

**Town of Boscawen
PLANNING BOARD
Boscawen Municipal Complex
FINAL MEETING MINUTES
Tuesday, September 5th, 2023**

Members Present: Loren Martin—Chair; Barbara Randall—Vice Chair; Ed Cherian; Gary Tillman; Josh Crawford; Roberta Witham; Lorrie Carey—Ex-Officio; Bill Bevans—Alternate Ex-Officio

Staff Present: Kellee Jo Easler—Planning & Community Development Director & Kara Gallagher—Planning & Community Development Assistant

Guests Present: Tom & Jody Berkeley—Riveredge Properties LLC; Eric Munro—Manager of Building & Loan Development; Spencer Tate—Meridian Land Services Inc; John Arnold—Attorney at Orr & Reno

Chair Martin opened the Public Meeting at 6:35 p.m.

PCD Assistant Gallagher completed roll call.

Minutes:

- Ex-Officio Carey requested one change to Line 52: Change the punctuation from a period to a question mark after “same”.
- Mr. Tillman asked for clarification on the section numbers for lines 200, 204 and 214.

August 1st, 2023, draft minutes were deferred to the next meeting to allow for the discovery of the missing section numbers.

Capital Improvement Plan (CIP):

PCD Director Easler presented the most updated version of the CIP. She said at this point the Board could ask for clarification on any of the items. There will be a CIP meeting on September 13th, 10am-12pm, where changes may be requested. She has scheduled the Public Hearing for the October 3rd meeting. Ex-Officio Carey asked if there was a minimum for Capital Improvement expenditures. PCD Director said \$10,000. Finance Director Kate Merrill said it would be best to refer any questions to the department or bring them to the meeting on the 13th. PCD Director Easler explained that the CIP is a wish list and a planning document. She said in 2022-2023, the town had a reevaluation done, which was why the amounts were unusual for that section. 2023-2024, capping the landfill and the sewer project were moved, because they will probably be bonded. That category was large because the Commercial Street project was included, and now that will be moved to 2024-2025. Mr. Tillman asked about the item “Bridge Removal”. Ex-Officio Carey said the Bridge that formerly connected Depot Street in Boscawen to West Road in Canterbury was removed, but the project has not been completed. Because it is a part of Boscawen’s history, an

educational piece will be required. Canterbury has finished their side. Mr. Tillman inquired about the item “Sidewalks” and said the location should be clarified. PCD Director Easler said that the item falls under the Public Works department and is for general repairs. Both items currently have a balance of \$0. Mr. Tillman asked what “Wild Land Fire Suppression” was for. Chair Martin suggested asking Fire Chief Tim Kenney. PCD Director Easler said the only way to remove an item from the CIP is at the annual Town Meeting. Alternate Ex-Officio Bevans asked where the money for the Storrs Bridge removal came from. Ex-Officio Carey said a grant was received. She said the only way to receive grant money is by having the item on the CIP. Chair Martin would like to attend the meeting on the 13th to ask some specific questions.

River Walk Visioning Session for Redevelopment of the Mills:

PCD Director Easler said the Visioning Session will be Saturday September 9th, and encouraged the members of the Board to attend. Chair Martin has a previous commitment and will not be able to attend.

Zoning Ordinance and Land Development Regulations Discussion:

Central NH Regional Planning Commission submitted their changes to the Land Development Regulations. PCD Director Easler asked the Board to take the changes home to review and provide feedback. She hopes to have the Public Hearing in November or December. PCD Director Easler will send the document via email with the track changes turned on.

New Business:

Bond Reduction Request Map 183D Lot 16 Sublot 1 Eagle Perch Drive: Mr. Berkeley has requested a partial release of the bond for the Eagle Perch Drive project. Underwood Engineers received a completeness estimate prepared by Jeff Burd and performed a site visit to confirm the project completeness. Underwood Engineers recommended releasing all but \$44,000 of the original amount.

Mr. Cherian motioned to release all but \$44,000 of the original bond. Seconded by Ex-Officio Carey. All in favor. None opposed.

Mr. Berkeley said because a letter of credit was used, he needs a letter from the town to the bank to release the funds. PCD Director will work on the letter with Underwood Engineers

Old Business:

Continuation of Public Hearing for Major Subdivision for Cluster Development Map 94 Lot 23:

Chair Martin reopened the continued Public Hearing at 7:05 p.m.

