

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING MINUTES
December 16, 2019

Chairman Roger Montbleau called the meeting to order at approximately 7:00pm.

Secretary Cindy Kirkpatrick called the roll:

PRESENT: Roger Montbleau, Cindy Kirkpatrick, Paul Dadak, Jim Bergeron, Tim Doherty, Derek Steele, Selectmen Representative Hal Lynde, Alternate Selectmen Representative Kevin Cote, Alternate Paddy Culbert, Alternate Samuel Thomas, Alternate Bruce Bilapka, Planning Director Jeff Gowan

ABSENT: Alternate Richard Olsen

PLEDGE OF ALLEGIANCE

MEETING MINUTES

November 18, 2019

MOTION: (Lynde/Doherty) To approve the November 18, 2019 meeting minutes as amended.

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

OLD BUSINESS

Case #PL2019-00028

Map 18 Lot 12-16

MAKO DEVELOPMENT, LLC – Beechwood Road Extension (from Salem) – Public Discussion of Proposed 15 Lot Subdivision Date Specified to December 16th *(Note: This will not be heard at this time. Awaiting full application.)*

Representing the applicant was Peter Zohdi of Herbert Associates. He explained they had to seek a variance from the Zoning Board of Adjustment ('ZBA'); the board decided the applicant needed to have regional notification. The applicant was in the process of doing regional notification and would return to the ZBA on January 13, 2020.

Mr. Gowan stated the application required a variance. He explained the project was deemed as 'regional impact' under the RSA and required to notify the Town of Salem, NH, Rockingham Planning Commission and the Nashua Regional Planning Commission by Certified Mail. He told the Board there was no need to date specify the item as it was considered a 'discussion'. If a variance is granted and full application submitted, the case will be scheduled (with the Planning Board) and send out abutter notification.

Case #PL2019-00024

Map 35 Lots 10-200, 10-312 & 10-351

NEIL FINEMAN 2018 TRUST & LEMIEUX, Albert III & Christine – Currier Road, Peabody Lane & Bridge Street (Rte. 38) – Proposed 40 Lot Residential Conservation Subdivision with 3 Open Space Lots

Representing the applicants were Peter Zohdi and Shayne Gendron of Herbert Associates. Mr. Zohdi displayed two colored plans for the Board to review (“pink”- showing one access onto Peabody Lane and two accesses onto Currier Road; “yellow” – showing one access onto Peabody Lane and one access onto Currier Road). He described the previous plan reviewed by the Board and how the accesses to the proposed development were amended based on the comments of the Board and Highway Safety Committee (‘HSC’). Mr. Zohdi stated the subject of the discussion was to ask the Board if they wanted the third access. He showed the location of the gas line and pointed out future residents would have the ability to exit the development from either end (Peabody Lane or Currier Road) if anything happened (to the gas line). He said if they Board didn’t want the third access onto Currier Road, he would need to go back to the HSC.

As a member of the HSC, Mr. Gowan told the Board he concurred with the opinion of having an access ‘out’ at either end of the development made sense. In his opinion it made the third access in the middle of the development less relevant. He understood Mr. Zohdi was trying to get direction from the Board to be able to continue working on the plan and create a detailed drainage analysis for review by the Board’s engineer.

Mr. Doherty commented the ‘elephant in the room’ was the gas line that had to be crossed for half of the development. He noted the property owner owned three or four accesses down (one side of the gas line) to Route 38 or down to Doris Avenue. He felt the houses should be able to access their property without crossing the gas line. He said even one house was too many to have on the other side of a gas line; the proposed number (of houses) would be a travesty for the Board or Town to do so. He reiterated the property had plenty of accesses that weren’t being proposed; he was not ‘on board’ with the development.

Mr. Culbert inquired about the depth of the gas line and the depth of dirt above the line. Mr. Zohdi replied they dug test beds and were approximately six feet above the existing gas line. He didn’t understand where Mr. Doherty wanted the development to access. Mr. Doherty replied the applicant had a large piece of property with multiple accesses down onto Route 38 and one onto Doris Avenue and said Mr. Zohdi had to figure it out. Mr. Zohdi suggested reviewing the topography as there were slopes that wouldn’t work. He showed the area where the slopes were in excess of 20%. From the Route 38 side the sheer ledge could be viewed. He commented the requirement was (a minimum of) three feet over the gas line; the proposal showed six feet above the gas line. There were (a minimum of) two accesses out of the development. Mr. Culbert didn’t see a problem with the crossing given the gas line was six feet deep.

Mr. Thomas disagreed with Mr. Culbert. He stated if the line exploded it would come out of the ground; he’d seen it happen and brought up an accident in Lawrence, MA. He said he asked Mr. Zohdi at the last meeting if the pipeline was in Code and was told it was for both depth and width. Mr. Montbleau was under the impression the accident in Lawrence was due to the line being over pressurized. Mr. Thomas said if there is a stress crack in the pipe; the pipe will open up and come out of the ground. He said that’s the downside when building something over a gas pipeline. He reiterated during the last meeting the Board heard from the Mr. Zohdi the gas line was within Code; however, he was concerned. He said he wouldn’t build residences over a line, but it was being done. Mr. Montbleau questioned where it was being done. Mr. Thomas noted there was a senior community in Windham, NH over a gas pipeline within Code; the houses were offset from the line. Mr. Zohdi agreed with the comments regarding an accident. He called attention to a development (Mayflower Lane) approved by the Board where the gas line was at three-foot depth. He pointed out in the proposed subdivision they were showing a depth of approximately five to six feet. He said the whole world developed around gas lines. He added the gas company would also review the plan and either approve or not approve. Mr. Zohdi told the Board they were complying with the Zoning Subdivision Regulations as well as the gas line regulations. He said they weren’t requesting any waivers. For the current meeting he requested the Board’s opinion whether to have two or three accesses in/out of the development. In looking at the “pink” design, Mr. Thomas saw there were more options to exit the development in the event of a disaster.

Mr. Bilapka saw the gas line ran along the back side of lots 53-59. He was concerned about future residents digging/building on their lot and possibly rupturing the gas line. He wanted to know what could be done for it

not to happen. Mr. Doherty replied he was presently working on a project that ran along side the gas line. The gas company constantly has helicopters travel the line to ensure no one works on the line with heavy equipment.

Mr. Doherty spoke about the topography and understood Doris Avenue had a gradual slope. He believed a right-of-way was left for a reason. He walked the area and remarked it was not 20% slope. Mr. Zohdi responded he would be glad to walk the site with Mr. Doherty and a survey crew. He met with the HSC and hoped Mr. Gowan would speak to their opinions. He thought the proposed plan would address the Board's concerns regarding access in/out of the development. He used the Mayflower Lane development as an example (from many) developments with one access in/out. He then used a development on the border of Pelham and Windham containing 197 units on the gas line; in which Pelham approved 29 units in the back of the development. Mr. Zohdi believed he was complying with the Town's requirements and understood the Board's preference was different. He mentioned the applicant's attorney was present for opinion if needed.

Mr. Gowan responded to the question of what would happen if someone were to dig over the gas line. He indicated there were large bollards along the gas line to make the location clear. Any property with the gas line passing through will have the easement clearly indicated. If someone doesn't follow Dig Safe there will be a problem. He reiterated the gas line isn't hidden and would be very visible on the land. Mr. Gowan reported the proposed plans ("pink" and "yellow") satisfied the comments of the HSC who is advisory to the Planning Board. He stated the Planning Board couldn't approve a road in excess of 10% and wanted the Board to be wary of asking for something not achievable. Mr. Gowan added the plan would be going back to the HSC for review who would then submit an official letter of opinion to the Board.

