

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING MINUTES
January 7, 2019

Chairman Peter McNamara called the meeting to order at approximately 7:00pm.

Planning Director Jeff Gowan called the roll:

PRESENT: Peter McNamara, Tim Doherty, Jim Bergeron, Blake Clark, Selectmen
Representative Hal Lynde, Alternate Paddy Culbert, Alternate Bruce Bilapka,
Alternate Richard Olsen, Planning Director Jeff Gowan

ABSENT: Roger Montbleau, Paul Dadak, Alternate Derek Steele, Alternate Samuel Thomas

PUBLIC HEARING ON PROPOSED ZONING AMENDMENTS

Mr. McNamara appointed Mr. Bilapka and Mr. Olsen to vote regarding the proposed Zoning Amendments. He then formally opened the Public Hearing.

The proposed amendments are described as follows:

1. *Pelham Planning Board DRAFT zoning change to eliminate Article IX Elderly Housing;*
Are you in favor of Amendment No. ____ as proposed by the Planning Board for the Town of Pelham to repeal in its entirety Pelham Zoning Ordinance Article IX, Elderly Housing? The effect of the repeal would be to eliminate any future age-restricted housing as an allowed use within Pelham.

PUBLIC INPUT

Mr. Steven Rancourt told the Board he was a citizen of Pelham for over twenty years. He wanted to know the reasons and concerns the Board brought the proposal forward. Mr. McNamara replied the Board had gone over the subject for a number of years; the proposal was the culmination of a variety of discussions. Mr. Lynde added that the article was not addressing Pelham's needs; it was providing housing for people (age 62+) that wanted to move into Town. Currently there were almost one hundred elderly housing units that were in the process of being approved or had been approved that were in addition to those units already existing. He said Pelham no longer had a need for these types of units and had other areas they should be addressing. Mr. Rancourt asked if the elderly units were using land resources that would normally be used to build houses. Mr. Lynde replied if they weren't used for elderly units, the owners would find other uses. He noted the elderly units were very densely-packed houses and provided examples of such. He reiterated that most of the buyers were coming from out of Town and out of State, which was not meeting Pelham's needs. One of the problems was the younger population couldn't afford to buy a house in Pelham.

Mr. Rancourt understood people had the ability to use their land, if they followed the codes. He asked if the Planning Board's intent was to determine how people use their land. Mr. McNamara pointed out that a short while ago the ordinance had two types of housing; over 55 and over 62. In the past year the Board proposed eliminating the over 55 housing and 70%+ of the voters voted in favor of abolishing the 55+ housing. He said elderly housing was a special category set up by the Board several years ago because there was a limited ability for elderly to live in the Town. When the article was passed it was to provide an opportunity to address the need; that need has been addressed and in the Board's view it no longer exists. Mr. McNamara also informed Mr. Rancourt that the State Legislature passed an ordinance allowing accessory dwelling units ('ADU') to be rented out, which would be another outlet to help the elderly population stay in Town. Mr. Rancourt asked if

the Town considered relaxing some of the ADU restrictions. He wanted to know the overall plan and what the next step would be. Mr. McNamara replied the next step was for some sort of 'affordable/workforce' housing. The Zoning Subcommittee was going to review ways to fill the gap.

Mr. Culbert said currently there wasn't a plan to replace the article; the subcommittee would discuss other options. Mr. Rancourt pointed out that the vote to eliminate 55+ housing was not voted by the entire Town population; it was a vote of approximately 70% of the approximately 8,900 people that voted. Mr. McNamara replied any citizen is allowed to vote. Mr. Rancourt asked how the removal of the article would create affordable housing. Mr. McNamara said the proposed article wouldn't; however, the Board would work toward doing so.

Mr. Doherty understood the Board would be considering an elderly development plan later in the meeting, and because of the way the article is worded it was almost an ideal fit for the neighborhood. He said if that development came in as a conservation subdivision or something else, the development would have been pushed through a very small cul-de-sac and ruined an existing neighborhood. Instead, the elderly development is being forced onto a main road (Windham Road). Mr. Doherty said it was a double-edged sword when pulling something out of Zoning without replacing it. He felt Mr. Rancourt had a valid point. Mr. Rancourt questioned if the Board had other options while working on a (replacement) plan, such as to restrict the number of units that could be done each year or address density. Mr. McNamara replied they could adjust density but couldn't restrict the number of developments. Mr. Rancourt felt it would be better for the Board to have some sort of plan and hoped that they would consider doing so.

Mr. Gowan noted that the Fair Housing Act prohibited discrimination based on age, sex, nationality etc.; municipalities are allowed to have an exemption to that Act through age-restricted housing. He said for approximately 18-20 years elderly development have been allowed and there were a number of them built. It was his impression that the Board members were looking to see what other options there were for better density. He said it was important to understand that the proposed article was simply eliminating an exemption to the Fair Housing Act.

Mr. David Hennessey also commented that the senior/elderly housing projects were an exception to the Fair Housing Rule that came in 1968 with the Fair Housing Law. He believed when voters approved doing away with the 55+ developments and left the 62+ in place, not everyone understood how restrictive the 62+ housing was. He discussed some of those restrictions. In looking at the Master Plan comments from 2002, he saw one of the needs identified was for senior housing; in response the Town added an ordinance. Mr. Hennessey believed the 2020 Census would show New Hampshire as having the oldest population in the country. He said the State had been overloaded with seniors and had lost many of the younger people. The need articulated in 2002 had been addressed and satisfied. As a result, Pelham (and the entire State) has a disproportionate number of seniors and a lack of young families. Mr. Hennessey was in favor of abolishing the exception to the Fair Housing Law.

Mr. Culbert asked Mr. Hennessey what the older population would do. Mr. Hennessey replied the majority of seniors would rather live-in-place and have visiting nurses than reside in a senior housing project. Being in real estate for several years, Mr. Hennessey was unsure if there would be a market for elderly units in the future (15-20 years). He said there was elderly housing all over the State and based on statistics believed the market would run out of people to purchase them.