Mr. Tate presented a new waiver request for Section 14.03 (e): *Provisions for the perpetual maintenance of all common facilities through a mandatory Homeowners’ Association shall be made (see section 14.06 c & d).* Mr. Tate pointed out that there were other provisions within the

Zoning Ordinance that allow for a different ownership strategy. Mr. Tate stated that because there will be a lack of common facilities that are normally managed by a Homeowners' Association, the applicant would seek to not implement a HOA. Mr. Tate asked Attorney Arnold to explain the proposal. Attorney Arnold explained that the applicant was seeking a waiver for Section 14.03 (e). In his opinion, there were inconsistencies on how the Zoning Ordinance was drafted. He was not sure if a waiver would even be required. He said in Section 14.06-Open Space, 14.06 (b) states *the open space shall be held, managed, and maintained by the developer until it is owned in one or more of the following ways: 1. By a Homeowners' or Condominium Association or similar form of common ownership set up by the developer and made a part of the deed or agreement for each lot or dwelling unit. This form of ownership may only be used where all land within the development is held in common. The open space shall not be in a parcel or parcels separated from the dwelling units. 2. The land may be held separately by each of the individual lot owners, where each unit/lot owner owns an equivalent portion of the open space. The open space shall not be in a parcel separated from the dwelling unit. It is recognized that this will result in unusually shaped lots. Copies of each deed depicting this arrangement shall be submitted to the Planning Board as a condition of approval of the Conditional Use Permit, and one hundred percent of the open space must be accounted for in the deeds. All deeds shall specify that no further development of the open space is permissible in perpetuity.* His understanding of this provision and the way it operates in most municipalities was that if the applicant does not pursue the HOA option, they would instead deed the open space to all the individual lot owners. The simplicity to that was if the development does not have a lot of common facilities that need maintenance, budgets, voting, etc. you would have a development that would not be saddled with the ongoing responsibility to maintain an HOA, and there would still be the protection of the open space. By recording a Declaration of Covenants with the Merrimack County Registry of Deeds that would say, the land would be maintained in perpetuity in its open and undeveloped state, no buildings can be built, and any number of restrictions that achieve the purposes of the open space. He then said Section 14.03(e) was inconsistent with the requirements of Section 14.06(b). He felt Section 14.03(e) only applied if the developer decided to use option 1 of 14.06(b). He did not think 14.03(e) would apply in a scenario where the developer elected to use option 2 of 14.06(b). Chair Martin said the Board had spoken with the town counsel about this topic, and she thought it was noticeably clear that it was two different things. Section 14.06(b) talks about open space and how it would be held, managed, and maintained. In our Ordinance, open space can be owned by a HOA or individual lot owners. The Ordinance says nothing under 14.03(e) about open space at all, it talks about common facilities/common spaces, and the words "mandatory" and "shall" are used. The Ordinance was not inconsistent, it mentioned common facilities which would include the road, mailbox, drainage, etc. Those would not be a part of open space land they would be a part of common facilities. The Ordinance obligates the developers to create an HOA to maintain the common facilities. Chair Martin said she understood that it would be the applicant's desire to have the town take over the road, and take over the facilities, but there is no obligation to do so. She said this topic was discussed at the last meeting and with the town counsel. She said it was very clear that an HOA must be formed to maintain the common facilities. She said if the town were to take over the road, it would be a very lengthy process and could take years. It would be required to go to the annual Town Meeting and be voted on by the taxpayers of Boscawen. Attorney Arnold recognized that there was a difference between common facilities/common spaces and open space. In this case all the common facilities are located within the open space parcel. He said the Ordinance states until the common facilities and open space get turned over to the HOA or individual lot owners, the