Mr. Montbleau informed there were State and Town regulations the applicant was required to uphold and work within. He felt it was the Board's obligation to work with them. He noted the requirement was three-foot clearance to the gas line and believed having a six-foot clearance would be a lot safer. He spoke about a local golf course (in Nashua) that had a gas line running through its property (club house, road etc.); the location is marked with bollards and signs. He believed the Board should take into consideration there were properties all over the State that fell within the regulations and had roads, businesses and adjacent homes to the gas line.

In reviewing the plan, Mr. Dadak pointed out the gas line doesn't end at Peabody Lane. The line currently runs under Peabody Lane and continues to Route 38 and further between the elementary and middle school. He said it passes by a lot more residences than it appears. He understood there was potential exposure (in the proposed development) and identified the fact there was existing exposure within the Town. Mr. Doherty agreed the gas line went through other areas of Town. He said other areas didn't contain the same amount of rock, ledge and steep slope as the proposal. He said the proposed property wasn't sandy like the development in Windham, NH. He suggested the gas line may be at its current depth because it was resting on ledge; the proposed parcel was unique and not like other parts of Town. Viewing the property from Route 38 the ledge can be viewed.

Mr. Montbleau believed the Board needed an opinion from their engineer. Mr. Gowan replied they had not yet arrived (due to a schedule conflict with another meeting; they would arrive later in the meeting). Mr. Montbleau stated he would need to hear from the engineer in response to the concerns being raised regarding the pipeline. To recap, Mr. Montbleau stated he wasn't an expert or an engineer; however, when someone is following all the State Codes the Board had to be fair to the applicant.

Mr. Bergeron understood the request was for a Special Permit under the Innovative Land Use Regulation that were controlled by Statute and hinged upon a lot of things the Board hadn't addressed yet. He felt there was a presumption by the applicant that the Board would grant a density offset; however, they hadn't gotten to the point of making that determination. He agreed the Board should wait and possibly conduct another site walk to check for another access (as brought forward by Mr. Doherty). He cautioned the Board with how they proceed with the case. He pointed out it fell under Innovative Land Use the Board and the Board could just say they didn't like the proposal and the applicant should come back with a conventional subdivision. Mr. Gowan replied that would be a problem. Mr. Bergeron disagreed. Mr. Gowan commented the Board established a density for

the applicant to move forward. He believed if the Board denied the plan they could be sued. Mr. Bergeron answered Mr. Gowan by commenting when the Board first saw the plan it was presented by a different engineer as a 35-lot development. Mr. Gowan noted the first plan would have been allowed 36 lots if the owner received a Letter of Map Amendment from FEMA. Mr. Bergeron described the initial review of the first plan, which they agreed to consider under Innovative Land Use as a conservation subdivision; however, in no way did they say it would go down that road. He stated they didn't have to go the conservation subdivision route as there were issues with lot sizing and well radii that were contrary to the New Hampshire Water Well Board rules. He noted there were exceptions in Zoning, but nowhere did it say they had to reduce lots by 50-70%. He added density offsets were completely different. The Board can 'alter' lot sizes but no to the point they would be unsafe or not coincide with State guidelines. Mr. Bergeron expressed the overlapping well radii and water would be big issues to him as would the need for multiple easements. He wanted to see more information.

Mr. Zohdi reiterated the reason he was in front of the Board was to find out if they wanted the additional access onto Currier Road. He said the subdivision would go through; they could negotiate (with the Board) or go to court. He wanted the opportunity to finish and submit the plan to the Board. He noted if he wasn't confident about getting through the water board, he wouldn't do the subdivision or waste anyone's time. He wanted the Board's direction. During the past forty years working with the Town he's always negotiated. Mr. Zohdi stated if the Board wanted a community well system all they had to do is tell him and he would do it. He questioned if having a community well would be good for the neighbors. He said if for some reason it failed everyone would be out of water. If the development had individual wells and there was a problem possibly only one or two would be out of water.

Mr. Gowan pointed out he didn't suggest the total number of density offsets were 'set in stone'. The Board had complete authority to say the applicant could only have 36 lots. He thought there may be a problem for the Board to say they won't approve a conservation subdivision given they had approved many of them for lots similar in size. He didn't want to see them get sued. He strongly advised the Board to let the applicant finish the 'access' portion of the plan because it would affect drainage. Mr. Gowan stated the yield was established on the same tract of land using the same regulations; it doesn't change simply because there's a different engineer.

Mr. Bergeron stated there had been conservation subdivisions that didn't receive anything more than the yield plan although the Board gave some concessions (frontage, land swap, connectivity). He visited the Sky View development (off Spaulding Hill Road) and found it to be a beautiful conservation subdivision. That development had their own water system and stated he would do everything he could to make sure water quality is maintained. He stated there were strict standards the proposed development's association would need to abide by that are controlled by the Department of Environmental Services and New Hampshire Water Well Board.

Mr. Lynde expressed his preference for the plan showing three access points ("pink"). He was concerned with traffic funneling from Peabody Lane onto Currier Road. He preferred and suggested making the access from Peabody Lane an ingress only.

Mr. Zohdi told Mr. Bergeron if they had to have a community well, he would be glad to do so. Also, in response to the Board's concern with access, the plan showed an additional access to Currier Road. He believed the Board should hear from the Town's engineer regarding access from Peabody being ingress only. He reiterated the question presently in front of the Board was if they preferred two access points or three access points. In his opinion, the additional access (600ft-700ft) didn't provide anything. He pointed to an area on the plan that was reserved for a community well (public water) if that's what the Board determined they would like. He wanted to know what else the Board would like to see on the plan. Regarding the number of units, Mr. Zohdi understood the Board hadn't made a decision yet. The plan showed the number of units he would like to be granted. Mr. Bergeron believed there were other potential accesses the Board could discuss after hearing from the abutters.

PUBLIC INPUT

Mr. Dennis Hogan came forward to speak on behalf of Priscilla Pike-Church of 2 Peabody Lane. He read from a prepared statement. Ms. Church believed they would be better off with a conventional subdivision and hoped the Board wouldn't allow a conservation subdivision. She noted RSA 307-93 – Purpose states conservation will not adversely impact neighboring properties. She felt a conservation development would impact quality of life on her quiet dead-end street of only six homes. She believed the 'open space' given to the Town would be useless. More important building houses so close together with poor drainage and overlapping wells/septics would be unfair to the future owners. Ms. Church indicated her existing driveway was flat and 22ft in length. She wasn't sure if she wanted a longer driveway or one with an incline. She also wasn't sure if she wanted more lawn or the additional slope. She didn't want to pay more in taxes for things she didn't want or need. Ms. Church hoped for no access off Peabody Lane and wasn't happy about having all the cars from the development coming onto her road. She suggested there may be a way to have only 3-4 homes access Peabody Lane. She thought it would be nice to see two access roads onto Currier Road and hoped there would be a way to have access onto Route 38, since there may be one eventually.

Mr. Joe Norkiewicz, 14 Island Pond Road came forward and thanked everyone on the Board and others who attended the site walk. He was concerned with the reconstruction of Peabody Lane. He didn't realize until the site walk that the development's access road (from Peabody) would have vehicles point in the direction of his bedroom. He wasn't against Peabody Lane being reconstructed but wanted his request to deflect vehicle traffic from directly facing his home to be known. He suggested possibly having trees or something similar. Mr. Norkiewicz spoke about his concern regarding water drainage. He explained there was a retention pond directly in line with Island Pond Road; since it was installed no one has checked to ensure drainage isn't coming over the road. He believed there had to be some type of agreement to hold the contractor responsible for approximately 2-3 years to see what water problems may arise.

