road for their use even though it's a Town road.

Mr. Henry said in theory the value of the property is affected by that and the value of a property on road you have to maintain is worth less than property on a Town maintained road. Mr. Pimental said Mr. Henry made a good point that while these are the recommendations that were recommended to the Selectmen if there is overlap that could be a civil issue that this board resolves on their own. He said all the Town really wants is to make sure that these conditions are being met before buildings are being put up. So whether or not you want to split that up between the 2 of you I don't think the Town really cares or at least the Planning Dept. doesn't care. We just want to ensure these things are done prior to the building permit and the CO's being issued he said.

Mr. LaValley asked if it would be before the building permit or the CO and they tied to the CO for Mr. Mahern.

Mr. Pelkey agreed they tied it to his CO and to be consistent they should do the same for him. Mr. King said the ultimate decision is made by the Selectmen so the Selectmen may have put it to the CO based the Planning Board's recommendation or may have made that decision on their own.

Mr. Pelkey explained that they are not binding on this and this is just a recommendation to the Selectmen. He said Mr. LaValley would have to go before the Selectmen and get their approval for this and part of the process is for the Planning Board to make a recommendation to them. He said the wording he would use would be that they recommend that these conditions be met and that they be applied consistently with what was applied in the past.

Mr. Henry suggested that any requirements just mention that they be on file and accessible to staff not that they necessarily be submitted by this applicant. He said he was not in favor of putting requirements on them anyway and if they want to live on a goat path and they have to walk to their house they should have that freedom. It's up to them to decide what they want for access knowing that the Town is not going to maintain the road he said.

Mr. Fisher said he highly recommends that anything that they and their neighbors agree on be put in writing. He said that saved a lot of trouble for 5-6 families living on a road in town that were arguing about who was going to take care of the road they all lived on because there was a lot of damage and over the years the terrain shifted causing flooding and culverts needing to cleaned out. He said they went back to 1911 in the deeds and found where it said from here forward the property owners would work together to maintain the roads and culverts and that fixed it all. Get it in writing it will save a lot of fighting later he said.

Mr. Pelkey said properties get sold too and somewhere down the road somebody new moves into the situation and it's good to have these things in place.

Mr. Henry asked if they could have a road maintenance agreement for a Town owned road.

Mr. Fisher said if the Town is requiring them to maintain the road he would have an agreement between the neighbors on how it's going to be maintained.

Mr. LaValley asked if that would be between the building owners or just the owners of the land.

Mr. Henry said that is another great question.

Mr. Pimental clarified that while the Building Inspector was trying his best to be consistent with the conditions themselves with the other 2 applicants the Planning Dept. is suggesting that the board change the way that this is being recommended to the Selectmen in terms of having these be conditions be prior to a building permit as opposed to the previous that made it prior to the CO's. He said that is up to the discretion of this board on whether or not they want to change it and the rationale behind that was it may be difficult if there were conditions on the road if there is heavy equipment going up there for construction of a road where those conditions would still be exactly the same.

He said for example if there is an issue with a road wash-out area if that would be made worse by heavy trucking that goes up there for the building and is that recommendation still going to address that issue. He said the conditions are consistent with the other 2 applicants the process is different this time around and he didn't think there was any precedent just because they did it a certain way for 2 others doesn't necessarily mean they have to replicate that in perpetuity moving forward and it's up to the board to decide if there's value in having the conditions be met before the building permit.

Mr. Pelkey asked if Mr. Pimental would be presenting this to the Selectmen.

Mr. Pimental said no.

Mr. King said the staff recommendations in a memo form typically come with this.

Mr. Pelkey asked if this board decides to do one thing and the staff recommendation is different if that would be noted to the Selectmen.

Mr. Pimental said no because the RSA states the comments are from the Planning Board.

Mr. Pelkey said the Planning Dept. works for the Selectmen too and if they feel that they made the wrong decision in their professional opinion...

Mr. King said typically whatever this board decides will go forth to the Selectmen and if he recommended a higher or lower requirement in the past the Selectmen have not seen that because he is making recommendations to this board and that's this board's decision and the Selectmen will take that under advisement.

Mr. Pimental said if the board wants him to include that he is happy to do that but wasn't planning on it.

Mr. King said the Selectmen consider their recommendations and concerns but they may make other requirements that are more restrictive or less restrictive.

Mr. Pimental said this board could make a motion stating they are fine with the conditions and the Board of Selectmen should decide on whether to make it a condition of occupancy or a building permit. He said if they want to punt that to the Selectmen they can but if they want to take a stance on it he would make it part of the motion and to be as clear as possible.

Consensus of the board was to tie the conditions to the issuance of a CO.

Mr. Henry said Mr. LaValley said he was building a house on the lower part of the lot but there

is a house there already.

Mr. LaValley said there is a cabin there.

Mr. Henry asked if there will be 2 residences there or if one is being discontinued.

Mr. LaValley said there will be one residence but he is planning on keeping the cabin.

Mr. Henry asked for the size of the lot.

Mr. LaValley said it is 74 acres.

**Motion:** (Pelkey, second Fisher) that the recommendation we make concerning this property to the Select Board is that we agree with the conditions however we believe they should be tied to the Certificate of Occupancy passed 4-1-1 (Squires, Pelkey, Fisher, Day-aye; Henry opposed; King abstained).

### **Member Comments:**

**Plans Signing-** Mr. Pelkey said he signed the plans for the Dorr and the Kodiak applications and he was letting the board this stuff was coming back for signatures.

Mr. Pimental said they would have New Style Homes next week and those 3 have been all wrapped up.

### **Any Other Business before the Board:**

**Planner Fees-** Mr. Pimental said there was a discussion at the last board meeting about application fees and one reason it was being discussed was that the current fee structure does not really account for large projects that aren't going to be captured with commercial space such as an excavation. He said for an excavation that's 75 acres you're not going to say that entire 75 acres x 10 cents a square foot which would be \$280,000 for a permit fee and that structure for something like that doesn't work.

He said for something like that they also can't charge a \$50 permit fee and they have to find some way to account for that in the middle. He said there is going to be an excavation at some point this year and in talking with that applicant their suggestion was to institute a Planner fee and account for it that way. He said the Town had a \$75 an hour fee for anything that took longer than 2 hours prior to when he first started with the Town 3 years ago and in 2020 he suggested that they remove it because it comes in the wash-you're paying a flat rate for his services through the Strafford Regional Planning Commission and that money would be absorbed within the contract they already have.

He said they are finding now that a lot of these projects are taking much longer when they get to the board. He said they are being approved faster and there are not as many meetings but there is a lot of work being done on the back end of it that maybe wasn't being done prior. There could be some costs to that that the Town might want to be thinking about recouping for some of these applications that take longer he said.

Mr. Pimental said for example the Town of Deerfield has a \$500 Planner fee that includes 7 hours and any additional time will be billed at \$70 an hour. He said his position's billable rate at



SRPC is \$80 an hour for dues paying members and \$85 an hour for non-dues paying members. He said he also put together a very conservative time frame for what a major site plan application would look like which would consist of preliminary meetings with the applicant (1 hour for zoning interpretations, research, e-mail correspondence), the TRC (3 hours for scheduling/facilitating meetings, consolidating committee members' comments), Conditional/Special Use Permits (1 hour for scheduling/preparing materials for the Con Com and the Code Enforcement Officer) and Planning Board approval (4 hours for review of TRC revisions, agenda, final Planner review memo and does not include any coordination with legal, third party reviews, traffic studies, etc.).

He said at the beginning they had a lot of change of uses that were relatively quick and some zoning issues that they took care of but they are now seeing larger, more complex applications which is good, but it is taking more time. He proposed that the board at least consider coming up with a way for accounting for some of these costs.

He said the Planner position has grown exponentially in the 3 years of what he was being asked to do then and what this position is being asked to do now and for whatever decisions the Town makes on that in the future. He asked the board if they feel that a fee is reasonable or if they want to continue to operate the way things are done now. I think the Town is probably losing money in terms of the time it is taking to review and approve these plans he said.

Mr. Henry asked how many hours does the Town contract him for now.

Mr. Pimental said it's a maximum of 16 hours a week and if he goes over that he has to let the Town Administrator know and he runs that by the Selectmen.

Mr. Henry asked what happens when 16 hours isn't enough.

Mr. Pimental said it gets absorbed in his other work. He said if he puts in 25 hours for Farmington in one week the Town doesn't see those extra hours they only see the 16 hours and he doesn't bill over that. He said he only did it one time and he couldn't avoid it because of night meetings and most of the time he will shift his time around so he is not billing any more than 16 hours.

Mr. Pelkey said this isn't just about his time it's the total staff time.

Mr. Pimental said some of that is being absorbed by SRPC or other staff.

Mr. Henry said he was trying to zero in a dollar figure but not all staff is as expensive as Mr. Pimental.

Mr. Pimental said they are correct in that it is not just his time but he was accounting for conservatively what it takes for him to process an application. He said something like the New Style Homes application was double that and was probably close to 20 hours from start to finish because of the multiple rounds of editing, design review and third party reviews.

Mr. Day asked what he would recommend for a flat rate and if he would recommend changing the hourly rate to \$80 per hour.

Mr. Pimental said that is up to the board and it was \$75 three years ago, his rate is \$80 and

between \$75 and \$80 is probably the number they want to land on. He said prior to it being removed it was for anything over 2 hours and the discussion should be what is captured under taxpayer dollars as services that are being provided by staff and what is going beyond that. He asked if that is 5 hours, 7 hours and that's a discussion he didn't necessarily have a recommendation on and that should be a consensus of the board.

Mr. King said it is more than 2 hours and he was involved in that discussion and his opinion was closer to 6 hours but that was not the consensus of the Board of Selectmen at that time which sets the fees. He said it is somewhere in the 6 to 8 hour range because they could have a 2-3 lot subdivision by town residents that consumes 6 hours pretty easily because they had never done it before or there's another issue like a roadway. He said 2 hours is way too small and the taxpayers are owed the services through general taxation but asked when it gets to the point where every resident shouldn't be a burden for a larger scale.

Mr. Henry said from the numbers he is seeing here he is comfortable with 6 hours.

Mr. Pelkey said 6 hours sounds reasonable because we do have the expectation that there are services based on taxation. He said part of it is they budget for those services.

Mr. King said they budget for Mr. Pimental's services at a contract rate but even if that position was a full or part time position they should still say what the reasonable expectation through general taxation is for those services for a resident or somebody coming in to develop in town at what point the burden should be on them based on the extensiveness of the development.

Mr. Pelkey said the starting point would be to charge a Planner fee for anything that goes in excess of 6 hours and the fee would be \$80.

Mr. Henry said but \$80 is Mr. Pimental's rate and not all the staff is even \$75 an hour.

Mr. King said if they took into consideration the Building Inspector with his benefits that would be over \$60 an hour based on his pay and compensation and doesn't include any overhead such as heat and lights for the building.

Mr. Henry said he would put those costs under the taxpayers and he is comfortable at \$70 or \$75.

Mr. Pelkey said they are going to make a recommendation to the Selectmen and they could say their recommendation falls from \$60 to \$85 an hour for time spent over 6-8 hours.

Mr. Squires said to let them nail it down because they are going to do that anyway.

Mr. King said the Board of Selectmen is going to have to pick a number-if they choose to make a change.

Mr. Pimental asked if they wanted to put a maximum number on something.

Mr. King asked if he has seen maximums in other communities and what they have been.

Mr. Pimental said the maximums he has seen were based on the applications not on Planner fees and Dover's commercial site plan application no matter how much commercial space they're adding can exceed \$10,000 or \$15,000 for a permit.

Mr. King said we don't have a cap for a building permit.

Mr. Pimental said the application fee for commercial space they approved tonight was \$1,400. Mr. Henry said and that's just for the application and they have to pay for a building permit on top of that. We charged them \$1,400 to ask permission and we could have said no he said.

Mr. Pimental said it is being used to help fund the dept. and the entire dept. is not entirely based on taxpayer dollars. He said the dept. has to have some form of revenue to sustain itself so typically in Planning Depts. fees are to help fund the staff. He said they looked at a few other communities and their commercial fees were higher at 12-15 cents per sq. ft. and Farmington's fees are 10 cents per sq. ft.

He returned to the question of setting a maximum and asked the board if there was a maximum they wanted to make a recommendation on.

Mr. Henry said because the Planner fee is tied to the number of hours the cap is already there and it's however many hours it is. He said it's not tied to sq. footage, it's not asking permission its services and a giant project is going to use more hours. I don't think you need a cap he said.

Mr. Pelkey said he would love to be in the position where it's going to take so many hours to get through such a huge project that we're worried about over charging somebody.

Mr. Henry said the Selectmen have the option to waive fees so if somebody came with a project so big but the Selectmen said this is such an asset to our community.

Mr. Pelkey said he agreed with Mr. Henry that it is limited by the size of the project.

Mr. Pimental said there is no fee for a Conditional Use permit or application and they have fees for almost all of the other applications. He asked if the board is going to make a recommendation on the Planner's fees if they wanted to consider adding a Conditional Use permit or application fee.

Mr. King said they should have a fee for a conditional use permit because it has to go to the Con Com and then to the Planning Board and it has staff review and that would be consistent.

Mr. Fisher said there is staff time spent on getting the paperwork together and agreed there should be a fee.

Mr. Henry said they just said that as a taxpayer you should get up to 6 hours of planning staff time and the justification for a fee here is that it takes planning staff time so if it takes more than the 6 hours we charge you for it and if it falls within the 6 hours we don't. Now we're going to pick and choose so if you're using an hour for this you have to pay but if you're using an hour for this you don't have to he said.

Mr. King asked if he was making the argument to get rid of all the fees.

Mr. Henry said as far as fees that are justified by planning staff time yes. He said they just said the taxpayers are entitled to 6 hours of staff time and asked if they were going to pick and choose what tasks are or aren't covered by those 6 hours.

Mr. Pimental said all applications have a fee with the exception of a boundary line adjustment and the conditional use permit. He said there are not many conditional use permits and that only the Aquifer Overlay District and the shoreline protection require a conditional use permit

and everything else is a special use permit. He said this could be something for them to clean up as there is no difference between special use and conditional use other than semantics.

Mr. King asked if they should change it to Special/Conditional Use permit.

Mr. Fisher said to just have Special Use permits and to do away with Conditional Use permits.

Mr. Pimental said it is mentioned in the zoning so they would have to fix the zoning.

Mr. King said for now as far as changing the fee policy they could put Conditional/Special Use Permit.

Mr. Pimental said that would be his recommendation. He said when they do make some changes that they should get rid of the Conditional Use and just do Special Use for everything.

Mr. Henry asked for the justification for any of the fees.

Mr. Pelkey said he was asking the wrong guy because the fees are set by the Selectmen and he should ask them.

Mr. Henry said he was asking this board in general and the fees are there to offset the costs to the dept. but if the justification for the application fees is to pay for staff time then why did they just say as a taxpayer you're entitled to 6 hours of Planning Dept. time. He asked if they should get rid of the fees and revisit the 6 hours and say you get 4 hours.

Mr. Pelkey said he wouldn't want to recommend to the Selectmen that they stop charging fees for everything and then figure out how they are going to pay for the Planning Dept. He said their answer would be to raise taxes because they would have to tax the population more. He said right now the people who are paying for it are the people that are using the dept. and accessing those services not the entire population. He said the fees are in addition to the existing fees we have because that is what it takes to run the Planning Dept.

Mr. Henry said these fees don't pay "squat" to running the Planning Dept. and Code Enforcement may be getting paid for out of the building permits but that's it.

Mr. Pelkey said a budget is set for the dept. and part of that budget is based on the annual revenue from the fees.

Mr. Henry said the fees just go in the general fund.

Mr. King said that's right but they should be tracked and asked Mr. Pimental if he knew what the total is for the fees that are gathered through applications in a year.

Mr. Pimental said he didn't know. He said if there was a Planner fee for the last 3 applications (Kodiak, New Style Homes and Farmington Self-Storage) there would have been between \$10,000 and \$15,000 generated from the application and Planner's fees.

Mr. King said \$15,000 divided by \$75 an hour is 200 hours.

Mr. Pimental said he wasn't just talking about hours but the application fees too. He said maybe it was closer to \$10,000 for the 3 applications and those are within the last 3-4 months. He said the application fees bring in some revenue but it doesn't pay for the entire dept.

There's no Planning Dept. I've ever worked with that doesn't have application fees he said.

Mr. Henry said they would have charged Farmington Self Storage a \$1,400 application fee and

then say \$75 an hour for every hour beyond 6 hours and that \$1,400 is lot more than \$75 an hour for the first 6 hours.

Mr. Pelkey said nobody has said the fees are based on 6 hours of planning time at \$75 an hour.

Mr. Henry said he was trying to draw comparisons and find the logic in any of these fees. He said the government dept. should not exist to raise revenue.

Mr. Pelkey said that is a great theory and if no government dept. should ever raise revenue then the IRS should be abolished.

Mr. Squires said they have a recommendation on their plate and asked if they are changing it or if they are going to sit here and argue application fees all night that are irrelevant to that.

Mr. Pimental said it sounds like after 6 hours and between \$60 and \$85 an hour and asked the board if that was the recommendation they wanted to make to the Selectmen.

**Motion:** (Pelkey, second Day) to recommend \$60 to \$85 an hour for time over 6 hours passed 4-1-1 (Squires, Pelkey, Fisher, Day-aye; Henry opposed; King abstained).

**Motion:** (Henry, second Pelkey) to take a 5 minute recess passed 6-0 at 8:35 p.m.

Chairman Pelkey reconvened the meeting at 8:40 p.m.

**Recusal/Disqualification of a Member in the Bylaws-** Mr. Pimental said at the last meeting they discussed whether or not the board had the authority to disqualify a member so he put the RSA in his memo. He said the bylaws say that the Chairperson shall ask board members in conflict to recuse themselves under RSA 673:14 so the board is probably protected with that. He said the way that is written it appears that one person on the board has the authority to ask a board member to recuse themselves where if they want to be more democratic they could make that a vote of the board to ask to recuse that member and now it is just the Chair.

Mr. King said it should be by a vote of the board to ask the member and asked if under the RSA the member would be required to recuse themselves.

Mr. Henry said he read it as the person can say no.

Mr. Pelkey said it does say that they are asked but it does not say they are told.

Mr. Pimental said at the end of that RSA it says "Such a vote shall be advisory and non-binding and may not be requested by persons other than board members except as provided by local ordinance or by a procedural rule adopted under RSA 676:1". He said RSA 676:1 provides the authority for the Planning Board to establish their own bylaws.

Mr. King said it doesn't give them the authority to make that person recuse themselves. He said what it is referring to in the bylaws is to allow by procedure the applicant to request that a person recuse themselves. He said he has been on applications where the applicant has requested that somebody has a conflict and should recuse themselves. But it's still non-binding the RSA says advisory and non-binding he said.

Mr. Pimental said he read it as if they put that in their bylaws the Town can stipulate that if you're asked to be removed then you can remove that member and he could get a legal opinion on that.

Mr. King said he was not opposed to getting a legal opinion but it should be by a majority vote of the board and they shall ask that person and do they have the authority in the bylaws to say that person will recuse themselves.

Mr. Pelkey asked once you have a vote and the majority of the board determines somebody is in conflict how they could proceed because they would be setting themselves up for you can't make a decision after that.

Mr. Pimental said if that occurred and that member didn't recuse themselves and that person's vote went a different way the Town could be opening itself up to being sued.

Mr. King gave the example where he was asked to recuse himself but he did not recuse himself because he did not feel he was conflicted, he votes against the application but the rest of the board votes for it.

Mr. Pimental said in that case it would be a bad look.

Mr. King said they need to ask the legal question if by the bylaws the person is asked to step down from that application if they have the authority to make the person step down.

Mr. Pimental said he would find out if by making a change to the bylaws to make it a majority vote if it would make it binding.

Mr. Henry asked if when they use the word recuse they mean for a specific application not removing somebody from the board.

Mr. Pelkey said it is for somebody that needs to be recused because of a conflict not because he doesn't like them so get off the board.

Mr. King said on the Planning Board you can't be predisposed to an opinion and if someone came in for a development of storage units and he said publically that they should all be outlawed because he doesn't like them he should not sit on that application.

**Upcoming Webinars-** Mr. Pimental said the NH Municipal Assoc. is putting out some webinars that may be of interest to this board. He said there is \$40 million coming in for municipal grants from "Invest in NH" but they don't know a lot about it yet other than there is going to be money for looking at planning and zoning and he is going to suggest that the Town apply for it. That could include a full audit of the Town's zoning ordinance and the site and subdivision regulations to remove existing barriers and streamline the process. There are a lot of redundancies that we could get rid of and improve other areas he said.

He said the webinar will be held next Wednesday at noon to review the program and if others want to attend he will send them this e-mail.

He said the webinar on HB 1661 will be held on Wed., Aug. 10 from noon to 1 p.m. and this is important because they are changing a lot of land use laws that will be effective this Aug. and other portions will become effective in July 2023. He said one of the changes is if you reach the 65 day limit and don't come to an agreement with the applicant to continue and didn't make a decision to approve or deny it the Superior Court will rule in favor of the applicant. He said there is a lot more to it and he would send the registration information to the board members.

Mr. Fisher asked about the application for church group camp ground that they keep continuing.

Mr. Pimental said those were just conceptual meetings so they weren't rendering a decision and the continuance was in agreement with the applicant so they are okay with that one. He said the one that was close was New Style Homes at 63 days but they were ready to work with the applicant to make sure it got extended. If we're going to ask for a continuance that needs to happen in writing going forward he said.

**Ten Year Transportation Plan**-Mr. Fisher said he got an e-mail today with a last minute call for any additions to the state's 10 year transportation plan. He said we have a couple projects in the 10 year plan such as some sidewalk work and he heard that the Town is putting in a request for some money and putting into the 10 year plan for a bridge to be rebuilt. He said the deadline is Friday, July 29 and if they know of any projects that should be added they have a little over a week to get them in.

**Old Fire Station Lot**-Mr. King asked if they received any comments during the comment period for the Level 1 Site Assessment at the old fire station lot.

Mr. Pimental said the comment period was 30 days which has passed and there were no comments from the EPA.

Mr. King asked if the study would be given to the Board of Selectmen.

Mr. Pimental said he would ask what they want to do about that.

**Downtown Improvement Plans**-Mr. Pimental said the board asked him to look into the drainage and he will pass along the information they got from Wright Pierce. He said there's a sewer drain report, a sewer drain asset management plan, a water asset management plan and a water system asset management plan. He said he spoke with Chris Burke at Wright Pierce and told him the Town is looking to compile any available data on the downtown to consolidate this into a long term infrastructure improvement plan to improve utilities, sidewalks, transportation and streetscape design. I think pulling all of those resources together would make for a better application for a planning grant to do some of that. If anyone else has any information let me know and I will try to track it down he said.

**Route 11 Zoning** -Mr. Henry said last year they talked about looking at the zoning along Rt. 11 and asked if they wanted to start putting something on the schedule to look at that and hear from property owners.

Mr. Pelkey recalled there was some group that was going to talk to them about the steps for developing that area.

Mr. Pimental said the next time they meet it will be August so if they want to think about zoning amendments he has a couple in mind that he will bring to that meeting. He said commercial development on Rt. 11 is challenging for a number of reasons so having somebody come in that can help us make decisions or make some recommendations on how to encourage commercial development along a corridor that constrained by the river on one side and the rail

trail on the other side and the Town has no authority over the road because its DOT (a state road). If someone could come in who has expertise in that I would welcome that to how we change the zoning to be successful he said.

Mr. Henry said Pike appears to be nearing the end of life on some of the gravel pit back there and asked how they want to see that reclaimed. He said it is currently zoned residential but to him it seems like a good place for an industrial park.

Mr. Pimental said this is a big topic and he would be looking for some assistance as economic development is not his expertise but he will look around to see if there is someone who will come in and give us some guidance on that.

Mr. Fisher said they have no real guidance in the zoning on solar power facilities and that might be something they want to look at.

Mr. Pelkey said they would put it on the list.

**Adjournment:**

**Motion:** (Squires, second Day) to adjourn the meeting passed 6-0 at 9:03 p.m.

Kathleen Magoon  
Recording Secretary

 8/3/22  
Richard "Rick" Pelkey, Chairman