applicant will be responsible for the maintenance. Attorney Arnold said the hope and expectation will be that the town accepts the road as a public road, but they understand that would not be decided by this board. The road will be designed and constructed to town specifications with the hope and expectation that the road will be accepted by the town. He said many subdivisions of this size could contain meaningful common facilities such as shared wells, septic, and recreational facilities. He said this development will not contain any of those common facilities, as each lot will have its own well and septic system. There will be a fire cistern that will be turned over to the town, the road with its infrastructure and cluster mailbox. He said in the unlikely event that the town does not accept the road as a public road in the future, then he thought it would make sense to have a provision for an association of some sort. Mr. Cherian said the issue would be how to get from now to the time if the town were to accept the road, and there needs to be an entity to maintain the common facilities/common spaces until such a time. Mr. Munro said he owns the land therefore he would be the one to maintain the common facilities. Attorney Arnold said that is what was stated in 14.06(b). Mr. Cherian said the applicant proposed to create a common lot for the open space and give each homeowner fractional ownership. He said that was not the way he read 14.06(b), as it specifically mentioned that land being attached to the deeds for the individual landowners and recognizes that the applicant may create unusual lots to do that. It did not seem to contemplate having open space with shared, common ownership and Mr. Cherian thought that was a separate issue that may need to be addressed in terms of managing the open space. That is typically a condo-type approach, when someone buys a house, and all owners collectively own the open space. He does not believe our regulations allow for that. He thought the acreage could physically be divided up and appended to the individual lots. Attorney Arnold said that Mr. Cherian made an interesting point, and he did not think of that scenario because he did not think the language was particularly clear. He thought that would be a challenging interpretation because in many developments there would not always be lots that are contiguous to open space. Mr. Cherian said, *"14.06(b) 2. states the open space shall not be in a parcel separated from the dwelling unit."* This regulation commands that each lot shall connect to the open space. That may mean the developer has to create a small strip for each lot to connect to the open space that is deeded to that owner. Ex-Officio Carey wanted to reiterate that this development was a highly active wildlife area, and thought it is important that someone be responsible for managing it. She wanted to make sure that the open space was not divided up into 30 deeds without any kind of entity in place to manage how it gets used. Attorney Arnold wanted to be clear in saying that was not the intent of the applicant, and not how the legal documents had been drafted. The protection of the preservation of the open space will be drafted through a Declaration of Covenants that gets recorded at the MCRD. He said these can be equally enforceable as if there were an HOA in place by recording the same restrictions. The applicant does not see the long-term need for an HOA since there will not be any common facilities. Attorney Arnold stated that he had represented many developments with HOA requirements, and it has always been incredibly challenging to get any kind of participation. Chair Martin stated that our Ordinance requires an HOA be in place. She thought it was a necessity because the road may never get accepted by the town, and she would not recommend approving the waiver for that reason. She understood Mr. Munro would like to have the road accepted next year, but the Board knows it is a lengthy process. She asked who would plow the road, maintain the swales, infrastructure and shovel out the mailbox? Mr. Munro said he would. Chair Martin asked what would happen once he began selling the properties. Mr. Munro said if the town does not accept the road, it would still be his property and he would maintain it. Chair Martin said she did not understand why there was so much push back towards

the HOA. Once the last lot sold, it would no longer be Mr. Munro's responsibility. Mr. Tate said it was their opinion that functionally the common interest would accomplish the same thing, just without the HOA. The preservation of the open space and the maintenance of all common facilities would be the responsibility of Mr. Munro, with the common interest ownership until such a time that the road was accepted by the town. Mr. Cherian asked how that would work once half of the lots are sold and houses are built, would Mr. Munro grant easements for those homeowners to use his road? Attorney Arnold said they could grant express easements by virtue of recording the subdivision plan with the road shown on it providing access. The homeowners get easements as a matter of law, and they would be implied with the plan. Mr. Cherian said the concern was if the issue were deferred, all 30 lots get sold and houses are built, it goes before Town Meeting multiple times and gets voted down every time, would Mr. Munro stick around to maintain the road? That could create a problem for the town. The town has in the past had developers walk away from a development once the last lot was sold, which was their right. Then suddenly, the road needed to be plowed, there was a problem with stormwater facilities, and that became a problem for the town. The HOA would be in place to protect the taxpayers of the town, until the road became accepted. Mr. Munro asked if that would be the purpose of the bond. Chair Martin said the bond would not cover the maintenance, it is for the road and infrastructure. Attorney Arnold understood the Board was trying to plan for a contingency where the town does not accept the road, and would the Board consider something within their approval that required the establishment of an HOA at that time if the road does not become public. Mr. Cherian said if that were to happen, there would need to be some provision with the sale of the lots that stated if the town does not accept the road, an HOA would be formed. He said that could create a large problem. Attorney Arnold said it would be the same issue if you created the HOA now or later. Mr. Cherian disagreed. He said the reason to create the HOA now would be for some certainty that there would not be a crisis. There would be duly elected officers, with resources to maintain the facilities. He thought without a doubt that the town would be drawn into that just by public health and safety. Mr. Munro said the bond would be an insurance policy. PCD Director Easler suggested the Board discuss CNHRPC, Underwood Engineers and PW Director Dean Hollins comments before making any decisions, because the bond does not cover the maintenance of a road.

At this point, Mr. Tate suggested he explain the technical merits of the proposal. There were some plan revisions and new materials submitted since the August meeting that Mr. Tate wanted to discuss, some of which pertained to Underwood's first round of comments. Mr. Tate received Underwood's second review, PW Director Hollins third review, and they reissued documentation for the DES Wetlands permit and the AoT permit. The last two were back under review by the State of NH at the time of the meeting. Chair Martin asked if Mr. Tate wished to discuss Underwood's comments. He agreed.

Underwood Engineers Review #2:

1. *Provide a utility plan indicating layout of underground electrical conduits and locations of pads and transformers when available – **No further comments.***
2. *It is unclear if the frontage lots 94/23/1, 94/23/2, and 9/23/3 have secured NHDOT driveway permits or if all of the project frontage is in compliance with NHRSA 236:13 – **No further comments.***

3. *Provide a landscaping plan* – **The Board determined this item was not applicable at the August 1st meeting.**
4. *A lighting plan should be provided. Suggestions on locations benefiting from minimal lighting might include: the mailbox kiosk, the entrance to the open space access path and the dry hydrant* – A waiver of this requirement was granted at the August 1, 2023, Planning Board meeting. *Comment #2: While we acknowledge a waiver has been granted, our original comment still stands as a recommendation regarding safety and convenience, at least at the mail kiosk. Winter conditions, being dark and icy, warrant some form of lighting* – **A waiver was granted. Leave as a recommendation.**
5. *Two existing wells are shown on the northern side of the property close to the Salisbury line. The purpose of the wells is unclear. If the wells are active and in use, appropriately sized sanitary well radii should be added to the plan. The radius of one well may extend across multiple property lines, so please confirm whether there are existing easements for the sanitary radius. If the wells are slated for abandonment, please note, and provide information regarding decommissioning requirements on the plans* – **The two existing wells depicted on the plans are observed ancient dug wells - the plans have been updated to clarify that they are to be abandoned.** *Comment #2: Define "abandoned". Wells in New Hampshire must be properly abandoned to protect them from unintended entry (for dug wells) and reduce potential sources of groundwater contamination (all wells). As dug wells, the wells present a significant liability if not stable and protected* – Mr. Tate said the wells in question were stone lined wells in the woods that have been there for decades or longer. They are located within the open space. He said they could take an excavator out there to decommission them according to the requirements. Mr. Tillman asked if they were open wells today. Mr. Tate said one was. **Chair Martin recommended decommissioning the wells properly to ensure they will not become a liability. Mr. Tate will add a note to the plan.**
6. *An existing ROW on the east side of the project is noted per reference Plan #2. Please add the information for the referenced plan* – Was added to plans. *Comment #2: Acknowledged. We note the abutting lot to the south of the ROW is labeled as lot 57 on one plan and lot 58 on another. The purposes of that ROW and who it serves and benefits need to be clear as it terminates at conserved land* – **Chair Martin did not think Mr. Tate needed to add the purposes of the ROW or who it serves and benefits because it is existing. Mr. Cherian asked if the ROW was abandoned. Mr. Tate said ROWs cannot be abandoned.**
7. *We recognize the layout of the entrance to the development from Route 4 is laid out to minimize disturbance to wetlands and follow the route of the existing access. Please confirm if the skewed angle is in compliance with the Town's requirement for intersecting roads to be at 75-degrees or greater* – **No further comments.**
8. *The offset in the proposed ROW at the mailbox kiosk is unusual. In addition to not meeting the 60' ROW width requirements, UE sees little value to the inward jog in the ROW as shown* – As the Town's Department of Public Works did not want to maintain this improvement as well as USPS's proximity to pavement/travel way requirement(s), this jog in the ROW was the only feasible way of satisfying both parties despite not being compliant with the noted 60-foot ROW width requirement. It should be noted that this was discussed with the Town's Planning Board at the August 1st, 2023, Planning Board meeting. **Comment #2: The ROW must be 60-ft wide with no exceptions. Restore the ROW to 60-**

ft despite the USPS kiosk. Add a paved tapered widened area, capable of stacking at least three cars, with the kiosk at the edge of it. Curbing at the kiosk pullover area is not advised except the kiosk foundation itself. If curbing is required for drainage purposes, it should be vertical granite in this area to stand up to plowing and other impacts it will experience – Chair Martin stated that the proposed location was sufficient, but the kiosk should jog in the other direction. **Chair Martin said the notch is going the wrong direction on the presented plan and must go the other way. She provided photos of what she was describing. Mr. Tate said he will revise the plans to omit the notch, relocate the kiosk so that it is within the open space area, and widen the road to allow for stacking of cars.**

9. *The project does not appear to provide connectivity options to be extended into adjacent undeveloped parcels, the most notable example being the existing ROW that is shown along the parcels easterly side between existing lots 49/56 and 49/57, but other through-road connections may also be worthy of consideration. The open space easements should allow for a through-road conversion and the open space calculations should anticipate that the conversion may occur in the future* – **Chair Martin said she did not believe this would be an issue.**
10. *Lot 94/23/4 is labeled incorrectly on sheet 3 of 35* – **No further comments.**
11. *The permanent access easement between 94/23/4 and 94/23/5 should be labeled on sheet 4 of 35* – **No further comments.**
12. *A permanent easement is shown on several plan sheets between 94/23/12 and 94/23/13. The purpose of this easement is unclear* – **No further comments.**
13. *The easement plans should clarify who the easements are in favor of. In particular, it is unclear who will be maintaining the access path(s) to the open space parcel* – The access easements will be under shared ownership of the individual residential parcels. The remainder of the easements are intended to be dedicated to the town following completion of construction and acceptance of the roadway by the town. *Comment #2: Potentially related to comment #9 above and comment #21 below, it is not apparent to Underwood why the access easement to the open space is an easement at all, it appears that the parcels on each side could be made slightly narrower such that the area proposed for easement were including in the open space to the rear. As stated above, the proposed road requires voter approval to be adopted by the Town and such an adoption is not guaranteed. It seems prudent that the Applicant proceed with the presumption that the project will not be adopted by the Town and that a HOA will be necessary to maintain the road and potentially other aspects of the project* – Mr. Tate said he discussed how a berm would be constructed in that location. A 3 ft berm would be sufficient, but they decided to create a 12 ft berm and then place an access easement over it to get to the open space. Once the berm was completed, the area would be a prime spot for access to the open space parcel. There is another access easement about 1,000 ft up. The intent of the easement was meant to serve as a legal mechanism for the residents of the subdivision to access the open space parcel. Mr. Tate said they could omit that access easement because there were already other points for public access. Chair Martin said it was important to clarify that these were intended to be “access easements” not “access paths”. Ex-Officio Carey asked if the 30 owners of the individual subdivision parcels would be responsible for maintaining the berms. Mr. Tate said if the berm were at the point of failure, the point of an earthen berm would be once its shaped, it will do its job. Mr. Cherian said this discussion would be a

part of comment #16. He then asked if the Town were to take the stormwater infrastructure over, would access easements to the open space for maintenance need to be sought from the individual landowners. Mr. Tate said no because legal easements will be granted to the Town and then showed the Board where on the plans they were depicted. Attorney Arnold said the town council would review the draft easements as part of the approval, and they would only be granted and recorded if/when the town accepts the road. **PCD Director Easler stated there was an easement for the fire cistern. Mr. Cherian asked if there was anything in our Ordinance that stated whether drainage infrastructure could or could not be within the open space parcel. PCD Director Easler said, yes. Nothing can be in the open space, refer to Article VII Definitions-Open Space in the Zoning Ordinance. Mr. Tate said they deducted their infrastructure from the open space, and they still meet the requirements.**

14. *The open space access path is shown as a drainage and slope easement on the easement plan. This should also be labeled/shown as an access easement – **No further comments.***
15. *UE recognizes that as the individual lots are developed, the need for some of the slope easements may be nullified, however an effort should be made to minimize the need for such offsite easements – **No further comments.***
16. *The remainder of the parent parcel, Lot 94-23, is proposed as an open space parcel; however, parts are dominated by stormwater features requiring easements to the Town for access and maintenance. It is unclear if this use is consistent with the intent of open space – In an effort to prove compliance with the intent of open space, the following open space areas exclude all proposed easement areas within the open space lot, which remains in compliance with the open space requirements. Total Open Space Area Provided: 2,993,932 SF Required: 2,199,134 SF Open Space Buildable Area Provided: 1,803,569 SF Required: 725,718 SF Open Space Maximum Wetland Area Provided: 716,885 SF Required: 1,496,966 SF. Comment #2: Comment not addressed. The intent of the comment is to bring into question if Stormwater Treatment/Detention Structures can be in open space areas at all and then by extension, what effect might that have on the calculated areas. It is Underwood's experience that areas dedicated to open space would not be utilized in a utilitarian manner such as stormwater treatment. With that said, it would appear that the Required: 1,496,966 SF under wetland area is not so much "required" as "maximum allowed", please amend as appropriate – **Discussed in comment 13.***
17. *The open space lot 94-23 is labeled as 94-23-35 on sheet P-1 – **No further comments.***
18. *It appears that no access means is proposed for the project's stormwater features. Access roads should be provided for each storm water basin or treatment swale to include perimeter access to at least 75% of the feature – Two end units have been proposed adjacent to treatment swale TS-2 creating an opening for access and maintenance. The cross-country swale has been proposed with a 12-foot-wide berm to accommodate for access needed for maintenance (as well as provide access to the open space lot). All other stormwater features are adjacent to have sufficient access from the proposed roadway. It should also be noted that the stormwater features have an interior maximum side slope of 3: 1, which is adequate for access/maintenance through the stormwater features. Comment #2: Please see the new comment below regarding parking provisions – Mr. Tate believed he could reach a middle ground with UE. They do not plan to provide a pull-off parking spot that is curbed for each of the access structures. He had never seen that done before. There will be areas to pull off in each area. He believed doing what UE asked for would*

create unnecessary ponding in those areas. **Underwood Engineers to advise in the next review.**

19. *We note the mailbox kiosk location is not convenient for many homeowners. We also note the dry hydrant widening at Station 8+60. A widening similar to that at the dry hydrant appears to be much more conducive to mail retrieval by residents than what is currently proposed* – See response to comment 8 for an explanation of the rationale behind the mailbox kiosk placement and current inability to provide this sort of access (although preferable). However, if provided, we would be more than willing to consider any alternatives to address this issue. It should be noted that the USPS CBU has been relocated to more nearly conform with USPS's CBU location request. **Comment #2: Add a pullover area in front of the mailbox kiosk as noted above in comment – Addressed above.**
20. *UE notes the 12' wide access path to the open space between 94-23-4 and 94-23-5, however there is no culvert along the roadway to access the path. As shown, residents would need to cross the riprap swale to access the path, which would be difficult for bicycles and some pedestrians-* See response to comment 21. **Comment #2: See response to comment 21 – Addressed above.**
21. *Per the comment above regarding the easement between 94-23-12 and 94-23-13, if the purpose of the easement is for open space access, an access path should be designed* – Our intention was to provide only an access easement as the specific use of the easement is unknown at this time. It should be noted that this improvement can be made in the future through shared ownership, as needed, for the applicable use of the easement. **Comment #2: The response above contradicts the 12-wide berm depicted on the plan set. The purpose of the easement is clear, to provide access. Underwood concedes to the Planning Board and/or Emergency Services regarding the type of access, pedestrian or vehicular, that should be provided. As access is required, an access path or drive, as appropriate, must be constructed as part of the development. This includes the stretch between the edge of pavement at the road and the edge of the ROW. Extend the access to the edge of pavement including drainage accommodations as required – Addressed above.**
22. *ESHWT should be added to all profiles where known-Test pit locations are depicted on plans containing depths to season high-water table (or ledge), as applicable. Additionally, the test pit data and a site-specific soil report for the site was previously provided.* **Comment #2: Add the ESHWT and ledge information to the profiles – Mr. Tate added the information where it was known. He also added the site-specific soil map to determine the drainage class and where SHWT occurs. Mr. Tate said if he needed to add some approximations to the maps, he would do that.**
23. *Add the following to the Culvert Profile View: Depth of cover, underground utilities, if any, including depths, and bottom of roadway gravels* – **No further comments.**
24. *Per the comment above regarding common space access, a detail should be added for a paved or gravel access drive as appropriate* – See response to comment 21. **Comment #2: Add a detail per comment 21 – Addressed above.**
25. *Revise the roadway cross section detail to depict what is shown on the plans* – **No further comments.**
26. *At a minimum, the 10' contours should be labeled on the drainage area plan* – **No further comments.**

NEW COMMENTS:

27. *The box culvert details on sheet Y-4 appear to indicate there will be wingwalls at each end of the culvert, whereas the plan sheets indicate a straight headwall. Coordination is needed* – Mr. Tate said this was simply graphical. The wingwall that was depicted was straight with no taper and asked the Board to look at the elevations which show the accurate information. **He will make the graphical change to satisfy UE’s comment.**
28. *Curbing should be removed at the dry hydrant to accommodate snow plowing needs from the area* – Mr. Tate said the curbing was a part of the drainage infrastructure because of the wetlands in that area. The apparatus that serves the dry hydrant will have no issues mounting that curbing, which will be a Cape Cod berm versus vertical granite. They would need to install a swale to change the curbing in that area, which will greatly impact the wetlands. Chair Martin said she did not know enough about the topic and was therefore uncomfortable providing an opinion. She was unsure why UE wanted the curbing removed. PCD Director asked who would be plowing the area. Chair Martin said that question had not been answered yet. Mr. Munro said the town has a 12-ft plow and would be capable of clearing snow from the area, so he thought it should not be an issue. The Board wants Fire Chief Kenney to review this before taking any action. Chief Kenney will be notified by PCD Director Easler for comment.
29. *With the road being only 22' wide, there is no room for maintenance vehicles to pull over and work or stage to work, particularly in the vicinity of the stormwater basins. We recommend widening be proposed along the roadway in the vicinity of BIO-1 and IB-2, and a second one in close proximity to pond IB-1* – Mr. Tate said they could engineer the road to create pull-off areas if they must. Within the ROW there is a 22-ft wide traveled surface centered on a 60-ft ROW. The balance of that goes to the shoulders, some areas would be Cape Cod berms, and some would be swales, but otherwise would be trafficable. Mr. Tate did not believe that creating more impervious surfaces in these areas was warranted given the frequency of maintenance. **Chair Martin asked if PW Director Hollins had seen these the latest comments. PCD Director Easler said yes, and he agreed with Underwood Engineers. The Board would like to have PW Director Hollins review this before taking any action.**
30. *As access to the open space area is required and shall be constructed as noted above, it is unclear who will be responsible for maintenance of the access* – **Addressed above. The Board asked Mr. Tate to label the access to the open space as an “access easement” versus “access path” consistently throughout the plans.** Mr. Tate asked if that statement could be stated in the record.
31. *The response letter to the AoT RFMI submitted to the NHDES states the individual homeowners will be responsible for I&M of the storm water features. In addition to being in direct contradiction with comment 13 response above, this approach is not recommended or supported by Underwood. As there is no guarantee that the Voters will affirmatively vote for public acceptance of the proposed road, the I&M should be presumed to be the responsibility of an HOA until such time as the Town agrees to assume those responsibilities* – Mr. Tate said at the risk of sounding contrary, Mr. Munro and he would like some clarity. Mr. Tate handed out copies of the Road Acceptance Policy found within the Land Development Regulations. He said Mr. Munro has an obligation to build the road pursuant to the design and specifications as proposed. But his real vested interest in

constructing it per those specs would be some level of agreement from the town that they may consider accepting the road. That would be what motivates Mr. Munro to construct the road correctly. Mr. Tate did not see anything that said that the town needs to vote for this as a general warrant at the Town Meeting. Under the town's Road Acceptance Policy, and NHRSA 674:40-a, the Select Board has been delegated to oversee the acceptance of roads. Mr. Tate said he was under the presumption that if the 11 criteria were met, with a Planning Board approved layout of the road, with the intent to dedicate the road for public use, it would not need to go to the Town Meeting. Mr. Cherian said he read the policy as technical standards that must be met before proposing that road for acceptance. That would be a hoop to jump through before going to the Town Meeting. PCD Director Easler said that PB does not have the authority to approve roads. It goes to Selectboard then Town Meeting as she had discussed with Town Counsel, Underwood Engineers and CNHRPC. PCD Director Easler read *#5-Any road or street which has not received prior Planning Board approval, as set forth above, shall not be accepted by the Select Board without an affirmative Town Meeting vote pursuant to RSA 674:40, III.* Mr. Tate said #5 was for any road that had not received prior PB approval. Ex-Officio Carey said she read #5 as any road or street which has not received prior PB approval as set forth above, *shall not* be accepted by the Select Board, but Town Meeting could. Mr. Tate said Town Meeting always could. The Select Board only could if they have been delegated via the townspeople in RSA 674:40-a. Mr. Tate said Mr. Munro needs to be motivated to construct the road to town specs. The dedication needs to be made that the road will be intended for public use and Mr. Munro intends to meet the 11 criteria as set out in the Road Acceptance Policy. Mr. Munro was of the belief in reading the policy, an application goes to the Select Board. Mr. Cherian said even if the developer did not plan to have the Town accept a road, that road would still need to be built to town specs for safety, fire, etc. Those standards would not be different. The Planning Board cannot give assurances to applicants. Mr. Tate said he was not asking for assurances; he was simply pointing out there is a published policy in town and a path of acceptance of the road without it going to Town Meeting. PCD Director Easler said that was incorrect and it had been stated previously by the applicant that he does want some level of agreement from the town that it may accept the road and PB cannot do that. Mr. Cherian said the policy was just the process to have the road accepted by the Select Board. Then it would go to the Town Meeting. Mr. Cherian suggested having the Town Attorney clarify in writing. Mr. Tate said that would be great. Chair Martin said she understood why Mr. Munro and Mr. Tate wanted clarification, because of the statement "under authority given under RSA 674:40-a to the Select Board". The issue will need to be investigated. Mr. Cherian said this does not resolve the ownership in the interim, which had been a question by all parties. He said whatever reason for the hesitation to create a HOA, he thought the applicant was better off committing to the HOA and then have it sunset with the acceptance by the Town. Attorney Arnold asked if Mr. Cherian could clarify the term "sunset". Mr. Cherian said for example, once the first lot is sold, an HOA would go into effect, and the developer would remain a part of the HOA but would begin to step back. Once the last lot gets sold, whether a house was built or not, the road could go to Town Meeting and it could be written in if the town accepts the road and common facilities, the HOA could dissolve itself. Mr. Cherian questioned whether the HOA would be required for the ownership of the open space. It could then become a commonly owned

lot and be deeded to the 30 homeowners. Mr. Munro said the covenants will spell out that nothing can be done with the open space. Discussion ensued.

CNHRPC 3rd Review:

Chair Martin read the 13 potential conditions of approval:

1. *Compliance with any town engineer requirements regarding the roadway or other public improvements should be a condition of approval.*
2. *Compliance with Town Attorney comments regarding any easement and legal documents.*
3. *Ensure that all areas of public improvements, including drainage and slope/grading along roads, are incorporated into the right-of-way or an easement deeded to the Town.*
4. *Receipt of other permits, including NHDES AoT, State Subdivision, and Dredge and Fill; and filing EPA General Permit.*
5. *Address issues identified by Department Heads.*
6. *Easement documents should be recorded prior to the issuance of any building permits as a condition of approval.*
7. *Designation of a willing entity for the maintenance of the open space and common facilities.*
8. *Inspection fees, as well as a performance bond, should be provided.*
9. *Professional stamps and signatures as well as owner signatures need to be on the final plan.*
10. *All waivers granted and conditions of approval need to be on the final plan.*
11. *Post-Construction Inspection Escrow, in an amount determined by the Town's Engineer, for inspection of all public infrastructure, roads, and drainage structures.*
12. *A performance bond should be provided for all public improvements before they are accepted by the Board of Selectmen.*
13. *Any other conditions sought by the Board.*

The one item suggested by CNHRPC that Mr. Tate disagreed with was filing an EPA General Permit. He said that was typically filed at the point of construction. Chair Martin believed that could be noted once it comes in, as the Board recognizes some permits will be filed after this process becomes approved. He said this could not be a condition of the subdivision approval because Mr. Munro would not have it until construction began. PCD Director Easler will reach out to CNHRPC for clarification.

Chair Martin asked if there were any abutters for or against.

None seen or heard.

Chair Martin asked if there was any public for or against.

None seen or heard.

Chair Martin closed the Public Hearing at 8:55 p.m.

Attorney Arnold asked if he could offer a suggestion on the waiver issue. He said that Mr. Cherian's comment about a "sunset" type concept made sense and would be a way to protect the Town during the interim period but would not saddle the owners with a HOA that would not serve any function if the road were to be accepted. He thought the way to address the issue given the request presented would be to grant the waiver on the condition that it would not become effective until such time as the road becomes accepted by the Town. In other words, when the road becomes public the waiver becomes effective to say the HOA would no longer be required and the HOA could be dissolved at that point. Since it would not be effective when the approval is granted, the HOA would need to be established for the interim period. PCD Director Easler recommended the Board verify with town counsel, prior to that suggestion. The application was just accepted last month, and it is important to be clear on waivers, whether you accept or deny. Discussion ensued. Mr. Cherian asked how the applicant wished to proceed, because the Board would like some legal advice before voting on the waiver. Attorney Arnold said the applicant would like to move forward with the waiver approval and language regarding the sunseting of the HOA if the road gets accepted by the Town or the applicant would ask to move forward with a formal vote on the waiver. Discussion ensued.

Mr. Tillman motioned to deny the waiver request for Section 14.03 (e): *Provisions for the perpetual maintenance of all common facilities through a mandatory Homeowners' Association shall be made.* Seconded by Mr. Crawford. All in favor. None opposed.

Outstanding Items:

1. A statement that a Homeowners' Association will be formed for the ownership and maintenance of the open space and all common facilities to become part of the application. Mr. Tate asked if a verbal testimony by the applicant would suffice. Chair Martin said yes. **Mr. Munro stated that a Homeowners' Association will be established due to the waiver being denied;**
2. A cover sheet of what has changed;
3. The open space shall be connected to all lots, needs to be reviewed;
4. Add a note to the plans depicting the abandonment of the wells (UE's comment #5);
5. Correct the notch on the plans and show an area for a stack up of cars at the mailbox kiosk (UE's Comment #19);
6. Easements notes on the plans (UE's comments #13&21). Attorney Arnold said they will also provide easement documents;
7. Add ESHWT and ledge information to the profiles (UE's comment #22);
8. Graphic changes as noted on UE's comment #27;
9. Consult with Fire Chief Kenney about the Dry Hydrant and receive an answer in writing (UE's new comment #28);
10. Consult with Public Works Director Hollins about widening the roadway and receive an answer in writing (UE's new comment #29);
11. All typos on the plans identified by Underwood Engineers will be corrected.

Ex-Officio Carey motioned to continue the Major Subdivision application to a date certain of October 3rd, 2023. Seconded by Mr. Tillman. All in favor. None opposed.

Other Business:

None.

The next meeting will be held on October 3rd, 2023 @ 6:30 p.m.

Mr. Tillman motioned to adjourn. Seconded by Mr. Cherian. All in favor. None opposed.

Respectfully submitted by Kara Gallagher.