Mr. Zohdi told Mr. Norkiewicz he would be glad to meet him and Mr. Gowan to discuss plantings. He commented the HSC wanted to go to the site and see the staked location of the road. In reference to retention areas, Mr. Zohdi explained he would create a design for review by the Town's engineer. After engineering review the design would be forwarded to the State Department of Environmental Services for Alteration of Terrain review. They were open to hearing what restrictions the Board wanted to place on the plan.

Mr. Bruce Jewett, 4 Peabody Lane came forward and thanked the Board for conducting a site walk. He was disconcerted about having a new plan introduced from what was discussed during the site walk. Previously his concern was traffic exiting the development with vehicles facing his front door. He said it appeared to be addressed during the site walk; however, the plans being displayed appeared to have the access road in a different location. Mr. Zohdi pointed to the access road from the development onto Peabody Lane and stated it hadn't changed since the site walk was conducted. He said the section of road they walked would not be changed. He added the Fire Chief specifically wanted to see the driveway (for Ms. Church) be improved better than the existing, which he agreed to do. The plan will then go back to the HSC for review and comment. Mr. Jewett ended by responding to an earlier comment regarding a resident losing their well. He said if one person lost their well it would be too many.

Mr. Paul Diamantopoulos, 11 Peabody Lane expressed his preference of having three accesses. He agreed with Mr. Lynde about having the access from Peabody be a one-way into the development because it would reduce traffic for current residents of Peabody Lane. He told the Board he had issues and concerns about the additional wells and possible problems. He understood there would be an additional retention pond constructed; however, he didn't know how it would help him on the other side of the development. During the site walk he asked if his lot could be reviewed and was told they were only walking the road. Mr. Diamantopoulos saw there was a 25ft. no-buffer proposed along the rear lots. Using the displayed plan, he showed the location of his lot and how the 25ft no-cut buffer was only along one of his property lines and not along the line (abutting the gas line). Without having that buffer would open up his lot and take away his privacy. He told the Board the gas company came through every couple years and clear-cuts the easement. Now if the proposed lots clear their land there

will be no vegetation to soak up drainage flowing toward his lot. He said if the lot lines couldn't be adjusted, he would like natural vegetation or a row or two of Arbor Vitae along the property line. Mr. Diamantopoulos was concerned the additional development would cause water would get into his home. Mr. Zohdi had no problem extending the lots. In the past the lots were smaller, and the Board had asked him to adjust the size. He told the Board he had no control over what the gas company cleared within their easement. He was glad to discuss adding vegetation onto Mr. Diamantopoulos' lot.

Using the displayed plan, Mr. Diamantopoulos showed the two proposed abutting lots to his property. He suggested eliminating them so vegetation could grow naturally. Mr. Zohdi replied he wouldn't eliminate the lots, but he would reduce the size of the lots if the Board advised. Mr. Diamantopoulos favored natural vegetation to help with drainage versus new plantings. He appreciated the 25ft. no-cut area given his lot was being impacted on two sides. Mr. Zohdi stated he would make the two abutting lots smaller so the buffer would be increased. Mr. Montbleau stated the Board would take it into consideration.

Ms. Suzanne Larson, 39 Currier Road told the Board she previously spoke about the water. She strongly urged the Board to consider against a conservation development as she felt it went against the spirit of conservation developments. She felt the land that would be set aside for open space couldn't be built on anyway. She urged the Board to conduct another site walk to see if there was a possibility for another access point to Doris Avenue or to Route 38. Ms. Larson felt the development was being pushed in. There were issues with the gas line and with water; the land has a lot of challenges and should be considered for a conventional development. She said there was no reason why they had to do a conservation development on the land. She agreed an owner had a right to build but the proposal was not keeping with the spirit of what a conservation development was intended. Mr. Zohdi stated there was a conventional development plan in front of the Board. If they would like a conventional development, he had no problem reverting to the old plan. He said when the Board reviewed the conventional and conservation plans the deal was to give a portion of the parcel to the Town to add to the abutting Town land. Ms. Larson asked if it was possible to compare the two proposals. Mr. Zohdi replied the plans were at the Planning Department; he would be glad to show her the plans although he felt after she reviewed the conventional plan, she would support the conservation plan.

Ms. Kim Jewett, 4 Peabody Lane believed the neighbors would like to meet with Mr. Zohdi to see the conventional versus conservation plan to understand what it meant to them. She was in favor of the third (center) road. For minimal impact, she requested Peabody not be used during construction of the development.

Mr. Montbleau reminded the Board the plan was on the table to consider if they preferred two or three accesses. Mr. Gowan recalled at the site walk there was discussion about how Ms. Church's driveway would look. He commented if people were going to go back to the site the Board should schedule another site walk. Mr. Montbleau felt the Conservation Commission should be invited to any future site walk to offer input.

Point of Order – Mr. Doherty questioned if the case had been brought back to the Board. He said if it was still open to the public the conversation was inappropriate. Mr. Montbleau replied Mr. Doherty was correct. He kept the input open to the public.

Mr. Dan Joyce, 46 Currier Road understood the plans showed a retention pond directly behind his lot. He wanted to know if it would be covered or not. If it was uncovered he wanted the Board to know there were other areas in the vicinity where the mosquito population is considerably high because of sitting water so adding an uncovered retention area would be a serious quality of life concern as he has two young children. Even a covered retention pond would be a concern because of drainage. He spoke about his property and explained when it rains his yard is significantly affected. Mr. Joyce explained currently vehicle headlights shine directly into his house from traffic traveling along Currier Road into Peabody Lane. He wanted to know if there was any way to prevent it from happening, such as by planting vegetation. Mr. Joyce stated although he recognized an owner's right to develop, he was disappointed it would be because he moved to Pelham because of the quiet neighborhood. He inquired what impact the additional houses would on the value of the existing homes in the area.

Mr. Steve Keach of Keach Nordstrom (Board's engineering firm) came forward to speak to the proposed development. He understood from conversations with Mr. Gowan the HSC had the opportunity to weigh in on the proposal. He noted at the conclusion of the site walk a sub-group walked the corridor of the accessway that shows on the "pink" plan that remained after the David Mendes development over the hill. He had concerns about the constructability with that area because there was no place to relieve water. He believed everyone had to listen to the HSC. Given the choice between the two plans, Mr. Keach liked the proposed realignment of Peabody Lane. Conceptually either of the drawings (and what was presented by Mr. Gendron during the site walk) would be a marked improvement. In the question of whether it should be a conservation or conventional subdivision, he wasn't sure if he knew enough about the conventional proposal because he hadn't seen it developed beyond a yield plan but presumed it would be the same density. He proposed allowing the applicant to achieve the density that the Zoning Ordinance suggests the land could support given there were fragile soils and steep topography in the area. From his perspective drainage was paramount. Mr. Keach mentioned he spent additional time after the site walk reviewing the lay of the land to understand its challenges and existing drainage which would be important regardless of which plan was chosen. He believed some of the existing problems could be improved with good engineering and understood the applicant recognized it. Mr. Keach commented the Zoning Ordinance provided for two alternatives. In his way of thinking there was a great deal of challenge to develop the land that utilizes the southerly portion of the land and felt they should try to leave it alone and stay out of that area. He said the conservation subdivision achieved that outcome.