Mr. Doherty had heard over the years that requests for variances could be submitted for any Zoning. He wanted to know if the Board made a mistake by eliminating the 55+ housing and if it was possible for applicants to get a variance to revert the 62+ housing to 55+ housing. Mr. Hennessey replied because of the way the 62+ projects were structured, according to attorneys he'd spoken to, it was almost impossible to change. They might be able to be converted before the documents are created.

Mr. Lynde believed most seniors in Town wouldn't be able to afford the elderly housing being discussed. He said in the past Pelham had problems providing housing, which had been addressed by some of the existing complexes (i.e. Windham Road, Main Street). Mr. Culbert asked if he was referring to apartments. Mr. Lynde replied the elderly complex off Windham Road was like apartments; that building was done without the Elderly Housing Article. Mr. Culbert asked if he would support apartments. Mr. Lynde stated he would, in an appropriate situation (to be discussed and vetted by the Planning Board).

Mr. McNamara closed the public portion of the hearing and brought the discussion back to the Board.

Through the present discussion, Mr. Bergeron said he felt that the Board should offer an alternative to the voters prior to abolishing the current article. He said he's had time to think about the situation and didn't feel they should go in a direction of rescinding what they had and not have another offer to consider.

Mr. Clark commented that the Board wasn't taking away everything; in the past they had created conservation subdivisions and mixed-use development and made the promise of more to come. He said the reality was that Pelham was leading the 'charge' by making the change. New Hampshire was in the process of making a shift/change which would take time. He believed they had enough to work with and pointed out that the State now insisted that towns allow more flexible use of ADUs. In the short-term Mr. Clark felt the voters deserved to see the question on the ballot and make a choice as a Town. He believed there had been enough discussion about the need for a change and said the proposed warrant article was the first step.

Mr. Doherty agreed if the Town over-built the 62+ units it could be a problem for the heirs to sell them for what they were purchased at. He said he would be willing to 'step up to the plate' and start buying some of the units and renting them to Pelham (senior) residents for a discounted cost. Doing so would create rentals. Mr. Doherty said if builders went to the Zoning Board for a variance prior to drafting homeowner's association documents, they might be able to change the development to 55+ if they prove a hardship.

Mr. McNamara stated his agreement with Mr. Clark and Mr. Lynde. He noted that the abolition of the 55+ developments was the first step, the proposed elimination of the 62+ was second step. From what they heard from Mr. Hennessey and what they've seen in some of the developments, he felt they had reached a limit and filled the need for the 62+ housing. He believed the voters had a right to say whether they wanted to abolish it entirely. Mr. Lynde spoke about the Board's good intentions when they created language for conservation developments, 55+ and 62+ developments; however, they've seen that the developments weren't meeting Pelham's needs. He said they needed to focus on where the needs are. He wanted the Board to concentrate on affordable/workforce housing so young people could move into the Town. Mr. Culbert believed they needed a plan to replace the article.

Regarding the needs of the seniors/elderly, Mr. Doherty was unsure if Pelham was really addressing their needs. He questioned if the senior center needed to be bigger and if they needed more buses. He also questioned if the elderly developments would make for less need of the senior center because they would have their own centers (club house). He said the elderly developments may help seniors because they would be living in a close-knit community. He was having a hard time considering the elimination of the article without having something else replace it. Mr. Clark pointed out that the Planning Board wasn't getting rid of it; they were considering a vote to send the question to the voters. He didn't feel there was any argument that would prevent him from voting to send the article in front of the voters.

Mr. McNamara felt the members had made their positions clear. He accepted a motion.

MOTION: To recommend Article 1 on the ballot.

VOICE VOTE: (4-3-0) The motion carried.
Mr. Bilapka – No – stating he didn't want to repeal 62+.

Mr. Clark – Yes – stating he recommended it being on the ballot.
Mr. Doherty – No
Mr. Lynde – Yes
Mr. Bergeron – No – stating he voted not to recommend it for the ballot at this time.
Mr. Olsen – Yes
Mr. McNamara – Yes

Mr. Gowan confirmed with the Chairman that the article would be Zoning Amendment No. 1 on the ballot.

2. Citizen Petition Zoning Question: *Are you in favor of the adoption of Amendment No. _ as proposed by Citizen's Petition for the Town of Pelham Zoning ordinance as follows : this amendment would modify; Article IV, Section 307-16(A) ; Article V, Section 307- 18 Table of Permitted Uses; and Article V-1 Mixed-Use Overlay District as follows : The raising and keeping of livestock, excluding poultry, may be conducted as an accessory use of a principal Residential or Mixed-Use Overlay District property of at least three (3) acres and shall be clearly incidental and subordinate to the use of the lot for its principal purpose. Structures and enclosures used in conjunction with the raising and keeping of livestock shall be a minimum of fifty (50) feet from any property line and shall comply with the best practices as identified by the UNH Cooperative Extension's housing and space guidelines for livestock. At no time shall a nuisance be created as to sight, sound, smell or any other impact that may interfere with nearby property owners' rights and enjoyment of their properties.*

For public information, Mr. McNamara stated the article could not be changed in any way by the Board. He said the only thing they could do after hearing from the public and having a discussion was to either 'recommend' or 'not recommend'. The item would go on the ballot regardless of the Board's vote. Mr. Doherty asked if it would be considered Zoning Amendment No. 2. Mr. Gowan answered yes.

PUBLIC INPUT

Mr. Paul Schnizler told the Board he was one of the petitioners and had enjoyed the past eleven years living in Town. He stated the petition was to help protect other property owners from situations that he and some of his neighbors had endured over the past several months. He also stated that he had no qualms with livestock and no problems with his neighbors keeping livestock. He felt the time had come for reasonable boundaries to be put in place. He liked the rural character of the Town and believed it was no longer a back-woods community. He said he was looking to have boundaries so people living in the community were not affected by decisions some neighbors might make. He stated it was also important to protect the livestock. Mr. Schnizler commented that the language used to draft the article came from Goffstown.

Mr. Bergeron felt the intent of the article was clear and noted it would affect two portions of Zoning; first being the entire residential district and second the mixed-use zoning district (overlay of residential). He read the words "*The raising and keeping of livestock, excluding poultry...*" which to him meant the only animal that could be kept was poultry. He then commented on the 50ft. setback, which he felt was a good distance. He had read the article to try and determine how it could be contested and/or interpreted by zoning officials. He asked if Goffstown excluded poultry. Mr. Schnizler replied they simply refer to 'livestock'. He went on to speak about the acreage requirements of other towns. Mr. Bergeron understood that anyone currently keeping livestock would be 'grandfathered'. He questioned if there would be legal fallout when someone transfers property where animals were previously kept. Mr. Schnizler believed the new owner would be subject to the new regulation.

Mr. Clark was confused by the 'excluding poultry' language and asked for clarification. Mr. Schnizler said he considered how much disruption/nuisance chickens caused, which he felt was minimal. Keeping poultry seemed to be a growing hobby that he didn't want to infringe upon. Mr. Clark said the plain reading seemed to indicate that no one could ever raise chickens. Mr. Schnizler replied that was not the intent. As the former Zoning

Administrator, Mr. Gowan commented that the 'devil was in the details' when reviewing specific cases. He said anyone who currently had livestock could continue; however, any further use would fall under the new article. He pointed out that the Town didn't have rules regarding animals and questions were referred to the State. Regarding the wording, he didn't feel there would be a prohibition of poultry. He said the Zoning Administrator would have a difficult time with horses since they weren't 'meat' animal and mainly kept as pets; they would have to speak with counsel. He said there could be unintended consequences from zoning changes.

Mr. Doherty thought Mr. Clark had a good point regarding the 'excluding poultry' verbiage. He felt the way the language was set up was almost anti-farming; it doesn't give a provision for larger parcels. He said the article was poorly worded and couldn't support it because of such.

Mr. McNamara asked Mr. Schnizler if he had been personally affected. Mr. Schnizler answered yes. He understood the article didn't change anything he was living with. He was looking to preserve other property owner's rights and to have something in place for how livestock is taken care of. Mr. McNamara thanked him for coming forward with the initiative.

Mr. Lynde wanted to understand how it modified zoning. Mr. Schnizler said because there was currently nothing in place, the article would add language to zoning. Mr. Gowan believed the petitioner could modify their own question at Deliberative Session. He suggested consideration be given to remove the words 'excluding poultry' within the body of the text and adding a sentence at the end reading 'this restriction would not apply to poultry'. He offered to get an opinion from Town Counsel regarding if a petitioner could modify at Deliberative Session.

Mr. Clark stated he supported the intent behind the petition, it was just difficult given the language. Mr. Schnizler understood.

Ms. Cynthia Kirkpatrick, 7 Mossey Lane which was in the mixed zone area. She came forward in favor of the petition and felt it should include the manual of best practices for agriculture. She told the Board she lived next to her neighbor for eleven years. When they moved in the neighbor raised goats, chickens and pigs and there were no problems. In 2016 the neighbor started raising cows, which caused problems and interfered with her enjoyment of her home. She tried having a conversation with her neighbor about the smell and increased flies and was told the livestock would be used to offset a disability income. The neighbor informed her they would raise approximately ten cows per year. She provided the Board with information about the amount of manure that would be produced by having so many cows. Ms. Kirkpatrick told the Board that the smell was so bad they could barely go outside and in the last three years had not opened the windows to their home. They run their air conditioning from May to October regardless of the temperatures. She discussed how they couldn't have friends over; their children didn't want to play outside, and they didn't want to garden. Ms. Kirkpatrick pointed out that they purchased the land that their neighbor subdivided; the neighbor retained 2.3 acres. She had difficulty with the fact that the Town worked with the neighbor to make sure there was enough frontage to sell the property, which had an access easement to her own property. She said a house was built and her family moved in, but they had no rights. When she went to Town hall to discuss their issues, she was told the addition of cows was the natural progression of a farm. She wanted to know what happens to the natural progression of a neighborhood because the Town had no problem approving the house for them to move into, but the Town wasn't doing anything to stop the neighbor from raising cows. From what she understood they could have as many cows on the property as they could take care of, which consisted of making sure they have a tree line to live under. Although she knew the article wouldn't affect her family, Ms. Kirkpatrick was very happy someone brought the article forward. She said something could be done so other people didn't have to live trapped in their home like she was.

Mr. Bergeron confirmed that the neighbor had 2.3 acres with the described livestock. Ms. Kirkpatrick answered yes; she hadn't gone on the property but at any time had seen up to at least ten cows. She noted not only could they smell the cows, but they could see them and hear them day and night. She brought a video of the sound to the Animal Control Officer and was told it was okay. The officer informed they could complain under the Noise

Ordinance, but at the same time was concerned with what would be done to silence the cow. She said the neighbor has a large bull chained to trees. The situation is not what she imagined living in Pelham would be. Currently, instead of planning a vacation for the family, they were saving for a land-use lawyer because there was nothing the Town could do, and the State was pro-agriculture.

Mr. Richard Rancourt, 21 Collins Way, told the Board he helped draft the article, as he had a neighbor that was raising two pigs and feared living in a similar situation as described by Ms. Kirkpatrick. He felt the State should help her based on the size of the lot and number of livestock. Mr. Rancourt told the Board he had already planned on not being able to use his swimming pool on certain days because of the smell of the pigs in his neighborhood. He noted the Town was allowing houses on smaller acres and pointed out there were no restrictions on anyone raising livestock. He ended by saying he was in favor of the amendment.

Mr. Doherty understood if the article passed at Town Meeting this year, the Board (in subcommittee) talk about making amendments to the wording for next year's ballot.

Mr. Clark wanted to know if the Board's recommendation would be valid if they voted in favor and subsequent changes were made at Deliberative Session. Mr. McNamara didn't believe the Board's recommendation would be voided by a change at Deliberative Session. It was Mr. Clark's understanding that substantive changes couldn't be made at Deliberative Session.

Mr. Keith O'Brien, 25 Collins Way thanked the Board for taking time from their personal life and doing a difficult job. He listened to the discussion and heard people speak about the cost of housing and property values and that people shouldn't have to listen to livestock if they pay a lot of money for a house. He believed people should have the opportunity to enjoy their house regardless of what they paid for their home. He asked that the idea of 'money/cost' be removed because it was really about the ability for someone to enjoy their property.

Mr. Johnathan Szarek, 8 Island Pond Road asked the Board if the Animal Control Officer had been spoken to about the article since she is remediation and enforcement on the issues. Mr. McNamara pointed out that the Planning Board and Town had nothing to do with drafting or submitting the petition. From the audience, Mr. Schnizler stated he had not spoken to her and was unsure if anyone else had. Mr. Szarek said the article was written in response to a small area in Town, but it would ultimately effect everyone. He was concerned about the wording of the article and felt it was important to view it as a Town-wide article. Mr. Gowan told the Board he had a long experience with the operation next to Ms. Kirkpatrick. He was shocked that there was nothing in the ordinance; therefore, they had worked with the State regarding the operation.

Ms. Judy Birch, 16 Collins Way told the Board she lived next door to the family that owns pigs. She commented that during the last year she was only able to sit on her deck four times because the smell was so bad. She said the neighbor didn't have pigs when she moved in; it has become a progressive farm from poultry. Ms. Birch noted that the size of a property didn't matter if an animal shelter (in her case pig sty) was on a property line.

Mr. Schnizler clarified that the Animal Control Officer had been involved, but he didn't have specifics. He told the Board he had gone to the State and was told that 'feeding' of livestock was through the local Police Department and Health Officer. He was also told that the State would get involved if the Police contacted them. He understood that the Police went to the property and didn't see anything incorrect and left without contacting the State; therefore, the State won't get involved. Mr. Schnizler said 'manure' issues were handled by a different department in the State; however, they can't get involved unless the property owner agrees to let them on the property. Because of this he came forward with a petition, so Pelham would have some 'teeth' to address issues.

Mr. McNamara closed the public discussion. He said the Board could vote to either recommend or not recommend; regardless, the matter would appear on the ballot. Mr. Doherty reiterated if the article passed the Board could work on better language and re-submit to voters. He pointed out the Town currently had nothing to work with.

MOTION: To recommend Article 2 on the ballot.

VOICE VOTE: (7-0-0) The motion carried.

Mr. Bilapka – Yes

Mr. Clark – Yes

Mr. Doherty – Yes

Mr. Lynde – Yes

Mr. Bergeron – No – he asked the petitioners to clean up the language at Deliberative Session

Mr. Olsen – Yes

Mr. McNamara – Yes

3. Citizen Petition Zoning Question: *Are you in favor of the adoption of Amendment No._ as proposed by Citizen's Petition for the Town of Pelham Zoning Ordinance as follows: this amendment would modify Sections 307-18 -- To allow Light Industrial and Manufacturing in the B5 zone. They would pay commercial taxes and employ residents to work in their establishments. Nothing else would change to the existing B5 zone.*

PUBLIC INPUT

Ms. Heather Forde, 7 Heritage Road questioned if there was a different ‘commercial’ tax rate or if everyone paid the same rate. Mr. Lynde replied there was only one tax rate in Pelham; there was nothing that singled out any distinction for a different tax rate.

No one else came forward. Mr. McNamara closed the public discussion.

Mr. Gowan discussed the B5 Zone and how they tried to create distinctions between it and the business districts 1-4 so it would be more restrictive to protect the residential neighborhoods that wrap around the property. As a ‘business’ district it would allow for residential uses. He was concerned about the petition because it wouldn’t just lower B5 to be the same as a district, it would take it down to ‘industrial’. He noted ‘light industrial’ was a broad category and read a section of Zoning (Article IV, Section 307-16,C – definition of Industrial) aloud. He interpreted it to indicate that ‘residential’ uses were currently allowed and if the article passes, ‘residential’ would no longer be allowed. He saw this a problem because the whole idea of the district was to not have impacts to the surrounding (existing) residential neighborhoods. He believed allowing light industrial uses in B5 would make it a new industrial zone. He hoped the Board would not recommend the proposed article.

Mr. Doherty opened to the section of Zoning Mr. Gowan referenced and read more of the language contained in that section pertaining to what was allowed within the B5 district. Mr. Gowan reiterated that residential would not be allowed in the district; he was going by the ‘Table’ and the definition of ‘industrial’ and ‘B5’. He didn’t think the intent was to turn the district upside-down, but he felt the effect would be a fairly significant change. He believed adding ‘light industrial’ would change the district and what would be allowed within it. Mr. Gowan noted he didn’t have any issues when a specific use (warehouse) was pulled. Mr. Doherty pointed out if the article was approved the table would need to be amended. Mr. Gowan believed so, and thought ‘dwellings’ would need to be taken out as an allowed use if industrial was allowed because the Board had long held the opinion that industrial and residential uses were not compatible. He saw this as a real challenge in terms of interpretation. Mr. Doherty commented that there were currently apartment buildings in the industrial zone. Mr. Gowan noted that predated the existing situation. He said it would be a lot more challenging in terms of ‘interpretation’.

Mr. Clark questioned if the petition was addressing a Town problem of not having enough industrial space, or if it was designed to benefit a specific land owner. He was reading that it was designed to benefit a specific land

owner, in which case, as a Board member who was elected to look after the best interest of the Town, he personally didn't see how he could recommend the article.

Mr. Lynde noted prior to the current article there had already been a petition amendment made to allow warehousing. He said that must not have been enough for the owner.

In reading the intended change, Mr. Bergeron believed to ease Mr. Gowan's concerns the obligations fell on the Planning Board to conduct proper site plan review. He was a member of the Zoning Board when the light industrial use was applied for and recalled it was a very intense change. He didn't fear the change and believed it could be dealt with. He felt anyone had the right to apply for a Zoning amendment. Mr. Clark replied they could do so; however, he didn't have to recommend such. Mr. Bergeron disagreed with Mr. Clark's opinion. He agreed with Mr. Gowan about protecting the neighborhood and felt it was the job of the Board to do so. Mr. Bergeron pointed out that they could alter the amendments during the work sessions they would have in the next year. He added that they could make changes to the B5 District for buffering. Mr. Clark wanted to know what current problem the Town had that the article would address. Mr. Bergeron couldn't recall the last time the Board had any industrial uses come forward. He said the Board promoted more and more residential developments. He felt some changes needed to be made along Route 38 and the 128 corridors. He also felt changes needed to be made to help people's pocketbooks in Town. He said there were discussions about how it wasn't affordable to live in Pelham anymore and believed it was because there was no base to support the Town other than residential landowners. He reiterated there was no industrial or business coming into Town.

Mr. Doherty spoke about some of the industrial uses in Town and the cases involving Keating and Wakefield. He stated light industrial received more scrutiny and time by the Board. He said if the article passed and something came forward that wasn't right for the area it would receive more scrutiny.

Mr. Lynde told the Board he had done an analysis of the data from the Department of Revenue Services. He looked at the percentage of taxable commercial property versus tax rates. He explained if they didn't have any commercial property at all the tax rate was low and if there is a lot of commercial property it was also low; and as the amount of business property increases the tax rate also increases. He said strip malls were a negative; large complexes (i.e. Wakefield) were a plus. Mr. Bergeron heard that the Town needed to do more to keep young people. If there were no jobs they won't stay in Town.

For the record, Mr. McNamara stated he agreed with Mr. Clark and Mr. Lynde. He also heard Mr. Gowan's concerns and the article had the potential of radically effecting the residential areas. He didn't feel that it served a Town purpose and was in a sense 'spot' zoning.

MOTION: To recommend Article 3 on the ballot.

VOICE VOTE: (3-4-0) The motion failed.

Mr. Bilapka – Yes

Mr. Clark – No -although he appreciated the initiative of people placing it on the ballot.

Mr. Doherty – Yes – noting the Board could work on it next year.

Mr. Lynde – No

Mr. Bergeron – Yes

Mr. Olsen – No

Mr. McNamara – No

Mr. Clark questioned what language would appear on the ballot. Mr. Gowan replied the words 'Not recommended by Planning Board' would appear per Statute.

Mr. McNamara concluded the Public Hearing. He then appointed Mr. Culbert and Mr. Olsen to be vote for the remaining Board action/business.

MEETING MINUTES

December 17, 2018

MOTION: (Lynde/Olsen) To approve the December 17, 2018 meeting minutes as amended.

VOTE: (7-0-0) The motion carried.

ADMINISTRATIVE

Map 24 Lots 12-215 & 221

BAYBERRY WOODS - Request for bond reduction

Mr. McNamara stated at a previous meeting a question was raised as to whether the remaining recommended balance (after approving a reduction) would be adequate to support the remaining work. Mr. Gowan stated that the recommendation stood as it was originally submitted to the Board.

Mr. Bilapka stated there were issues at the location (road and cul-de-sac) that needed to be addressed. He circulated photographs to the Board. He indicated there were cracks in the concrete and a frost heave where the pavement was seamed. He spoke to the drainage and stated the open runoff had gone across the roadway and frozen solid. He was concerned about safety and didn't think any bond money should be released for at least one year from the time of finish pavement and reinspection. The Board reviewed the submitted photographs.

Mr. McNamara noted the Board received a recommendation (letter dated November 20, 2018 from Jeff Quirk of Keach Nordstrom) that the remaining balance (after reduction) would support completion of the project. He read letter aloud.

Remaining bond: \$172,926.00

Recommended reduction of: \$94,212.00 (*reflecting completed work to date Phase I, II & III*)

Leaving a remaining balance of: \$78,714.00 to support completion of project.

Mr. Clark understood that the remaining bond was a 'worst case scenario' if the developer didn't complete the project. Mr. Gowan said the Board had the ability to 'call' the bond if the work is insufficient. He explained there was also an off-site bond for Town road improvement that was not being recommended for reduction. He explained the recommended reduction was for the project road bond. Mr. Steve Keach of Keach Nordstrom (Board's engineering review firm) came forward and clarified for the Board that the recommended reduction didn't affect the bond (for Town road off-site improvement) that Mr. Gowan spoke of. He stated his firm began to work on the project nine years ago when they started working in Pelham; the project being discussed was on-going at that time. He commented that the same problem that occurred at Ballard Road was happening at the location Mr. Bilapka spoke of. He said Mr. Quirk was watching it over the winter. He believed they would need to address it at another time. He told the Board that the plans don't match the cross-section, but they were approved that way; the contractor is guilty of nothing more than following the approved plan.

Mr. Culbert said this would be the first time the Board had ever approved a road that hadn't 'weathered' a full winter. Mr. McNamara replied they weren't approving the road. Mr. Gowan said the recommendation was for a reduction. Mr. Keach explained there were two situations; the subdivision-proper (within the development) that the bond reductions speaks to. There is a second bond, outside the subdivision where the

area of primary concern is situated (where the new road meets the old road) and Mr. Quirk is not satisfied at this time with the work. The matter on the agenda was separate from this. Mr. Clark wanted to know the value of the bond in connection with the second matter. Mr. Keach didn't have the information with him. Mr. Gowan informed him there hadn't been any release of that bond. Mr. Keach commented that the work was separate and distinct from work done on the subdivision. He applauded Mr. Bilapka for bringing the concern forward.

Mr. Bergeron wanted Mr. Keach to view the submitted photographs showing the current condition of the area. He believed the traffic calmer should have a yellow line down the middle of it. He asked if the money being discussed had any effect on the situation. Mr. Keach replied it had zero effect; the second bond (not part of the proposed motion) was in place for such. Mr. Bergeron said if they could get the conditions fixed, he would go ahead with the recommendation. Mr. Keach reviewed the photographs; the work for the traffic calming apron was clearly in an area beyond the subdivision bond and was a separate surety held by the Town for the off-site improvement. Mr. Keach reiterated that the approved plan that the contractor built has led to the situation (raised by Mr. Bilapka). He said it does not, and did not at the time it was approved, satisfy the typical cross-section in the subdivision regulations. He noted his firm was not involved with the Town at the time. Mr. Gowan added that he wouldn't bring it as request for acceptance to the Board until the situation doesn't occur any longer.

Mr. Culbert wanted to know if Mr. Keach would guarantee that everything could be repaired with the money not released from the bond. Mr. Keach believed they already had; his company takes recommendations seriously. Mr. Culbert asked if he could make a guarantee. Regarding the on-site project being discussed, Mr. Keach answered yes.

MOTION: (Clark/Culbert) To approve the reduction in the amount stated (\$94,212.00) leaving a balance of \$78,714.00

VOTE: (6-1-0) The motion carried. Mr. Bergeron voted in opposition.

Map 27 Lot 2-82 & 2-83

SWEET BIRCH PLACE (Rolling Ridge Lane) - Request for bond reduction

Mr. McNamara read aloud Keach Nordstrom's recommendation letter (from Jeff Quirk) dated December 5, 2018.

Recommended reduction of: \$34,298.75 (reflecting work completed to date)
Leaving a balance of \$40,238.50 to support the completion of remaining improvements.

MOTION: (Clark/Culbert) To approve the reduction in the amount stated (\$34,298.75) leaving a balance of \$40,238.50

VOTE: (7-0-0) The motion carried.

OLD BUSINESS

PB Case #PL2018-00028

Map 15 Lot 8-216

JAMES PETERSEN BUILT HOMES, LLC - Windham Road - Site Plan Review for Proposed 42-unit Elderly Housing Community Development and a Special Permit for Wetland & WCD Crossing for Access to Residential Units

Mr. Shayne Gendron of Herbert Associates came forward with the applicant Mr. James Petersen.

Mr. McNamara read aloud a letter submitted by the Conservation Commission (dated December 18, 2018). They recommended that the area under the power lines be donated to the Town, which would allow for connectivity and relocation of existing trail. The project creates wetland impacts and significant Wetland Conservation District ('WCD') impacts; the only way the Commission saw to significantly reduce those impacts was to eliminate nine units (#9-#17 on the plan). The letter stated should the Planning Board have reason to reduce the density of the project, the commission would support such; however, the applicant was not interested in doing so. The Conservation Commission voted unanimously (7-0-0) to support the current design proposal with the following changes: 1) land under power line be offered to the Town at no cost, 2) homeowner's association documents contain a maintenance schedule for the bio-retention ponds with maintenance reports being submitted to Pelham Planning Department, 3) homeowner's association ensures that snow removal and salt application be done by a New Hampshire certified Green Snow Pro contractor, 4) two snow storage areas (corner of Windham Road and corner of Basswood) be relocated as noted and agreed to by the applicant and that boulders be added between the cul-de-sac/first stub road/WCD, and 5) vegetation be added in six areas proposed by the Commission (and agreed to by the applicant).

Mr. Gendron summarized the project as being a 42-unit elderly housing project. He said since the last meeting the Board tasked them with specific items, one was to meet with the Conservation Commission and review the wetland/WCD impacts. He believed the Commission was happy with the new proposal. They had re-aligned the road and reduced some of those impacts. They were also asked to meet with the Highway Safety Committee ('HSC') and review the geometry of the roadways, specifically the hammerhead, cul-de-sacs, road width and 15ft. accessway. He told the Board that the HSC was recommending for the access road to be 15ft wide and have signage (on both sides) indicating 'Emergency Vehicle Access Only'.

Mr. McNamara read aloud the HSC letter dated December 10, 2018. They reached unanimous consensus that 1) emergency access (off Claudine) should not be gated, 2) supported the proposed 14ft-wide paved emergency access road and signage on both ends indicating 'emergency vehicles only', and 3) the hammerhead at the extreme rear of the project was acceptable as depicted on plan. The HSC asked the applicant to change the road name 'Cypress'.

Mr. Gendron told the Board they had updated the color plans handed out to the Board. Abacoa Road will be the main road going through the project (off Windham Road); the first cul-de-sac street will be Redwood and Basswood Road will be the second cul-de-sac. Mr. Gowan noted the HSC recommended using Lane or Way rather than Road. Mr. Lynde confirmed that they wouldn't be Town roads. Mr. Gendron replied they would be private roads.

Mr. Gendron stated the Board had tasked them with coming up with a landscape plan, which was included in their plan handed out during the meeting. Landscaping was shown all around the project, including the berm in the rear to buffer units 21 & 22 and 33-35 from the powerlines. It also included recommendations requested by the Conservation Commission. He pointed out that all the driveways have included a detail to have a 20ft depth (length). Mr. Gendron told the Board as of today they had received a letter from Steve Keach of Keach Nordstrom (Board's engineering review firm) containing his review comments; from what he read, they had no issues with such. He also submitted waiver requests for consideration.

Mr. McNamara said there was no way for the Board to review the plans when they are received the night of the meeting. He said there were so many changes it didn't provide enough time for feedback. Mr. Gendron understood and noted they had submitted the plans to Mr. Keach earlier in December.

Mr. Steve Keach of Keach Nordstrom (Board's engineering review firm) came forward. He told the Board that the drawings Mr. Gendron provided as courtesy copies were the same plans handed out at the meeting.

He then referenced his letter of January 7, 2019 (given to the Board during the meeting). He noted a lot of items identified under Planning/Design Matters were engineering issues that were mainly dotting I's and crossing T's. He said the remaining action items of the applicant were outlined under General Comments. Under Zoning Matters, Mr. Keach said in order to satisfy the requirements, particularly for age-restricted development, there is language for protection of open space, maintenance of the property, etc. that needs to be in the homeowner's documents. Mr. Gowan was not aware of receiving draft documents to date.

Regarding Zoning Matter #3, Mr. Keach noted there was a requirement in the Zoning Ordinance (Article IX, Section 307-53-2.C.8) that speaks to sidewalks. He said since the initial application submittal date, the applicant's consultant has added sidewalks to the plan commencing effectively at the first unit (from south at Windham Road) through the final two units (just before the hammerhead turn-around). The sidewalk is deliberately excluded from the area going back to Windham Road where there are no units in each of the cul-de-sacs. He raised the question for the Board to make the determination if this is acceptable.

Mr. Keach then spoke to Zoning Matter #4, which indicated the Board would have to vote on whether to grant a Special Permit for the areas within the Wetland Conservation District ('WCD'). He then spoke to the proposed water system and wanted to make sure that there was an adequate water supply for both domestic use and fire protection. He commented that he hadn't offered an opinion to the four waivers relating to roadway width and turn-around geometry because he wanted to hear what the Highway Safety Committee ('HSC') had to say, which he did when Mr. McNamara read aloud their letter earlier in the meeting. He had no concern on his own relative to the use by future residents and public for passenger vehicles. He now understood that the Fire Department had no concern. Mr. Keach told the Board he had no opposition to the granting of the requested waivers.

Mr. McNamara questioned if Mr. Keach had any concern regarding the waiver relating to the design construction for drainage and storm water management 3ft. minimum cover. Mr. Keach replied his original review picked up several locations where less than 3ft. of cover was provided; however, they have since been reduced to a single location with 2.9ft. of cover, which he had no problem with. To gain more coverage they would have to steepen the road, which he was not in favor of.

Mr. Keach told the Board the waiver request he struggled with was the matter of landscaping. He believed the Town had created standards of uniformity for a reason. He said the neighborhood was contemplating a significant piece of construction. He said they all knew Mr. Petersen built developments that looked nice; however, he was concerned if he sold the project and said he had a hard time suggesting the Board grant the waiver. He believed the project was well on its way to having a well-engineered set of plans. He explained that he had been away from the office for fifteen days and believed if he had done the normal turn-around the applicant could have addressed his comments for the meeting.

Mr. Petersen stated he tried to get the water system tested prior to coming back in front of the Board because he hadn't gotten a letter back from the Department of Environmental Services ('DES') on the small community well report until December 10th. He explained they had to send out twenty-two certified letters to the abutters; they received ten back. The list of ten was sent to the State; the State picked eight.

Mr. McNamara opened discussion for public input; no one came forward.

Mr. Doherty questioned if the applicant was going to be able to potentially donate land under the power lines as they discussed with the Conservation Commission. Mr. Gendron replied the applicant had no issue with donating the land under the powerlines. Mr. Doherty asked if there was a 'Dead End' sign at Claudine Drive. Residents of Claudine Drive seated in the audience told the Board there was no sign. Mr. Gendron stated no objection to adding a sign. Mr. Gowan noted the applicant supplied the sign, the Road Agent would determine the location.

Mr. McNamara asked for the Board to discuss and possibly vote on the waiver requests.

MOTION: (Culbert/Olsen) To accept for consideration the waiver to Appendix I-Paragraph BB.2 – to allow pavement width of 22ft. as opposed to the 26ft. required.

VOTE: (7-0-0) The motion carried.

MOTION: (Culbert/Olsen) To approve the waiver to Appendix I-Paragraph BB.2 – to allow pavement width of 22ft. as opposed to the 26ft. required.

VOTE: (7-0-0) The motion carried.

MOTION: (Culbert/Doherty) To accept for consideration the waiver to Appendix I-Paragraph BB.11.a – to allow a radius of 50ft (edge of pavement) where a minimum cul-de-sac radius of 63ft. is required.

VOTE: (7-0-0) The motion carried.

MOTION: (Culbert/Doherty) To approve the waiver to Appendix I-Paragraph BB.11.a – to allow a radius of 50ft (edge of pavement) where a minimum cul-de-sac radius of 63ft. is required.

VOTE: (7-0-0) The motion carried.

MOTION: (Culbert/Doherty) To accept for consideration the waiver to Circular Cul-De-Sac Detail to allow the radius coming into cul-de-sac to have a 50ft (edge of pavement) radius as opposed to the required 100ft. and to allow the cul-de-sac to be paved instead of required loam & seed.

VOTE: (7-0-0) The motion carried.

MOTION: (Culbert/Doherty) To approve the waiver to Circular Cul-De-Sac Detail to allow the radius coming into cul-de-sac to have a 50ft (edge of pavement) radius as opposed to the required 100ft. and to allow the cul-de-sac to be paved instead of required loam & seed.

VOTE: (7-0-0) The motion carried.

MOTION: (Culbert/Doherty) To accept for consideration the waiver to Appendix I-Paragraph BB.11 – to allow a hammerhead as opposed to a required cul-de-sac.

VOTE: (7-0-0) The motion carried.

MOTION: (Culbert/Doherty) To approve the waiver to Appendix I-Paragraph BB.11 – to allow a hammerhead as opposed to a required cul-de-sac.

VOTE: (7-0-0) The motion carried.

MOTION: (Culbert/Doherty) To accept for consideration the waiver to Section 11.07(E) (of Subdivision Regulations) to allow the owner to landscape without providing street trees and waiver to Section 303.3 (Site Plan Regulations) to allow owner to landscape without providing a detailed landscape design plan by licensed landscape architect or color rendering.

VOTE: (7-0-0) The motion carried.

Mr. Culbert commented they had worked hard to have landscaping specifications and felt the requested waivers to such flew in the face of common sense. He was not in favor of granting the waiver. Mr. Doherty referenced the plan sheet with landscape and wanted clarification as to whether the waiver was only for the road section from Abacoa to Windham Road. Mr. Gendron stated they typically placed street trees in exact intervals; the plan provided a tree for every unit. He explained they were submitting a complete landscape plan; however, it wasn't stamped by a licensed landscape architect. He noted they called out all the species and provided buffering to the abutting property and coming off the emergency access. They didn't object to having the plan stamped. He pointed out that the only section they were providing street trees was on the section of Abacoa from Windham Road to the intersection with the 15ft. emergency access.

Mr. Lynde said his concern came from Mr. Keach being hesitant about the request. Mr. Keach explained his hesitancy was that he wanted to see a nicely landscaped product and knew the applicant would provide such; however, he wanted to remain objective and was concerned if the project was sold. He noted that a full landscape plan would include a schedule, species and various other items. Mr. Doherty saw that the applicant had included a listing of information (from the required list). Mr. Keach noted that there had been a departure from what was submitted and what the regulations require. Mr. Gowan inquired if the submitted landscape plan contained sufficient information for a bond calculation. Mr. Keach answered yes.

Mr. McNamara agreed with Mr. Culbert and Mr. Keach. He believed they had put a regulation in place for a reason. Mr. Clark stated that the site wouldn't be in a natural state once development was done. He felt it was a small concession to ask the applicant to line the street with trees given the magnitude of disturbance.

Mr. Gowan wanted to know if Mr. Keach was still concerned with the architectural plan and adjusting the footprint dimensions. Mr. Keach answered yes, but believed before building permit applications were submitted, they would be amended. He understood the current submittal showed the variety-type of unit that was proposed to be built. He received three styles of housing and a facsimile drawing of the club house which was slightly different dimensions. He assumed that site specific drawings would be done prior to construction. Mr. Petersen said that was correct and clarified the dimensions of the proposed houses and how they would be configured with the fireplace to maintain the 20ft. separation between units.

Mr. Doherty spoke about the proposed landscaping in the area of the emergency access and wanted to know that it would remain if they had to plan additional street trees. Mr. Petersen discussed what he was proposing for fencing and shrubs to provide separation.

MOTION: (Culbert/Clark) To **DENY** the waiver to Section 11.07(E) (of Subdivision Regulations) to allow the owner to landscape without providing street trees and waiver to Section 303.3 (Site Plan Regulations) to allow owner to landscape without providing a detailed landscape design plan by licensed landscape architect or color rendering.

VOTE: (6-1-0) The motion carried to **DENY** the requested waiver. Mr. Doherty voted in opposition to the denial.

MOTION: (Culbert/Doherty) To accept for consideration the waiver to Section 303-4 Design & Construction Standards for Drainage and Stormwater Management Facilities Subsection B3 – Minimum of three (3) feet of cover shall be maintained over all culverts and storm drainage situated beneath pavement.

VOTE: (7-0-0) The motion carried.

MOTION: (Culbert/Doherty) To approve the waiver to Section 303-4 Design & Construction Standards for Drainage and Stormwater Management Facilities Subsection B3 – Minimum of three (3) feet of cover shall be maintained over all culverts and storm drainage situated beneath pavement.

VOTE: (7-0-0) The motion carried.

The Board then discussed sidewalks. Mr. Gendron stated the sidewalk (5ft bituminous) would start at the first parking area near the first unit and run along Abacoa. Mr. Bergeron questioned if they would be able to maintain the 20ft. depth of parking for each unit (#15-17). Mr. Gendron said he could push the units back if needed.

Mr. McNamara stated the Board was waiting on the results of the water testing and some of the issues from Mr. Keach's most recent letter. Mr. Gendron wanted to know what information the Board wanted regarding the water. Mr. McNamara felt it was best to have as much information as possible. Mr. Bergeron believed Mr. Keach was looking for a favorable response from DES. Mr. Petersen commented it was a big job and they would be on-site for six days. Mr. Keach said he hoped to have acknowledgment that they were able to get twenty gallons per minute of yield. Mr. Petersen described the water testing process. Mr. Keach said he would be comfortable with the Board holding off until such time as they obtain the data.

Mr. Doherty questioned if there could be a 'No Parking' sign on the left side of the hammerhead so vehicles wouldn't be blocked from turning around. Mr. Keach said one of the quid pro quo for him to support the waiver going from 26ft. of pavement to 24ft. was to have no parking on the street.

The case was date specified to the January 24, 2019 meeting. Mr. McNamara wanted information submitted prior to the meeting. Mr. Keach asked for the status of the 60-day timeclock. Mr. Gowan saw from the file that the application was past the 60-days; however, the applicant had consented to and requested a continuance.

PB Case #PL2018-00033

Map 35 Lot 7-106

McDONALD'S USA LLC - 113 Bridge Street - Site Plan Review for the proposed redevelopment of the McDonald's Restaurant which includes upgrades to the existing drive-thru features, renovations to the building & minor site improvements (*Applicant has requested a continuance and will not be heard*)

Mr. McNamara informed the applicant had requested a continuance to the Thursday, January 24, 2019.

NON-PUBLIC SESSION - If requested in accordance with RSA 91:A:3

DATE SPECIFIED CASE(S) – January 24, 2019 (Thursday)

PB Case #PL2018-00033 - Map 35 Lot 7-106 - McDONALD'S USA LLC - 113 Bridge Street

PB Case #PL2018-00028 - Map 15 Lot 8-216 - JAMES PETERSEN BUILT HOMES, LLC - Windham Road

ADJOURNMENT

MOTION: (Culbert/Olsen) To adjourn the meeting.

VOTE: (7-0-0) The motion carried.

The meeting was adjourned at approximately 10:13pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary