

TOWN OF CENTER HARBOR  
PLANNING BOARD

Hearing

Tuesday, November 10, 2020

(Final minutes with amendments per the 12/01/2020 meeting)

**Due to the COVID-19, this meeting was conducted via Zoom. Participants, which included the public, could join the meeting through video web or by telephone. All documents pertaining to this meeting were sent electronically to Board members and the same files were posted on the Website under the meeting announcement on the PB Calendar for public access.**

The Chairman called the meeting to order at 6:01 P.M. Mr. Hanson announced that the meeting was being recorded and provided the protocol of the meeting (that document is contained in this set of minutes). Mr. Hanson asked Bill Ricciardi to do the Roll Call of the PB Members/Alternate Members.

**Roll Call: Chairman, Charles Hanson, in attendance with his wife Jenn Hanson in the room  
Vice chair, Peter Loudon, in attendance with no one else in the room  
Secretary, Bill Ricciardi, in attendance with no one else in the room  
Selectmen's Rep, Harry Viens, in attendance with no one else in the room  
Member, Kelli Kemery, in attendance with no one else in the room  
Member, Rachel Xavier, in attendance with no one else in the room  
Member, Mark Hildebrand, in attendance with no one else in the room  
Alternate Member, David Nelson, in attendance with no one else in the room  
Alternate Member, Ken Ballance, in attendance with no one else in the room**

**Due to our clerk having to recuse herself, Kelli Kemery has been appointed clerk Pro Tem for this matter.**

**All votes will be by Roll Call. Voting members are: Charles Hanson, Peter Loudon, Harry Viens, Bill Ricciardi, Kelli Kemery, Rachel Xavier, and Mark Hildebrand.**

**I. MINUTES:**

Peter Loudon motioned to approve the Minutes of October 20, 2020 as read. Mark Hildebrand seconded the motion. Roll Call: Bill Ricciardi-Yes, Charley Hanson-Yes, Rachel Xavier-Yes, Mark Hildebrand-Yes, Peter Loudon-Yes, Kelli Kemery-Yes, Harry Viens-Yes. The vote was unanimously in favor. Mr. Hanson wanted to be clear about the Alternate Members position. The Alternates are able to ask questions during deliberations and participate in case they should be put into the voting roll.

**II. HEARING – AMENDMENT TO SUBDIVISION AND BOUNDARY LINE ADJUSTMENT BETWEEN EDWIN KLINE JR. TAX MAP 212 LOT 32 AND J. CONOR AND AMANDA HAYES TAX MAP 212 LOT 30 CASE 2020-0505 CONTINUED.** Mr. Hanson started by saying thank you for sending the final revised plan. The Board received the plan on the 5<sup>th</sup> of November. Both John Rokeh and Carl

Johnson were present for this meeting. Mr. Hanson wanted to start by asking if either Mr. Rokeh or Mr. Johnson wanted to comment on the highlights of what they had provided. Mr. Hanson said that there seems to be some changes that may have addressed some of the earlier questions. Mr. Johnson, representing the Klines this evening, said that he thought that it was important that John Rokeh go over the highlights of the changes to the engineering plan. Mr. Johnson said that they were minor in terms of engineering, possibly more significant in terms of the goal in getting this roadway approved. Mr. Johnson thought that it would be appropriate for Mr. Rokeh to go over the changes that he made based on the last meeting.

Mr. Rokeh put his plan up on the screen. He said that one thing that they added in the beginning of the site where the original gravel road, down by what was supposed to be a prior cul-de-sac, there is an access point to the lot to the east and as you go up the road. Mr. Rokeh pointed out where the retaining wall was that was blocking access to the access point that exists right now. Mr. Rokeh said he had talked with Derek about this and eliminated the wall and added in access, actually continued the existing access point onto this lot. Mr. Rokeh said that he graded it in a little bit but where he put this access point is right at the high point of where the road is going to be, so no culvert is needed. The drainage just goes downhill in both directions. Mr. Rokeh said that he created the access point that was being asked for at the last meeting. He continued; the roadway plan was all done. Mr. Rokeh said that he worked with Derek Kline trying to work out a couple of ways to make it easier to maintain the ditch. They came up with using erosion control fabric, a rolled product, rather than rip rap, down through the ditch. Basically, there will be rip rap around the catch basins and the outlets, but the rest will be basically like a grass lined ditch that has erosion control fabric to further stabilize it. Mr. Rokeh said that the access points, removing the wall, and doing erosion control fabric for the ditches are basically the only changes.

Mr. Hanson thanked Mr. Rokeh and asked if there were any questions from the Board for Mr. Rokeh.

Mr. Viens asked Mr. Rokeh is there were two access points going in here or one? Mr. Rokeh said that there was always the one by the cul-de-sac. Mr. Rokeh said that if you look on Google Earth, and what Mr. Johnson had given him, there is another accessway that kind of exists right now. Almost across from the existing house. Mr. Viens said that is the Nason/Hayes house. Mr. Rokeh said that he believes so. Mr. Viens continued, so there are two access points. Mr. Rokeh said there were two and pointed them out. He said that what he understood was that the neighbor to the east wanted that access continued so they graded it on there.

Susan Patz was wondering what that access is to and for. She said that the woods road is over here so what is this for. Mr. Johnson answered that originally the subdivision plan showed a gravel roadway coming off the proposed subdivision road heading out to the parcels in the northwest portion of that parcel. That portion of the property is similar to the property that they are putting the road through. It is a fairly wet and probably not developable, but nonetheless it was the former roadway accessway. Mr.

Johnson said he believes that it originally accessed the field which is currently the Kline property. There was some concern about retaining that access even though it is probably not going to be a driveway for development. It would be access to the property for maintenance and cutting fire wood or whatever. The existing access point which is in the lower part of the field portion has been there for some time and that probably is the point of access that would be used should somebody decide to develop that property because the field is more suitable for home development. Mr. Hanson asked Mr. Johnson if he was talking about access off the cul-de-sac. Mr. Johnson answered, "Correct." Mr. Rokeh put that part of the plan on the screen. Mr. Johnson said that there is an existing point there with the culvert. They have highlighted that point and making sure it is understood it is an additional access point to the Heiner property Mr. Hanson asked Susan Patz if that answered her question. Ms. Patz said that she was not quite sure. Ms. Patz asked if Mr. Johnson was saying that the proposed cul-de-sac access that the Heiners put in is going to remain that way. Mr. Johnson said, "Correct." Ms. Patz then asked if they were giving a stub off the Hayes driveway into the woods. Mr. Johnson said that that was correct with one exception. As you drive up there now the Hayes driveway turns to the left and essentially if you kept going straight where that existing access to the Hayes property is now, that was the former pass way which led to the field. Mr. Rokeh said that the road basically goes up and into the field right now. So, they are basically creating a stub that gets connected back on to the access point. Ms. Patz said that it doesn't connect to the pass way in the woods. Mr. Johnson said that it does. Ms. Patz asked if it will go off through the Hayes driveway and take a hard left to join the pass way. Mr. Johnson said that he wouldn't call it a hard left, but bear to the left. Mr. Rokeh said that it was not off their driveway, is off the other side of the road from the driveway. Ms. Patz said right, but it is a stub off their driveway, it is on the other side of the road from their driveway. Ms. Patz said that she was confused as to how it would interface with the woods road. It is part of that property and was purchased that way and it is a used woods road. So, it looks like a stub into nowhere; it looks like a stub into the woods. Mr. Rokeh said that if they would add all of the topography on that lot and the edge of the road on his plan it does look like a stub that doesn't go anywhere but if you look at Google Earth, he tried to align it with Google Earth so that it would attach back onto that road, it does look like a stub that doesn't go anywhere.

Charley Hanson said so to be clear because of the information they had access to they just stated that the existing woods road that is there is to meld essentially right into the woods road, regardless of maybe how it is portrayed exactly right according to the angle. Mr. Hanson asked Mr. Rokeh if that was fair to say. Mr. Rokeh said, "Yes." Mr. Hanson asked Ms. Patz if that made sense. Ms. Patz said that she would probably have to see it because they had the stub there and then it is going to the left and there are trees there now. She asked if that was correct. Mr. Hanson said, "No." The intent is to be where your existing woods road is; they just stated that. Ms. Patz said that there are trees there now. Mr. Rokeh said not on the woods road. We are going right into the woods road where it comes off of the new proposed road. It is going to go in and then it is going to go left. However, the left happens, and then it is going to meld into the woods road. There may be a couple of trees right at the base of the road but as soon

as we get into the property and make the turn it will meld right into the woods road. Ms. Patz thanked Mr. Rokeh. Mr. Johnson wanted to make one minor qualification. He said when it is mentioned that it is coming off of the Hayes' driveway it is coming off of Kline Road because this is going to be the new location of Kline Road; so, it is not coming off of the Hayes' driveway, it is coming off of Kline Road.

David Nelson wanted to know if the elimination of the retaining wall changes any of the water flow and also does it requires any sloping of the property that was going to be retained. Mr. Rokeh said that the only way to meld an access point into the existing road is to create the driveway and grade a little bit. The retaining wall cannot be in the way at all to allow that to happen. Drainage all slopes down into the ditch like it was going to and there may be a little bit of a slope but it all part of making sure the driveway and access point is built correctly on the easterly lot. Mr. Hanson said that the town engineer is viewing this. This also goes to another issue. Part of our regulations require a hydrology study, a hydrologic loading study; but you can also request a waiver. Mr. Hanson said that he had talked to Mr. Johnson several weeks ago and the opinion they got from the town engineer, based on in field and the plan the Board had before for this was basically the existing drainage wasn't really going to change and the culverts that were in place were adequate and they didn't need to change. That they didn't need a study. Mr. Hanson said that he thinks that the waiver should be formally requested and he thinks it should be granted. Mr. Hanson said that in theory the way he sees it, in removing the retaining wall it simplified things from some of the concerns that were raised for access and hydraulic loading. Mr. Hanson asked Mr. Rokeh if that seemed right. Mr. Rokeh said, "Yes." Mr. Johnson said that to be clear he believed that an email was sent from Mr. Kline formally requesting a waiver from that report. Mr. Hanson said that maybe he didn't get that email but good. Mr. Hanson said that maybe that could be taken up right now with the Board. Mr. Hanson asked if anyone had a copy of that email. Mr. Hanson asked Mr. Johnson when Mr. Kline sent it. Derek Kline said that it was sent to Mr. Hanson on Friday, November 6<sup>th</sup>. Mr. Hanson said, "Fine." That was not going to hold things up any more than they are being held up already. It was determined that the email was sent to an old email address that Mr. Hanson no longer had. Mr. Hanson gave Mr. Johnson his email address so he could forward it to the Board. Mr. Rokeh said that if Mr. Johnson forwarded it to him also, he would put it up on the screen. Mr. Hanson said that from a procedural standpoint he was going to put himself on mute and touch base with Council to just make sure that they handle this appropriately. Mr. Rokeh put the email on the screen. Mr. Hanson told the Board members that this was something they could take action on this evening. Mr. Hanson said that this is a hydraulic report regarding the Kline Road project and to be clear it is really the Kline Road project from the cul-de-sac to the end of the proposed new road. Mr. Hanson made a motion to approve this request with those specifics that this for this particular project. Mr. Ricciardi said before we do that, he is not really sure; because the wall has been taken away and there is access to the woods road, we no longer need a drainage report? Mr. Ricciardi asked if he was misunderstanding. Mr. Hanson said, "Yes, even before the wall was taken away." Mr. Rokeh said that even with the wall we were always requesting that waiver; with the wall or without. Mr. Hanson said that there has basically been no change. Mr. Ricciardi said that again

he is looking at this. He was reading from the email and he would respectfully request a waiver, Mr. Ricciardi asked if he was reading it wrong. Mr. Hanson said that he was correct. Mr. Ricciardi said don't we need a drainage report? Mr. Hanson said, "That is correct." There is a section in the subdivision regulations that potentially requests it but, because it is existing Mr. Ricciardi said that because the drainage already exists, we don't need a new report? Mr. Hanson that that that was the opinion of our engineer. Mr. Ricciardi asked even with the proposed road going where it is going? Mr. Hanson said based on what the plan indicates, we don't need it. Mr. Ricciardi said that he is still trying to get his head around this, the new road is going to change the water flow. He said he thought we would need a new report on how that is going to affect the current drainage, so why would we not need a new report. Mr. Hanson said that they could take that up with our engineer; we don't have to take any action on this tonight. Mr. Ricciardi said that he just wants to understand this fully before we vote. Mr. Ricciardi asked if anyone else wanted to chime in.

Peter Loudon said he is uncomfortable considering this without first talking to our engineer, just so we all understand what the implications are. Mr. Hanson said that they could have Jim put together something. Mr. Hanson said that the engineer just got this today and was able to open it late in the day. He hasn't been able to review the changes. Mr. Hanson said that the hearing was going to be continued to a week from tonight to give him an opportunity to review it. Mr. Hanson said that he could also ask him to comment on the waiver request and the reasons for his thinking. Mr. Loudon said that that would work for him. Mr. Ricciardi said that that made more sense considering how complicated this whole thing is. Peter Loudon asked Mr. Hanson if he needed to withdraw his motion. Mr. Hanson said, "No. Nobody seconded it so it just dies on the vine."

Susan Patz said that she is a little concerned about waiving something like that. There is a change in the water flow; certainly, by cutting into the woods and such. The existing culverts have been inadequate to begin with. Ms. Patz said that they have water running in backyards and flooding things. She doesn't understand why we would do that. Mr. Hanson said that in part because these culverts have been in for a long time and back in the day perhaps a study should have been done. Mr. Hanson said that to his knowledge it wasn't. Mr. Hanson suggested that Ms. Patz should probably consult her attorney regarding the existing drainage structures. Existing culverts themselves are sized appropriately. Mr. Hanson said that he thinks the issue that Ms. Patz is bringing up is where that water is going and being directed and that is not really in the Board's purview for consideration tonight. Ms. Patz said that houses have been added to the road and that has changed the flow and now we are talking about additional grading and cutting. Ms. Patz thinks that it is appropriate to look at hydraulic loading in this situation; what is going on here is not a simple task.

Mr. Johnson said that being the case he thinks it would be important for his clients to get input from the Board if there are any other questions or considerations other than the opinion from the Board's engineer regarding the drainage report so that they can be adequately prepared in one short week to address any of those concerns.

Mr. Hanson said that he thinks they can start to discuss some of the other items, some of the details, should we make a motion to approve this plan when we get to that final plan which he thinks they are close to. Mr. Hanson asked what are some of the items the Board wants to consider. Mr. Hanson said that one item that is important to him is that he would like to see the cul-de-sac built to the specs that it was supposed to be built to originally. Mr. Hanson said that he didn't know if anyone else on the Board had a comment about that. Mr. Hanson said that from a public safety perspective it would be sound, particularly with another extension of road going out there, to be built so that it would be large enough so that we can adequately turn fire trucks around there. You don't have good side by side access going down the proposed road. Mark Hildebrand said that he concurs. Harry Viens said that he echoes that too. Mr. Viens thinks from a fire safety standpoint it is really a must do. Mr. Ricciardi said that he personally would feel more confident in the overall plan if previous parts of the original plan were completed. He said that he would feel more confident going forward especially since we are making an adjustment to the size of the road going back to the hammerhead. Mr. Ricciardi would like to see things at least brought up to code to that point.

Mr. Rokeh said that where the cul-de-sac is or where the cul-de-sac was going to be built and we are extending from when the hammerhead, that they are building down at the end, basically the new turn around for the fire trucks. Mr. Rokeh said that is basically what they are trying to do. Normally when you extend the road, if there is a temporary sulk-de-sac, the cul-de-sac goes away and the new end of the road becomes the turn around. Mr. Hanson said that just speaking for himself this is a substandard road that is being proposed and he doesn't think that you can safely get multiple fire trucks passing one another down through there. Mr. Hanson said that in his mind the compromise is first, the cul-de-sac; have the substandard road be approved so that if you have an event you can stage trucks at that cul-de-sac and you can have an attack truck out there doing what it needs to do with a line run that is not inordinately long. Mr. Hanson asked if that made sense at all. Mr. Viens said that that made perfect sense. That is exactly what he is concerned about. Mr. Ricciardi said that it was not a secondary thought that both the cul-de-sac and the hammerhead are on the same original plan. Mr. Rokeh said that he has never seen the very original plan.

Mr. Hanson asked if there were other thoughts from Board members that they might want to consider. Mr. Ricciardi said that it was just his personal opinion after looking at this for a few months now, he thinks that it would be a very simple solution, if he was clear on what was going to happen from the Hayes property going back, particularly on Lot 9. If we finish the cul-de-sac and bring the road up to code to the Hayes property and then from there to the back lots, if there are only going to be two houses back there, it could be just a driveway. Then it would be in compliance and we wouldn't have to narrow the road. Mr. Ricciardi said that he is not clear about what is going to happen back there. We are being asked to make the road not up to code for some reason and he doesn't know what that reason is. Mr. Ricciardi said that he is still not clear what is supposed to happen here; he said it is because we are doing this in

little chunks. He asked if anyone wanted to explain that better. Mr. Ricciardi said that he thinks this whole thing could be over if we just turn the road into a driveway.

Mr. Johnson asked if he could comment on that. Mr. Johnson said that we have to back up just a little bit in terms of the history and what is going on; why we are proposing what we are proposing. Mr. Johnson said that he is not sure when you say a substandard road which part of the regulation you are referring to in terms of the width. The meat of the matter from the Hayes property out, which is where this project originally, the genesis was the litigation and the narrowing of the right-of-way which is suggested by the town. Mr. Johnson believes that portion of the roadway is not substandard. He asked if that is correct, it is twenty feet wide. Mr. Ricciardi said that he thinks that is the heart of the issue right there. Mr. Johnson said that being the case it is not a driveway it is a roadway. There has been a great deal of expense accumulated to get this standard sized roadway to fit within the thirty-foot right-of-way as opposed to the fifty-foot right-of-way; backing down into the existing cul-de-sac situation, that not being constructed as a cul-de-sac when the original plan was approved seems to be jeopardizing what we have accomplished in terms of moving forward from the extension of the road to the other land of the Klines. Mr. Ricciardi said he understands what Mr. Johnson is saying but he is not sure how it is being jeopardized. Mr. Ricciardi thinks it was jeopardized from the initial design. Mr. Johnson said that there is no mistaking the fact that there were several issues that existed at the time of the original subdivision that probably should have been otherwise accomplished from everybody's standpoint, the Klines, the town's, that is why we are in this pickle that we are in terms of getting some kind of conclusion. Mr. Johnson is a little worried that all of this work that has been done to provide a very safe, adequate, up to code roadway within a narrowed right-of-way is going to be threatened by something that happened a long time ago. Mr. Johnson said that as Mr. Rokeh mentioned, in the normal course of events, when there is a Phase 1 and Phase 2 situation normally the cul-de-sac that is in Phase 1 is discontinued when Phase 2 is continued. Mr. Johnson said that you have to remember that this is not a through roadway. This roadway is used exclusively by the people who live on it. It does not connect to anywhere and in terms of once you get past Mrs. Heiner's actual house there are very few lots that are actually going to be accessed by this road. It is certainly going to be adequate for fire access extending beyond the Hayes house to the new hammerhead. (edited per the 12/1/2020 meeting).

Kelli Kemery said that she remains confused with the life safety piece of this. She said that although we are allowing the ability for fire trucks to get into the property clearly, they will not be able to turn around unless the hammerhead (amended per the 12/1/2020 meeting) down at the end will allow that. What if there are two homes or one home down at the end of that property that had a life safety issue that we couldn't get a truck down there. Then we would have trucks essentially stuck lined up on the pass way. Ms. Kemery said that she is confused as to how the life safety issue is being address which is of paramount concern to her. Mr. Johnson said that maybe Mr. Rokeh could put his plan back up and show how the proposed hammerhead type turn around that is designed at the end. It is designed specifically to provide adequate turn around not only for life safety vehicles but service vehicles such as oil/propane deliveries etc.

Mr. Rokeh put his plan back up on the screen. He pointed out that when you get down to the end of the road how a fire truck would be able to turn around and leave the site. Mr. Rokeh said it was pretty much a standard hammerhead turn around that is allowed in a lot of different towns as a turnaround for emergency access. Ms. Kemery said that presuming that the emergency was down at the end of the road how do you propose it would turn around if the turnaround spot was the location of the proposed emergency? Mr. Rokeh said if there is an emergency along on the road they pull up on the road to the spot and once they staged or did whatever they need to they would drive to the end, turn around and leave again. They wouldn't need to turn around at the site. Ms. Kemery said she apologized for sounding confused but if the emergency is at one of the two lots, you had two tanker trucks lined up headed in that way, how would they be able to turn around down there if the emergency was there, they are going to be blocked by the actual emergency. They would in essence have to back up. How would they turn to get another tanker down there? Mr. Rokeh said that if the first vehicle arrived it could pull off into the hammerhead, (amended per the 12/1/2020 meeting) once the emergency is over the vehicle could back up and drive away, then the second truck backs up and drives away first.

Mr. Viens asked the dimension of the hammerhead. Mr. Rokeh said that the hammerhead is wide enough for two fire trucks vehicles to be sitting side by side. On each side of the hammerhead. Mr. Viens asked what the length was. Mr. Rokeh said it was ninety-one feet.

Mr. Viens said that he had an issue with people who are not firefighters trying to decide what can or cannot be achieved up there. Mr. Viens said that he thinks he wants the fire chief's sign off on this. Mr. Viens said that he is not comfortable that he or anyone here has the knowledge to decide what will or will not work from a safety standpoint. It seems to Mr. Viens that the fire chief should have the last word on that.

Mr. Hanson said that he thinks that they can get a little insight from Ken Ballance. Mr. Ballance said he had twenty-five years in the fire department and a former fire chief. Mr. Balance said that he has talked to Fire Chief Leon Manville about this situation. Mr. Manville is the one who should be the ultimate on this. Mr. Ballance said that Mr. Manville does have a definite concern about the width and the way that the road itself may not have a shoulder when you have two trucks going side by side in the winter time on a ten-foot road. The truck is nine feet six inches so there is only one foot to play with anyway so there is some concern. What may happen to solve Ms. Kemery's worry or wonder is the cul-de-sac. The truck would pull into the cul-de-sac, drop a four- or five-inch line, run one thousand feet, that is why we have a thousand foot maximum on roads because trucks carry a thousand feet or better of hose. That truck goes in, lays in, starts the attack. The other trucks come to the cul-de-sac, to a rural hitch and they can spin right around and fill. They keep water flowing all the time. The issue with a hammerhead, we tried to get rid of hammerheads, is we found that they get locked, so on occasions trucks that run "dead on water" because you can't get them back and forth quick enough. Mr. Ballance said that one other point that he would



like to make is, Mr. Johnson made a statement that the town suggested, whatever, that is all the town did, closing the right-of-way down only as a means by which Mr. Kline could settle his lawsuit. We did not suggest that, that is the way it should have been done or what we thought should have been done. Mr. Ballance wanted to make that perfectly clear that that was never stated that we need to do that. It was only a suggestion to try to help solve the lawsuit portion for the Klines. Mr. Balance asked if that was enough and said thank you. Mr. Hanson thanked Mr. Ballance.

Derek Kline said that we are here today because of the suggestion that the twenty-foot-wide road could be in the thirty-foot right-of-way and there were no talks of this cul-de-sac or anything else that has been developed. Things have ebbed and flowed since the town made that recommendation, made that suggestion. Derek Kline thinks that they should move forward with what the town suggested several months ago. Mr. Hanson said to Mr. Kline that that's fine. To Mr. Ballance's point Mr. Hanson doesn't think that the town suggested; we make you aware of the possibilities. You chose to present this to us and I am not going to get into a big argument about it. Mr. Hanson asked Mr. Ballance if he wanted to add anything. Mr. Ballance said again it was not meant to be a fix all, what all. We are in a situation not because we suggested this; we are in this situation because of a breakdown in the subdivision itself all along. Mr. Ballance said he doesn't think that the blame can be thrown on us to try to help solve an issue that we had nothing to do with to begin with. Derek Kline said that we are not talking about blaming anyone, we appreciate everything that the town has done. It is just when my father was called into Ken's office with, I have a solution that can fix it all, that is why we are here today.

Mr. Hanson asked any Planning Board members had questions or other items that the Klines might want to consider.

Mr. Ricciardi said that he doesn't know if he has seen anywhere on any plan that once the road is complete to the hammerhead that the cul-de-sac would be removed. It hasn't even been built yet, so talking about removing it after the hammerhead is there is not making any sense to him. Secondly, he said, if he is not mistaken, it is on the proposed completed plan. We are talking about this thirty year or more in the making, so a lot of stuff is getting jumbled up together. When you look at this plan there is a cul-de-sac where the unbuilt cul-de-sac is now. There is a cul-de-sac and a hammerhead. Mr. Ricciardi said that now that he is looking at it the entire hammerhead is in the wetlands. He said he didn't know how that was going to be done. Mr. Ricciardi said that he is confused with this whole thing. Mr. Johnson said that he could address the wetlands issue. Mr. Johnson said that there was no requirement to show the wetlands at the subdivision hearing. There were no wetlands presented at that meeting that he is aware of. He said that there has been extensive searching for information that was presented, minutes and so forth. He said he doesn't believe that at that point in time we were dealing with that situation. It could be as he mentioned before, and he doesn't know for a fact, it could be the standards for jurisdictional wetlands have changed since the original subdivision. Where we are today and where we are essentially proceeding with the original subdivision road layout at the end, we are trying to accommodate multiple

parties and the suggestions, however we want to make that point, it was suggested possibly narrowing the right-of-way to push the actual physical roadway away from the Hayes property. Mr. Johnson said that Mr. Ballance is exactly right in that this is an accommodation that the town is making based on the existing situations that are out there. However, in terms of the wetlands and so forth Mr. Johnson doesn't believe that there would be a significant difference if the road was in the middle of the right-of-way. This is simply a good faith effort of trying to resolve this so there is no further litigation the road is constructed; it is constructed to a sufficient standard for emergency vehicles and we can put this to bed. Pointing fingers at this point doesn't really get anyone anywhere. Keeping in mind that whatever the town ultimately approves for this roadway is subject to the State of New Hampshire wetlands Bureau approving this. Mr. Johnson said that they have had an initial discussion with the Wetlands Bureau and Mr. Ricciardi is absolutely right, the portion of the hammerhead (amended per the 12/1/2020 meeting) that shows up on the original subdivision plan is almost entirely in a wetland, but the wetland as the functional analysis has determined is not a prime wetland and of relatively low value. Mr. Johnson said if you look at the scope of what is being impacted in terms of the scope of the entire wetlands on the site it is not that significant. Mr. Ricciardi asked Mr. Johnson if they were putting the cart before the horse; shouldn't we be getting the approval for the construction in the wetlands before we approve the plan? Mr. Johnson said not normally because we won't know what we will be submitting to the Wetlands Bureau. In other words, if we submit a plan to the Wetlands Bureau and get approval and come back to the town it may not be a plan that is approved. Then you get into a dog chasing its tail. We would like to be in a situation where we get a conditional approval from the town subject to the approval from the state so that if there are some minor alterations to the plan that the State has, we can run that through Code Enforcement to see if those changes are significant enough to challenge the town's approval or not. That way we would not have multiple plans in multiple places. It would be the plan that the town approved that we would be submitting to the State. Mr. Ricciardi said that made perfect sense to him. Mr. Hanson said that basically one part of our conditions might be a DES approval as a condition of our approval.

Mr. Hanson asked if there were any other questions or concerns or thoughts.

Mr. Ricciardi asked if it would be prudent to have any set of conditions that we are looking for at next Tuesday's meeting. Mr. Hanson thinks that they should. Mr. Hanson said that to Mr. Johnson's point we should throw out these general concepts. This would give us a week to get back our engineer's information, think about this ourselves, and then really hone in on some final product.

Mark Hildebrand said getting back to what Kelli was talking about, you look at the hammerhead and thinking about fire trucks and tankers and stuff like that it just occurred to him, what if somebody is having a party and there are ten cars parked in the hammerhead. Mr. Hildebrand thinks this all goes back to getting the fire department to sign off on this. Mr. Ballance asked to speak to what Mr. Hildebrand said. Mr. Ballance said that he thinks that they will find that the fire chief is going to

go pretty much with what is decided; we will have to work with unless there is something that is really glaring. The ineffectual passing across of vehicles in the winter time itself can be taken care of. Mr. Ballance said that he is not sure that the fire chief is going to have any problem with how it is actually laid out at this point but he believes that the cul-de-sac is something that is absolutely imperative in the whole plan as far as that goes. Mr. Ballance said that that is just his opinion.

Mr. Hanson asked if any other Board members had any thoughts. Mr. Hanson said that he had a couple that were more administrative. He said a bond will be required with time lines for completing the road improvement and he needs to get a final version of that from the town engineer and an estimated amount. Also, any expenses incurred doing this process will need to be paid in full prior to final approval. Those are the things that have come to Mr. Hanson's mind. Mr. Viens said there was one little administrative thing; there is a reference on Sheet 3 to a court order, it is just sort of floating there in the notes. Mr. Viens asked if they had a copy of that, he is curious what that is. Mr. Hanson asked if either Mr. Rokeh or Mr. Johnson would talk to that. Mr. Rokeh said that he had a note saying, thirty-foot reduced right-of-way per court order and agreement with the town of Center Harbor. Mr. Viens said that he didn't have any recollection of seeing the court order on that. Mr. Viens said that if it exists, he would like to see a copy of it. Mr. Rokeh asked Mr. Johnson if it was correct or how it should have been written. As a note trying to explain how it was a thirty-foot right-of-way instead of a fifty-foot right-of-way. Because, when your engineer did their review of it, they said it should be a fifty-foot right-of-way so we had to explain why it was a thirty-foot right-of-way. Mr. Viens said ok, what is the court order, where is it? Mr. Johnson asked Mr. Hanson if they could provide an answer to that question at the next meeting. Mr. Hanson and Mr. Viens both said that would be fine.

Ms. Kemery added one last comment. She said that she didn't have an opportunity to respond to Mr. Ballance's explanation to her initial question. She thanked Mr. Ballance and said to be clear because we have all spent a lot of significant effort to come to a resolution her purpose in asking was just to make sure that any further lot owners are afforded the opportunity for life safety. It is not in any way to try to impede any progress that we are trying to make. Ms. Kemery wanted to make that clear because life safety to her is of paramount importance and she just wanted to make sure that they were all thing of the future lot owners.

Mr. Viens said that this might be irrelevant but asked if there are any plans or thoughts about what is going to happen to Lot 9? He said that is a big lot, it is about thirty acres or something like that and as he recalled that is the lot where we are making up the insufficient property for the lots in the front. Mr. Viens asked if there were some thought to subdividing that, or something else going on up there long term? Mr. Viens asked if someone could answer that or if it was going to be one lot. Mr. Johnson said that there are no plans at this time to develop that lot that are before the Planning Board. Mr. Viens said that is not what he was asking. He knows what is in front of the Board. He is just trying to get a sense of what the long vision is. Mr. Johnson said that he could answer that by saying that any subsequent developing of that lot would

be subject to review by the Planning Board. Mr. Viens said, "Obviously." Mr. Ricciardi said that the review by the Planning Board at that time is going to look back at this reduced size road in front of the Hayes' property. Mr. Viens said the hammerhead is kind of where his head is. He said he that if there is a plan to subdivide that he sees that as an issue down the road so it would be good not to have a surprise there. Mr. Johnson said that all he can say to that is, we are having difficulty enough dealing with the situation that is in front of us at this point in time and that to try and foresee what is in the future what is going to be happening would make it much more difficult. Mr. Viens said that he was just asking the question. Mr. Hanson said that was in their purview.

Susan Patz just wanted to say on the last comment; the land needs to be made up for the insufficient lots closer to 25B. She asked if they should be demarcated in some manner as part of this. She said she didn't know why it shouldn't be. Where is the land that went to make up the five acres or whatever is needed for a lot in Center Harbor? It is not defined, so that is a point to clarify. Another is in the original subdivision plan from the 80's or whenever there was a right-of-way off the proposed cul-de-sac to Lot 6. She asked if that was off the table, if they were going to have something that hooked up to the woods road in back. Mr. Hanson told Ms. Patz that if she looked at the most recent plan, they have actually delineated the access to Lot 6 at the cul-de-sac. If this is a plan that gets approved that's why it is. Ms. Patz said so there will be a legal access? Right now, we have a little bridge that they put in so they could get to Lot 6. Mr. Hanson said it is a documented access. Ms. Patz asked if it was a real access that fire trucks could get over. Mr. Hanson said that if they build it appropriately, yes. Ms. Patz said that they were not building it, it is part of the right-of-way. Ms. Patz asked again if they would have legal access on this. Mr. Hanson said that he would should check with council on this but they will provide Ms. Patz a place to go in. In terms of who is responsible Mr. Hanson believes it is Ms. Patz responsibility. Ms. Patz said that the access was originally off of the cul-de-sac that is not there and that they don't have legal access now. Mr. Hanson said that they do now with this plan. Mr. Johnson said that he could potentially address that. He said that this lot has several hundred feet of frontage on what is Kline Road. It is being shown that there are at least two points of access. Mr. Johnson said that it is his understanding that if somebody should want to develop a portion of that property that would require an additional access on Kline road that would not be out of the question. It would be subject to the road agent and possibly eliminating one of the accesses to the benefit of the other and that would be up to the Road Agent, depending on how many access points are allowed for a lot. In terms of legal access that lot has several hundred feet of frontage on Kline Road. That is the legal access to Lot 6, not any individual point. Ms. Patz said that there is a culvert there that you can't go over so it is not a legal access anywhere along Lot 6 except at the little bridge that we put in so that you can actually get onto the lot. Mr. Hanson said that he thought that it would behoove Ms. Patz to sit down with somebody to go over this plan a little bit to explain that. He said he agrees with what Mr. Johnson is saying. It is a matter of semantics at this point and Mr. Hanson said that he doesn't want to get bogged down in semantics if possible. Mr. Ricciardi said that they are conflating legal access with physical access and what Mr.

Johnson is saying is that anywhere along that road is legal access but you have to cross the cul-de-sac and put in a little bridge like you already did near the unbuilt cul-de-sac.

Ms. Heiner said that she wanted to clarify something that was said earlier about the culverts have been in there a long time. Ms. Heiner said that the one by the proposed cul-de-sac was put in in the last few years after her husband Jay died. So that has not been there. Ms. Heiner said that she was informed, she was not sure if it was the Klines or by Atty. Tausig, that it was illegal. Ms. Heiner thinks that is one of the concerns that they have, that the original plan showed the access to Lot 6 coming off of the cul-de-sac. Ms. Heiner just wanted to be clear that that was not an old culvert it is a new one.

Mr. Hanson asked if there were any other comments. Hearing none he asked for a motion to continue this hearing to November 17, at 6:00 P.M. Peter Loudon made a motion to continue this hearing to November 17<sup>th</sup>. Mark Hildebrand seconded the motion. Roll Call: Bill Ricciardi-Yes, Charles Hanson-Aye, Rachel Xavier-Aye, Peter Loudon-Aye, Harry Viens-Aye, Kelli Kemery-Aye, Mark Hildebrand-Aye. The Vote was unanimously in favor.

**III. CONSTRUCTION PERMITS:**

Mr. Hanson asked the Board if there were any questions about the Permits. There were no questions.

**IV. OTHER BUSINESS:**

Mr. Hanson asked if anyone had any other business to come before the Board. There was no other business.

**V. ADJOURNMENT:**

The Chairman adjourned the meeting at 7:12 P.M.

Transcribed by Sheila Mohan

## A Checklist To Ensure Meetings Are Compliant With The Right-to-Know Law During The State Of Emergency

As Chair of the Center Harbor Planning Board I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are:

*a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:*

We are utilizing the ZOOM platform for this electronic meeting.<sup>1</sup> All members of the Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone (See website for call in and password) or by clicking on the following website address: [www.centerharbornh.org/planning-board](http://www.centerharbornh.org/planning-board)

*b) Providing public notice of the necessary information for accessing the meeting:*

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the website of the Center Harbor Planning Board at: [www.centerharbornh.org/planning-board](http://www.centerharbornh.org/planning-board)

*c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access:*

If anybody has a problem, please call 603-481-1485

*d) Adjourning the meeting if the public is unable to access the meeting:*

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

Please note that all votes that are taken during this meeting shall be done by roll call vote.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.

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<sup>1</sup> Many public bodies are utilizing video teleconferencing technology, such as Zoom, to ensure the electronic meeting comply with the Right-to-Know law and any applicable due process requirements. In certain circumstances, a regular business meeting of a public body may be conducted utilizing audio-only technology. If you have any questions about the appropriateness of the technology utilized to conduct your meeting, please consult your agency counsel or the Attorney General's Office.