Mr. Doherty asked Mr. Keach to look at topography of the entire parcel as there was another access to the property from Doris Avenue (northerly end of the parcel). He wanted to know if the grades could be met for access out to prevent development on the other side of the property. He said if it was impossible to engineer, he would have to change his position regarding the development. Mr. Doherty said the plan may look better with larger lot sizes and showing septs and wells within the lots; but when it was done it inadvertently eliminated open space to the abutter's properties. He noted there was a minimum of sixteen lots that didn't have direct access to open space. By making the lots bigger it eliminated open space and made the need for a no-cut buffer. He spoke about the difference between the proposal and the Garland Woods development. The frontage lots are usually preserved to the maximum extent possible; in this proposal the two frontage lots on Peabody Lane didn't seem to show preservation. Mr. Doherty commented within the Innovative Land use an applicant would barter back and forth and negotiate with the Planning Board to get the best possible plan. He said they shouldn't come in 'armed with a lawyer' and immediately threaten the Board with court. He said that wasn't the right way to get a good plan for the neighborhood. He said the Board has been willing to work with all the developers to get the best plan to fit neighborhoods. He noted the plan was submitted for a conservation subdivision under Innovative Land Use. Mr. Zohdi responded by pointing out he didn't own the land and wasn't developing the land; it wasn't his intention to bring a lawyer. His point was for the Board to tell him how many accesses they wanted so he could design a plan and drainage to be brought back to the Board. If at that point the Board didn't like the plan he would be out of the process. During the last forty years of coming in front of the Board he pointed out he hadn't been to court even twice. Ideally, he wanted direction from the Board so he could design a plan. The current plan doesn't have finished engineering or drainage because he needed to understand what the Board wanted for access; either two points of access or three. Once that is determined he could submit a plan for the Board to consider whether or not they wanted a conservation subdivision. Mr. Zohdi mentioned the Fire Chief would like three access points. He said he would be bringing the plan back to the HSC but understood ultimately it was the Board who would make the final decisions. Mr. Doherty said he couldn't see himself having the applicant only talk about one thing when there were other items, he felt were important to bring up at this time. He didn't want the applicant to circumvent the meeting and have the Board wait to speak about other important items. He wanted to have everything discussed upfront so the engineer could work on creating a good plan for the neighborhood.

Mr. Montbleau heard a lot of discussion about the plan going back to a conventional subdivision. He felt the Board should give the applicant direction regarding the type of subdivision and the number of accesses (two or three). He personally thought having three ingress/egress points was important with either a conventional or

conservation development to keep as much traffic off Peabody Lane as possible. He believed there were a lot of benefits with a conservation development such as proximity to wetlands, preserving Wetland Conservation Districts ('WCD') and other items of concern. He said they wanted to give the neighborhood the best possible subdivision because the land would be developed. He wanted to know if the Board would like to conduct another site walk and/or give the application direction.

Mr. Lynde recalled walking further into the property (from Currier) and wanted to know if Mr. Keach saw problems in that area or was doubtful going in that direction. After the site walk Mr. Keach spoke with Mike Gospodarek of Herbert Associates to find out how he would deal with water on the down grade side. He believed the drainage would work if it went downhill and tied into the existing closed drainage system (westerly side of Currier). The question was what the discharge would do once it got to that area. Mr. Keach stated if the Board wanted three points of access, he was certain it (drainage) could be made to work. Mr. Lynde explained he like the third access because he wanted to minimize the traffic onto Peabody Lane and thought it would be better/safer to have vehicles exit directly onto Currier Road. Mr. Keach agreed with the middle access (onto Currier) being purpose driven. Three access points would minimize the use of Peabody. He said for Peabody (in its current condition) to assume any more volume it would need significant realignment both vertically and horizontally as presented during the site walk. Mr. Lynde stated he favored a conventional subdivision.

Mr. Doherty reviewed the plan and questioned if it was possible to have no access onto Peabody by eliminating the two lots (at Peabody) and having the road end in a cul-de-sac. By doing so he said there wouldn't be a need for any work or disruption to Peabody. The area could then be used for a retention area. Mr. Zohdi replied when he started working on the subdivision he didn't want to go through Peabody Lane and previously proposed a cul-de-sac. However, the HSC didn't like the cul-de-sac and wanted the additional access to go through Peabody Lane. He said if he didn't have to go through Peabody Lane that area of the development could be open space. Also, in response to the open space the previous plan showed open space behind the lots; however, the abutters had convinced the Board the lots had to extend further back (to the lot line) therefore he changed the lot size (to be larger). Mr. Zohdi pointed out they were doing everything the Board wanted, they simply needed direction so the drainage information could be done. He understood the Board may not be able to make a decision at this time and may possibly want an additional site walk.

Mr. Gowan told the Board the plan had gone in front of the HSC twice (once a couple years ago). He believed the HSC (consisting of members from the Fire Department, Police Department along with the Road Agent and himself) were good enough with planning to see the road needed to go through (to Peabody). They believed cul-de-sacs were bad planning; the Town needed connectivity. He stated Peabody Lane was one of the most 'messed up' roads in Town. He loved it when the Town puts the responsibility on developers to correct problems that the Town (taxpayers) would otherwise have to pay for. He believed Peabody Road needed to be entirely rebuilt and doing so with the development would hugely remedy drainage problems. He said if the plan is approved the Road Agent plans to go in and fix the middle portion of Peabody Lane. He urged the Board to put the developer 'on the hook' for improving the problems on the southerly end of Peabody Lane. Mr. Gowan indicated the Fire Chief (during the last HSC meeting) specifically stated they couldn't support having a cul-de-sac. He understood the HSC was 'advisory', but he hoped the Planning Board never stopped listening to them.

Mr. Doherty asked why the Board didn't see an opinion or proper notification from the HSC. He read their letter but didn't see anything saying they didn't want a cul-de-sac. Mr. Gowan replied they made that recommendation two years ago. He noted they would always recommend putting through roads in. He noted meeting minutes from the HSC were on-line or he could provide them to the Board. He also noted the meetings were public and open for people to attend.

Mr. Montbleau wanted the Board's opinion and direction for the applicant. Mr. Dadak wanted to know the difference between the number of lots in the conventional plan versus conservation plan. Mr. Zohdi indicated there were four additional lots in the conservation plan. Mr. Dadak didn't see four lots as much of a difference

between a conventional or conservation development but between the two would choose conventional. He was in favor of three accesses.

Mr. Bergeron saw progress and direction to the applicant. He indicated Mr. Zohdi had shown tremendous effort to cooperate with the Board to resolve the questions and abutter's concerns. At this time, he wasn't ready to say which plan he preferred. Using the conservation subdivision formula, he said they could remove the two lots abutting Peabody Lane from the density bonus and used them for drainage. He also said the access from Peabody Lane could be ingress only. He was in favor of conducting an additional site walk with engineers, developers and the abutters. Mr. Bergeron stated the only way he would go with a conservation subdivision was if there was a safe water supply and well system; he wouldn't be able to explain allowing individual wells/septics on half-acre lots. In summary his suggestions (at this point) would be: 1) eliminate the two lots abutting Peabody Lane and make Peabody Lane ingress only, 2) work with the abutter (Mr. Diamantopoulos) regarding buffering, and 3) three access points. He wanted the opinion from the Conservation Commission because if the open space had no public 'good' he would pull his opinion back to a conventional subdivision.

Mr. Montbleau asked if there were any members of the Conservation Commission present to speak. He wanted the commission to be in tune with the items for a conservation subdivision. He felt a conservation subdivision would have a smaller impact on the neighborhood, increase the buffer and provide open land which would be a better design than a grid (conventional development).

Two members from the Conservation Commission came forward; Al Steward and Dennis Hogan. Mr. Hogan indicated it was the committee's great fortune during their last meeting to have people come in and express displeasure regarding a petition warrant article that would eliminate conservation subdivisions. He believed part of it came from the proposed project which he felt was being confused with a project on Nashua Road.

Point of Order – Mr. Doherty stated the comments were totally irrelevant to what was going on. He didn't think Mr. Hogan should be talking about what happened at a Conservation Commission meeting and bringing it to the Planning Board. He felt it was absurd; there were two members of the Conservation Commission who couldn't talk for the commission. He said they could speak as members of the public that were part of the commission. Mr. Hogan understood the point. Mr. Montbleau wanted to know, from their experience, what they considered to be the benefits of a conservation subdivision for the project. Mr. Hogan replied he had been on the commission since the middle of last December. He was aware of three projects that he felt had gone well: Atwood Road, Waterford Estates and Sky View Estates. In those developments after negotiation (between the commission and developer) there was quality land donated to the Town and there was discussion regarding the number of houses that would be developed meeting the requirements for land. He questioned why the commission wasn't involved with the proposed development and was told it was because there was no wetland impact.

Mr. Gowan mentioned there would be a public hearing regarding the petition and other Zoning questions on January 6, 2020. He recommended the Conservation Commission meet as a group and form an opinion. During that process members of the commission could come forward and members of the public to speak. Mr. Hogan informed he was in attendance to support his friend who was an abutter. He did not attend the meeting in his role as a Conservation Commission member. It was explained to him the language in the Conservation Subdivision might be in question.

Mr. Steward stated the idea behind a conservation development versus conventional was substantial improvements to the open space in the Town through creativity of the project. He added they have been able to connect Town properties and noted Wolven Park was next to the proposed parcel. From what he'd seen the proposal (as a conservation development) would donate approximately fifty acres to the Town as open space, which would substantially increase the size of Wolven Park. Mr. Steward felt the area of the development was desirable for a conservation development because it was lowlands that would protect wetlands and help filter out water and drainage. It would also supply wildlife considerations and give the ability for people to observe

the area through the addition of trail systems. He told the Board through acquiring land and connecting parcels (through conservation developments) people could now walk from Pelham Veteran's Memorial Park up to Gumpas Pond (approximately three miles of trail). He expressed how conservation subdivisions were a significant asset to the community as well as developers. He believed they should continue.

Mr. Bergeron disclosed he was not an upfront fan of conservation subdivisions for reasons that had to do with the language (and discussed later). He said if the Conservation Commission were to make a positive recommendation he would probably lean back to (the proposed development) being a conservation development provided Mr. Zohdi came up with a community well system. He believed they could probably have minimal impact on existing neighborhoods, which the abutters might like better than taking the whole piece as a conventional development.

Mr. Lynde was in favor of open space and land the Town had acquired. However, he didn't see that the land to be donated had anywhere to go. He also didn't know if it would be good land to have. He said the Wolven parcel was a nice piece. Mr. Lynde pointed out there had been times in which conservation projects came in front of the Board of Selectmen to accept property and they voted not to accept it because they couldn't see a benefit to the Town. He was interested to know if the proposed land had value to the Town.

Mr. Doherty would like to hear from Mr. Zohdi about the other access out to make sure it was definitely not doable. He saw the proposed third road came down past the Lemieux property which he believed was the location of the existing trail access. If that access is going to have two-way traffic, he wanted the engineer to find out if it would still be possible to continue the trail from Garland Woods (across the street). He informed it would be problematic if the trail couldn't be continued because of the road placement; the trail system had to be continued if they move forward with a conservation subdivision. Mr. Zohdi understood the Board's comments. He commented if they were going to move forward with a conservation subdivision, he had to go back to the HSC with Mr. Gowan and Mr. Keach. He assured the Board once he received all comments and direction, he would bring another plan to the Board for review. Mr. Doherty pointed out there was another access to Currier Road further south in the original yield plan that may need to be looked at. Mr. Zohdi replied he would look at the previous plan. Mr. Doherty told Mr. Zohdi he couldn't commit to a conservation development if it didn't keep the connectivity of open spaces since they were designed to interact with each other. He said they would need to make sure it could be achieved.

Mr. Gowan felt the Board had given very good direction and suggested they date specify the plan and determine whether or not there would be a site walk.

Ms. Kirkpatrick inquired what they wanted to accomplish by conducting another site walk. She wasn't on the Board during the previous plan review and said it would be hard to envision a conventional plan without seeing information for it.

Mr. Dadak questioned the location of a trail. Mr. Zohdi replied if they were to move forward with a conservation development and had to have a trail, they would include a trail. He said he would review the aerial and show the trail. He added that the conventional plan was in the Planning Department; he was happy to show it to the Board.

Mr. Zohdi told the Board he would like to continue with the conservation subdivision and work with Mr. Keach. He noted there would be approximately fifty acres deeded to conservation that contained a well easement. However, if the Board wanted him to work with a conventional subdivision he wouldn't object. Mr. Bergeron was aware (as per Article XV) open space could be used for a well easement. He told Mr. Zohdi he couldn't ask for an answer regarding the proposal since the Board was provided with two new plans to review. Mr. Montbleau asked if the Board would agree to allow Mr. Zohdi to stay on the course of working with a conservation subdivision based on the fact, he was willing to put in a community well. He pointed out the community well was a big change. He also pointed out the lots were larger, the setbacks from neighbors were

better and the applicant was willing to do things for the neighbors to give them privacy. He noted Mr. Zohdi offered to take two lots off the side abutting Peabody Lane. He asked if there was an agreement regarding three entrances/exits. There was no objection. Mr. Zohdi was happy with the Board's direction.

Mr. Keach indicated he had been reviewing the plan during the Board's discussion to address Mr. Doherty's question regarding another access (to Doris Avenue). He asked him to look at the topography shown on sheet 19 of the full set of plans. If a road was engineered to connect to Doris Avenue it would look similar to Interstate 93 or 89 because of the topography.

Mr. Bergeron wanted confirmation from the Selectmen if they would accept the proposed property (to be deeded to the Town). He said if they felt there was no value the Board would need to know it now. He commented that's what was wrong with Article XV. Mr. Zohdi told the Board he would be glad to meet with the Board of Selectmen and show a preliminary plan that deeded approximately fifty acres to the Town. Mr. Gowan advised the plan should go to the Conservation Commission prior to the Selectmen; the Selectmen don't make decisions regarding land without first receiving a recommendation from the Conservation Commission.

Mr. Cote made a point about connectivity by suggesting the applicant show the Planning Board where it would be located. He saw the property dead end on the conservation map; it didn't connect to anything.

The Case was date specified to February 3, 2020.

NEW BUSINESS

Case #PL2019-00030

Map 41 Lot 6-133

NICHOLAS, Barbara M. (Owner) / HOWE, Kevin R. (Applicant) – 6A Pulpit Rock Road – Minor Site Plan Review to operate a Used Car Dealership (Variance approved by ZBA 10/17/19 Case #ZO2019-000250

Ms. Kirkpatrick read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

The applicant Mr. Kevin Howe came forward. He provided the Board with additional photographs of the location pre- and post-clean up.

Mr. Montbleau stated he had seen the location prior to clean up when it contained junk cars and was a horrible mess. He understood the applicant wanted to open a used car dealership. They had completely cleaned the property and beautified the area by turning it into a professional location.

Mr. Howe told the Board he and his wife resided on West Shore Drive since 2008. They've owned several rental properties and decided to take on the project of cleaning up the land for the woman who owns it. His plan is to open a used car lot. He stated he operated a used car lot in good standing for close to twenty years in Massachusetts. He was looking to do the same thing in Pelham.

Mr. Bergeron asked for the location of his Massachusetts business. Mr. Howe replied it was located at 297 Tanner Street, Lowell, MA.

Mr. Gowan indicated the applicant had gotten a little ahead of themselves and done work on the lot. The Planning Department considered the application as a minor site plan and asked if the Board agreed. There was no objection. He suggested the Board accept the plan for consideration.

MOTION: (Lynde/Bergeron) To accept the plan for consideration.

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

Mr. Doherty questioned if the entire parcel was gravel or road base. Mr. Howe replied it was road base. Mr. Doherty inquired if the applicant would work on the vehicles on site. Mr. Howe answered no; it would just be a used car dealership. He will only be selling vehicles. No work will be done on the premises.

Mr. Culbert wanted to know (from the photographs) who Pro Turf Landscaping was. Mr. Howe replied Pro Turf was the abutter located next to the lot he would use.

Mr. Montbleau opened discussion to public input. No one came forward.

Mr. Doherty wanted to know about lighting on the lot. Mr. Howe stated Liberty Utilities required a pole for electricity. The pole has been installed and the electricians will come to connect electricity underground to the trailer. After the electrical inspection Liberty Utilities will connect to the trailer. Mr. Doherty questioned if the lot would have any lighting on posts or on the building. Mr. Howe replied there was existing lighting from the previous car lot; he won't add any lighting except for possibly lighting the building or installing a light over the sign. He wouldn't have anything to disturb neighbors. For the record, Mr. Gowan informed any lighting would be required to be Dark Sky compliant. He will review any lighting with Mr. Howe.

Mr. Gowan inquired how many vehicles would be on the lot. Mr. Howe believed there was room for approximately thirty-five vehicles, but he would keep it at about thirty-three. He stated the location wouldn't be an eye sore like other locations in Town. He pointed out he had already done a lot of work to clean up the lot and improve the neighborhood. He intended to keep it as such.

MOTION: (Lynde/Bergeron) To approve the site plan conditioned on there being not more than thirty-five vehicles (on the lot) for sale.

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

Case #PL2019-00029

Map 31 Lot 11-33 & Map 31 Lot 11-37 Access Lot

KLECZKOSKI, Charles Jr. (Owner) / AMERICAN TOWERS, LLC (Applicant) – Off Spring Street - Site Plan Review for a Wireless Communications Facility, pursuant to Section 307-58(B)(3) of the Town of Pelham Zoning Ordinance and Site Plan Regulations & a Special Permit pursuant to Section 307-40(A)(1) of the Ordinance relating to wetlands for the construction, operation, and maintenance of a Wireless Communication Facility

Ms. Kirkpatrick read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Representing American Towers was Attorney Edward Pare of Brown Rudnick who came forward with Luke Hurley of Gove Environmental Services. Using a plan set, Attorney Pare showed the location of the proposed parcel which was landlocked and approximately ten acres in size abutting Dracut, MA. The parcel has a Spring Street address and also abuts Blueberry Circle. He provided a brief history explaining the initial location was proposed near the Dracut, MA town line; however, after doing a few balloon tests and running into abutter and wetland issues they relocated the site to access the property through Blueberry Circle cul-de-sac in Pelham. Attorney Pare informed they had obtained variances 2018 from the Zoning Board of Adjustment for the use of the site for a cell tower and relief for height, frontage, setback and fall zone. They were currently seeking site plan approval and a special permit because some of the access road runs through wetland buffer zones. During submission of the application Attorney Pare provided an information packet which included the recommendation

of the Conservation Commission for conditional approval. He noted all the conditions were met and placed on the plan currently in front of the Board. Attorney Pare informed the Board they had appeared before the Highway Safety Committee ('HSC') and obtained their favorable recommendation with conditions that were accommodated and also included on the plans. He noted they obtained two letters of strong support, one from the Pelham Fire Chief the other from the Dracut Fire Chief. He explained the fire chiefs were in support because they had reached agreement with both towns to provide free space on the tower for public safety equipment.

Attorney Pare reviewed the proposed plan. He showed the gravel drive access obtained through easement as well as the compound area. He noted under State Statute relative to telecommunication facilities they were required to notify all municipalities within twenty miles of the parcel; they have been duly noticed of the tower installation. He stated they would like the Board to accept the plan and brought Mr. Hurley to address any questions pertaining to wetlands. In summary a gravel drive would access the tower compound. The tower will be used for wireless coverage for T-Mobile and two public safety agencies. It was noted T-Mobile needed a 125ft. tower; however, they agreed to extend the height to 150ft. at the request of the public safety officials.

MOTION: (Bergeron/Steele) To accept the plan for consideration.

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

Mr. Culbert referenced an email submitted by an abutter (Brian Carton of 7 Falcon Drive). It indicated abutter notification may not be complete as it didn't include the owner at 64 Blueberry Circle. Attorney Pare replied the owner of 64 Blueberry Circle was named as co-applicant; there was an easement agreement to use their parcel for an access drive to the tower. Mr. Doherty clarified the owner of 64 Blueberry Circle was involved with the plan and therefore not an abutter.

Ms. Kirkpatrick also referenced the abutter's letter and questioned if the proposed property had deed restrictions that prohibit building the proposed access road. Attorney Pare replied there was a restriction on the site plan approval that had been addressed and satisfied through the HSC. He said there was a requirement to have a turn around for public safety vehicles; this was addressed with the fire department by including a turn around.

PUBLIC INPUT

Mr. John Masterson, 58 Blueberry Circle came forward and told the Board he was opposed to the tower. He said he had been in front of all the Town boards and discussed his opposition for reasons such as: 1) wetlands, 2) one ingress to Blueberry Circle creating additional truck traffic accessing the tower (for each cell company that uses the tower there would be two trucks per month - possible four cell companies will use tower), 3) safety concerns for children in neighborhood, 4) concern with issues of house values diminishing, 5) visibility of cell tower, and other items. Mr. Masterson stated he and his room mates purchased the home based on the neighborhood and quiet location. He was concerned the cell tower would open the area up to development in the future. He believed the owner was using the cell tower to build a road because they owned additional land that would eventually be developed into house lots. He added no one on Blueberry Circle wanted or needed a cell tower in that area. He said his cell phone worked fine (with Verizon) and didn't feel a cell tower needed to be located in the center of Pelham.

Mr. Montbleau understood the Fire Department indicated they had bad service in that area. Mr. Masterson believed they would say they had bad service because having the tower would benefit the Fire Department and the cell tower company. He told the Board the cell service worked in the area and questioned why they needed a cell tower.

Mr. Dadak recalled there had been a cell tower proposal off Dutton Road for which the Board conducted a site walk. He suggested they walk the proposed site to obtain further information. Mr. Gowan believed the Board

had walked the proposed site a couple years ago when the balloon test was conducted. He clarified the point about the Fire Department's use of the tower; they use radios for dispatch not cell service.

Attorney Pare explained the 'use' issue, design and approval of the property to be used for the telecommunications monopole was decided by the Zoning Board. He said they had gone in front of other Boards for discussions, review of multiple sites and alternate locations etc. He pointed out Verizon wasn't an applicant at present but may seek to co-locate in the future. Attorney Pare discussed how the tower could be used by the Fire Department; they will install equipment so their two-way radio/network would function. He said both Dracut and Pelham have the need. Regarding the road, he noted it would be a gravel drive not built to road standards. He stated there were slope issues and they would be going through some wetland buffers; any changes would need to go back to the Town boards. They were using the access parcel so the tower wouldn't be as visible for all abutters in the area given it was almost blanketed by trees. Attorney Pare reiterated the top height would be visible; however, it wasn't for their use, it would be used strictly by public safety officials. He noted they only needed a 125ft. pole. All the things being raised by the abutter were previously discussed and considered at the Zoning Board; a Use Variance was granted (subject to conditions). The applicant had also met with the Conservation Commission and HSC. With respect to the use of the cul-de-sac, there was a restriction placed on having additional driveway cuts unless a turn-around is provided. Attorney Pare stated they provided a turn-around to the satisfaction of the public safety officials and HSC and would pave additional portions so the fire trucks would have an easy turn-around.

Mr. Montbleau inquired about the fall distance of the tower. Attorney Pare replied they received variance relief from the Zoning Board. They placed the tower away from Blueberry Circle and as far away from the Dracut, MA abutters as possible. They abut conservation land owned by the Town which would be the closest fall zone. The tower is set back 483ft from Blueberry Circle so neither the fall zone nor setbacks would affect residents on Blueberry Circle.

Mr. Culbert left the meeting.

Mr. Larry Horgan, 32 Blueberry Circle asked the Board to read aloud correspondence submitted by Brian Carton.

Mr. Montbleau read aloud the email (dated December 16, 2019) submitted by Brian Carton of 7 Falcon Drive. Mr. Carton had objections to the proposal to build a cell tower access road through 64 Blueberry Circle for the following reasons: 1) application is incomplete as it doesn't include the owner of 64 Blueberry Circle, 2) property is subject to site plan and deed restrictions that prohibit building the access road as proposed and 3) site plan (of Woodcrest Park Phase II dated April 15, 1976) describes a driveway restriction that prevents any road being built in the area on the plan; the plan for the cell tower road places the access road into the restricted area. Mr. Carton's deed cites this restriction. It was noted earlier deeds issued from 1979 to 1996 specifically list restrictions although the restriction is not directly mentioned in the most recent deeds. He found no evidence of an effort to remove the restriction from the site plan or the deeds and would have been notified of such as he was an abutter in 1996. Mr. Carton's submission also believed there may be issues raised within Section 11.05 (Driveway, Access and Road Design) of the Town's Regulations. He strongly encouraged the Board to uphold decisions that are made when a neighborhood is proposed, designed and approved. He said failure to do so would send a message that property protections provided by the Board could be rescinded at a later date.

Mr. Horgan stated they had been discussing the proposal for approximately two years. He understood the Town had regulations and towers weren't supposed to be in residential zones. He noted no one spoke in favor of the tower during the Zoning Board hearings; there were numerous people who fought against it from Pelham and Dracut. Mr. Horgan pointed out the abutter notification made no mention of Charles Kleczkowski Sr. who owned the house on Blueberry Circle. He said the application was for Charles Kleczkowski Jr. who owned the property in the rear. There are two separate lots and two different entities.

Attorney Pare confirmed Mr. Horgan owned 32 Blueberry Circle. Mr. Horgan answered yes. Attorney Pare asked if he was an abutter. Mr. Horgan answered no. Attorney Pare referenced the cover page of the application that listed the owners of both site and access parcels (Kleczkowski Jr. and Sr.).

Mr. Horgan discussed co-location of equipment. He told the Board there was another cell tower at the corner of West Street in Dracut, MA (less than 1.2 miles from the proposed site) on which T-Mobile was a tenant. At the time of the initial hearing (with the Zoning Board) the attorney didn't know about the existing tower. Attorney Pare replied that was incorrect. They had reviewed all the alternatives and provided the Zoning Board all T-Mobile locations as well as the towers they weren't located on. He stated they had done so to the satisfaction of the Zoning Board. All information and materials were vetted in front of the Zoning Board. Attorney Pare told the Board the Zoning Board case was approved and no appeal was filed. Mr. Horgan stated although he wasn't an abutter, he resided approximately 1,200ft from the tower and opposed it.

Ms. Michelle Johnson, 6 Partridge Lane stated she wasn't an abutter but wanted to know how relief was sought for the deed restriction. She also wanted to know where the turn-around would be located (if on Town Forest) and how large it would be. She asked if the restriction had been lifted from the property; if so, would it negate the restrictions contained on other properties. She suggested the applicant's due diligence to find another location was probably not the most self-serving thing given their goal was to build a tower. In her mind the diligence to co-locate in any other location seemed almost inconsequential. Attorney Pare stated the restriction contained on the approved site plan had been satisfied to allow them to put in a second driveway onto the parcel at 64 Blueberry Circle. He told the Board they received relief from the requirement to have 300ft. frontage. He said the Zoning Board understood the unique circumstances of a cell tower and implications of Federal Law and from their prospective the proposal was the best solution to protect everybody in the neighborhood. With respect to coverage, Attorney Pare informed T-Mobile had a need in the area and had demonstrated such through numerous radio frequency coverage maps submitted to the Zoning Board who was satisfied and granted relief.

Ms. Johnson questioned why they were just finding out about the need for fire and safety infrastructure in that area. Mr. Gowan explained the Town didn't build its own towers. When a tower is being proposed/built, the Board has honored the advice/request of the Fire Chief to require Town emergency apparatus on top of the tower. He felt it was important to understand that the Zoning Board decides 'if' something is built and the Planning Board decides 'how' it would be built. He said the lack of an appeal (to the Zoning Board) meant the tower would be located there. He said the Board's engineer would review the plan and road and ensure there weren't any drainage issues. He noted the best action for abutters would have been to appeal the decision of the Zoning Board. Ms. Johnson responded when they sat through the Zoning Board hearings there was very little indication that would be the case. She said they were basically told that was just the first step and they would have a voice when it came time to sit in front of the Planning Board. This was discouraging to her because the cell tower was being 'rammed down their throats' without due process from their perspective. Also, they understood there was an opportunity for the Town to use an AT&T tower in the past. Mr. Gowan replied they used it; they use every tower. Ms. Johnson heard through the discussion the Town didn't have adequate fire and safety coverage. Mr. Gowan replied in a couple instances the Town has lost private agreements and believed the Board had always supported co-location of emergency apparatus for that purpose. He pointed out the Fire Chief clearly articulated their position in his letter. Ms. Johnson questioned if the tower on Old Lawrence Road wasn't acceptable. She believed there were multiple choices. Mr. Gowan couldn't speak for the Fire Chief and believed he had made his case. Ms. Johnson didn't know if they had truly looked at the existing towers. Mr. Gowan pointed out if someone wanted a tower in a residential district, they had to seek a variance and demonstrate hardship. He understood her concerns and reiterated the best way to stop the project would have been to challenge the variance with an appeal; however, that opportunity had passed.

Attorney Pare told the Board there had been months and months of due process. There was a specific need for the proposed location that both the Fire and Police Chiefs were very much interested in. Part of the delay in coming to the Planning Board was to ensure the Fire Chief (and Town Counsel) was satisfied. Mr. Montbleau inquired if there was a possibility to camouflage the tower similar to one on Route 106 near Laconia. Attorney

Pare spoke to the Zoning Board about the possibility but the public safety equipment was not amenable to doing so. He noted the lower 125ft. would be barely visible, if at all. He believed Police and Fire had issues with 'camouflaging'. Mr. Montbleau asked if they would do it if it would satisfy the neighborhood. Attorney Pare replied they had a variance in hand. He added the neighbors never suggested that a tree would be preferred. He didn't know if they could accomplish it at this point given relief had already been granted.

Ms. Johnson asked if the Board would consider looking at any of the other towers in the vicinity for the co-location of the Town so the proposed tower would not be necessary. Attorney Pare replied the residents didn't want the tower whether it was for Police, Fire or T-Mobile's use. He reiterated they satisfied all the requirements of the Zoning Board. He said the tower was barely visible when they did balloon floats. It was the prime location. They had moved the tower closer to the property line to reduce additional visibility. Attorney Pare pointed out the variance was granted, and no appeal was filed. He said they were happy to have discussions with the Planning Board regarding things they could do to reasonably satisfy items in the site plan and special permit for wetlands. It wasn't realistic for residents to think the tower wouldn't be at the location.

Ms. Karen MacKay, 31 Blueberry Circle told the Board during the balloon test the balloon was visible. She pointed all the trees would be cut along the road to the tower and further, a 50ftx50ft area would be cleared to locate the tower. She believed the tower complex would be completely visible to everyone in that area on Falcon Drive and Blueberry Circle. The tower would bring an industrial look to a very rural neighborhood. She said obviously people didn't want the tower, but with the Zoning Board allowing it she wanted to know if there could be some type of screening to make it not so visible. She didn't know if there could be plantings to screen it from the neighborhood. Ms. MacKay inquired if there would be a barrier to keep people from driving down the access road and causing trouble. Attorney Pare replied if people were to go on the private property they would be trespassing. He noted American Tower would be a tenant (on the property) and T-Mobile would be a subtenant; the co-locaters would have access. He said the HSC discussed the possibility of having a Knox-box at the access drive gate. He pointed out the Town's parcel abutted the tower parcel and people could walk into the area as they currently did. He's visited the site and couldn't imagine the base equipment would be visible from Blueberry Circle. He didn't know how plantings would survive given the current nature of the area. He said the fenced area wouldn't be visible although the top of the tower would be. He reiterated the Zoning Board determined the need and found it to be the best location. Ms. MacKay spoke about the topography and vegetation of the site. She pointed out there was not a lot of undergrowth because the area was a mature forest and shaded. She said the area that had a lot of bushes was along the access drive but once the access drive is put through all the vegetation would be gone and the compound area would be clearly seen. She asked the Board to consider requiring some type of screening and/or vegetation in the area of the access road. Ms. MacKay resided in the neighborhood for years and mentioned once the vegetation and access road were cleared Mr. Carton would have full view of the compound and tower from his back yard. There was another new resident in the neighborhood whose house was on top of a hill and would also have full view of the tower.

Mr. Montbleau asked if there would be a fence around the base of the tower. Attorney Pare replied there would be a six-foot fence with three strands of barbed wire around the top. Mr. Montbleau questioned if the fence could be 10ft-12ft in height with screening around it. Attorney Pare asked the Board to look at the plan because he didn't feel the compound would be visible. Mr. Montbleau described types of fences that could provide screening. Mr. Doherty commented Hemlock trees grew in mature forests and full shade. They provided good screening and were extremely hearty. Attorney Pare stated they would do what they could to satisfy the Board and would agree to conditions regarding a fence with slats. Ms. MacKay wanted the Board to understand if they didn't make conditions during review/approval they wouldn't be able to come back later and add conditions. She personally would prefer plantings and natural materials over fencing with slats.

Mr. Bergeron stated he wanted to follow the procedure as he hadn't dealt with a cell tower citing since being on the Zoning Board 15-20 years ago. He understood the Zoning Board granted relief to Section 307:58,C,3 telecommunication overlay zone among other things. Under the permitted use chart, he didn't see cell towers. Mr. Gowan indicated it was a stand-alone ordinance allowed by variance. He stated the applicant received a

variance to certain sections of zoning, but the Planning Board still had significant authorities. Mr. Bergeron inquired if the applicant needed to file waiver requests or if they had already fulfilled it by what the Zoning Board had granted. Mr. Gowan replied he would like to involve the Zoning Administrator. He didn't know if there would be any waiver requests to the site plan regulations. Attorney Pare stated their position was the Board didn't have authority over a conditional use permit because they were outside the zoning district. He said if the Planning Board wanted to keep control of cell towers, they could include it under ordinance for special permit. He felt it would behoove the Town to center the authority under one board. He believed the Town would see more towers because the need was driven by customer demand.

Mr. Doherty commented there had been a point of contention throughout the years with applicants going to the Zoning Board to try to circumvent the Planning Board for special use permit. Attorney Pare replied the Town needed to determine who would have oversight over cell towers. Currently for Pelham the Planning Board have oversight in certain districts and the Zoning Board had jurisdiction (for relief) in other districts. Mr. Gowan agreed there was room for improvement given the ordinance was approximately nineteen years old. He called the Board's attention to performance standards, which included lighting, landscaping etc. Attorney told the Board they had no issue with reasonable requests and/or conditions. He offered to work with Mr. Gowan to design something. Mr. Doherty suggested Hemlock because they grew from the ground up and didn't lose their lower branches.

Mr. Lynde inquired if there would be generators on site. Attorney Pare replied they would have a backup generator. Mr. Lynde questioned if they would be set so as to not be noisy for the neighborhood. Attorney Pare provided the specifications in their application packet and believed they ran at 75dba and with noise reduction at 65dba. He said they could test them during set times. He noted it was located approximately 600 feet from the nearest neighbor. Mr. Lynde suggested having the Board's engineer (Keach Nordstrom) look at the plan and give a suggestion to address the questions/issues such as landscaping. Attorney Pare had already assumed the plan would go through engineering review. Mr. Lynde wanted to know how the questions regarding the deed would be resolved. Mr. Gowan replied the Board had never tried to 'untangle' deed issues; it was up to the applicant and their attorney. Attorney Pare believed everyone in the development was subject to deed restrictions. He said they had addressed and satisfied the conditions. Mr. Lynde along with Mr. Cote will try to get the answer as to if the cell tower was absolutely necessary.

Mr. Bergeron wanted the abutters to understand his previous questions pertained to the legal procedures surrounding the case. He told the public that the top of the tower would belong to Pelham; for its safety and wellbeing. In speaking to first responders understood they had asked the applicant to add footage to the tower so they could occupy it. Attorney Pare reiterated their initial plan was for a 125ft tower. The Fire Chief asked that the tower height be raised for public safety (equipment). The increased height would be at the applicant's cost.

The case was date specified to Thursday, February 20, 2020.

ADMINISTRATIVE

Map 35 Lots 10-191-1 & 193 GREEN & COMPANY - GARLAND WOODS SUBDIVISION – Request for Full Bond Reductions (Offsite – Fineview, Offsite – Pasture, Onsite – Grouse Run, Bramble Path & Caribou Crossing)

Request for full release of the following bond: 1) \$8,050 , 2) \$5,750 and 3) \$2,300

MOTION: (Doherty/Bergeron) To fully release the three remaining bonds for Garland Woods.

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

DISCUSSION

Mr. Gowan spoke about the public hearing requirements for Zoning.

Monday, January 6, 2020 – first public hearing for Zoning

Thursday, January 23, 2020 – second public hearing for Zoning

The Board was provided with a copy of the two citizen petition articles. For review Mr. Gowan handed out draft amendments to 1) Article XII Special Exceptions and 2) Illicit Discharge Detection and Elimination Ordinance.

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

Not requested.

DATE SPECIFIED PLAN(S)

February 3, 2020:

Case #PL2019-00024 - Map 35 Lots 10-200, 10-312 & 10-351 - NEIL FINEMAN 2018 TRUST & LEMIEUX, Albert III & Christine – Currier Road, Peabody Lane & Bridge Street (Rte. 38)

February 20, 2020

Case #PL2019-00029 - Map 31 Lot 11-33 & Map 31 Lot 11-37 Access Lot - KLECZKOSKI, Charles Jr. (Owner) / AMERICAN TOWERS, LLC (Applicant) – Off Spring Street

ADJOURNMENT

MOTION: (Kirkpatrick/Dadak) To adjourn the meeting.

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

The meeting was adjourned at 11:25pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary