

**APPROVED**  
**TOWN OF PELHAM**  
**PLANNING BOARD MEETING MINUTES**  
**February 3, 2020**

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, Alternate Paddy Culbert, Alternate Richard Olsen, Alternate Bruce Bilapka, Selectmen Representative Hal Lynde, Alternate Selectmen Representative Kevin Cote, Planning Director Jeff Gowan

ABSENT: Alternate Samuel Thomas

**PLEDGE OF ALLEGIANCE**

**MEETING MINUTES**

**January 23, 2020**

**MOTION:** (Lynde/Doherty) To approve the January 23, 2020 meeting minutes as amended.

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

**OLD BUSINESS**

**Case #PL20219-00024**

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

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

Shayne Gendron of Herbert Associates came forward with Attorney John Cronin to represent the applicant. Also present was the developer Bob McCarthy. Mr. Gendron informed subsequent to their last meeting with the Board they met with the Highway Safety Committee ('HSC'). Upon review of the plan and proposed access from an improved Peabody Lane (and two new access roads) as well as hearing from Town engineer Steve Keach of Keach Nordstrom, the HSC forwarded a letter informing they unanimously voted to approve sending a letter to the Planning Board indicating their opinion that the 'middle' Currier Road access point is no longer needed with the project road providing two-way access from any lot within the project with an added condition that the project road is not phased but constructed all at one time. The 'middle' road (from Currier Road) would add significant maintenance burden to the Pelham Highway Department without any perceived benefit. The letter also indicated that Peter Zohdi of Herbert Associates told the HSC his client is willing to improve Peabody Lane from the project entrance to the back portion of the road so it is a consistent width that will allow the normal two lanes of travel. It is also Mr. Zohdi's intention to identify a Pelham driveway of the same grade and length as proposed for Priscilla Pike-Church's driveway and to take her there so she can see for herself what is being proposed. The HSC voted unanimously to approve the candidate road name of Thistlewood Drive.

Mr. Gendron spoke further about the HSC letter specifically regarding the 'middle'/'third' road (or center connection from a right-of-way off Currier Road). He said Mr. Keach, the Town's Highway Department, Police

Chief and Fire Chief felt the (middle) connection was unnecessary since the HSC was looking for the development to have one way in and one way out, on either side of the gas line. This point was satisfied by the proposal showing the (development) road accessing Peabody Lane and Currier Road. The HSC letter noted Mr. Keach's opinion that the 'middle' road would create a problem with drainage (onto Currier Road) that the Town would have to take over. The HSC didn't see there was enough benefit of having the center road for the Town to take on the extra roadway and maintain the drainage. Mr. Gendron summarized the proposed work/improvements on Peabody Lane to the road, drainage and Ms. Pike-Church's driveway. Mr. Gendron stated they needed the Board to take a position on the HSC letter, which would weigh heavily on how they design the subdivision. He noted they had changed the lot configuration because the plan in front of the Board didn't show the middle connection (to Currier Road). He then discussed the trails (existing/realigned/proposed) and used the displayed plan to show the locations. He noted the trails down on the southern portion weren't touching the development and could remain as they were.

Mr. Lynde noted he was the person who proposed the additional access. He understood and appreciated the letter from the HSC but remained concerned about the way traffic entered from Currier Road and Peabody Lane. He said the proposal didn't solve his concerns.

Mr. Gowan saw there was an existing trail along the gas line easement and inquired if it was legal. Attorney Cronin replied he would review the easement. He said generally when an easement is granted for utilities there were reserved rights as long as they didn't conflict with the underlying grant. He will review the specific easement and provide follow up.

Mr. Cote asked if the plan had changed from having single wells to community wells. Mr. Gendron replied during a previous meeting with the Board they had agreed to show a community well and submitted two possible locations for such. He noted those wells would need to be drilled/tested; however, before they were at that point a full design would be needed. He said it would also require a State permit, which was lengthy in nature.

Mr. Doherty recalled mention that the original yield plan (done by a previous engineering firm) didn't take into consideration the wetland being a 'prime wetland'. He saw a member of the Conservation Commission in the audience and asked if the number of lots within the yield plan could be discussed as they might not have been legitimate if they didn't take the 100ft. Wetland Conservation District ('WCD') setback into consideration. He said it would affect a number of lots within the layout if several needed to be eliminated.

Paul Gagnon, member of the Conservation Commission and resident of Dutton Road came forward. He told the Board the plan didn't show a prime wetland, which was a significant error in the early stages of the development; prior to the current engineering firm being involved. He cited RSA 36:A which forms a Conservation Commission. It stated a commission's goal is the proper utilization and protection of natural resources and watershed resources. He pointed out RSA 482 A:15 addresses prime wetlands and how they are designated. He stated the Conservation Commission had four prime wetland studies: 1987, 2000, 2007 and 2010. The study in 2010 declared three wetlands, one (being 48 acres in size) is located on the proposed parcel. He read aloud a portion of the study done by Mark West regarding the referenced prime wetland. Mr. Gagnon mentioned it was in the commission's charter to protect wetlands and spent a lot of time and resources to define prime wetlands. He noted there was a map displayed in Town Hall showing the area circled in orange as a prime wetland. The Department of Environmental Services ('DES') website also shows the wetland as 'prime'. He didn't see the prime wetland designated on the yield plan, which would have benefitted with a 100ft. buffer (enforced by the State). Mr. Gagnon saw there were five house lots that couldn't be accessed without crossing the prime wetland and doing an 8,000SF dredge and fill. One of lots (last house in the development) would have three crossings; 8,000SF, 780SF and 560SF. He said if the 100ft buffer was put in place there wouldn't be any lot remaining. While he understood a developer couldn't be kept from developing their parcel, Mr. Gagnon didn't believe the Board would have allowed an 8,000SF wetland crossing to increase the lots from 31 to 36. He felt the wetland scientist made a mistake by not including the prime wetland and the engineering firm made a mistake by not showing the 100ft. buffer and as a result the Planning Board made a mistake by using 36 house lots as the basis

for the subdivision. He noted there was a total of approximately 12,000SF prime wetland dredge and fill and pointed out the State's new regulation (as of December 15, 2019 for a regular wetland) was to require mitigation over 10,000SF. He added the proposal showed 42,635ft of buffer impact (after the 50ft. buffer); with a 100ft. buffer there would be approximately two acres of buffer impact. Mr. Gagnon reiterated his belief that the yield plan wasn't realistic.

Mr. Doherty questioned Mr. Gagnon if he was aware of how to mitigate a prime wetland. Mr. Gagnon replied it was hard to reproduce a wetland and had never seen mitigation done in Pelham. He commented the power company donated open space to offset some impacts they'd done but had never seen a developer recreate wetlands. Mr. Gowan recalled from the yield plan process the plan allowed for 36 lots if the owner obtained a Letter of Map Amendment ('LOMA'). He recalled there was a condition that the LOMA needed to be approved for the development to have 36 lots. He said it would be interesting to know if it was reviewed and how it was reviewed. Mr. Gagnon stated he supported the conservation subdivision and felt it was much better than a conventional subdivision; however, he didn't feel 40 lots was appropriate for the site.

Mr. Bergeron understood the Conservation Commission was never made aware of the initial yield plan and how it might impact the wetlands. Mr. Gagnon replied because yield plans aren't going to be built there is no wetland that would be impacted therefore plans don't go in front of the commission. Further because lots are pulled out of wetlands (in conservation developments) they aren't sent to the commission. Given the information being discussed, Mr. Bergeron stated it gave 'new light' on what the Board should look at and be practical about. In addition, he said the information raised questions regarding the whole conservation subdivision article and pointed out Statute says in order for plans to proceed there must be a realistic yield plan. Mr. Bergeron stated the Board was looking at the third iteration of the subdivision and felt they should look at it in its entirety and talk about what the real yield plan should have been. He reminded everyone that it was under the Innovative Land Use and the Board could tell the applicant to build the development conventionally if it didn't fit what the Statute required it to be. He added his belief that they should look at why the information wasn't picked up by those that the Board trusted most to do so. He said it was unfortunate the commission wasn't brought in because the Board should have had more information. Mr. Gagnon stated he was challenging lots 32-36.

Mr. Gendron told the Board he couldn't speak to the original yield plan because it wasn't done by his office. The original plan was brought by Jones and Beach, vetted through the Planning Board and the property was then purchased by Mr. McCarthy under the guise the yield plan had been vetted by the Board. He said they were now in their third meeting with the Board, plus a site walk with the proposed layout and added it seemed a little 'late in the game'. He was willing to look at it and reiterated it wasn't his design or layout; they were working off the yield plan previously approved by the Board. He said that's what Mr. McCarthy was moving on when he purchased the property and brought Herbert Associates on board to do the design. He said he wasn't in front of the Board to discuss the number of lots; he was discussing the roadway design. He couldn't do a drainage design and prepare a submission for the Board's engineer until they had a decision on the third road. It was important for them to have an answer because a lot of time would be spent on the drainage design for the roadway. Mr. Gendron told the Board the number of lots didn't matter, he would still build the same amount of roadway because he needed to start at Peabody Lane and exit at Currier Road. He said if he could receive direction regarding the roadway he could come back and discuss the yield plan and number of lots.

Mr. Montbleau understood Mr. Gagnon's concerns and that the Board had the latitude to restrict the number of lots. He said if the Board feels the yield plan isn't accurate, they could make a conscientious decision on what could be permitted at the location. Mr. Gendron replied they would be happy to look at the yield plan. They didn't spend a lot of time with it because the owner came on board believing that the yield plan was approved though the Planning Board and the proposed plans were based on the yield plan.

Mr. Lynde questioned what lots Mr. Gagnon was referring to. Mr. Gagnon replied his concern were in reference to the lots (32-36) of the yield plan. Mr. Lynde asked if any of the lots on the proposed plan affected

the prime wetland. Mr. Gagnon didn't believe so. He asked Mr. Gendron to show 100ft. buffer on the plan. He believed the conservation subdivision pulled all the lots (except the corner of one) out of the 100ft. buffer.

Mr. Dadak understood the type of proposal didn't matter because there needed to be a 100ft. setback. Mr. Gagnon replied the conservation subdivision pulled most of the houses up the hill and got them out of the buffer. He pointed out the yield plan showed houses on the south side of the prime wetland. He said to the applicant's credit the conservation subdivision pulled all the lots up the hill. He stated the conservation subdivision was almost unaffected by the fact that there was a prime wetland, although he would like to see 100ft. buffer to confirm that fact. He didn't think it would have a big effect on the design.

Mr. Cote confirmed the applicant was looking to build the road whether it was a conventional or conservation subdivision. Mr. Gendron answered yes. Attorney Cronin stated the comments in the discussion were not uncommon from those in many towns regarding the delicate balance between conservation subdivisions and yield plans. He mentioned some towns have said they want a fully engineered yield plan; if someone has to go through the effort and expense of doing so they will move forward with the plan, which he felt was contradictory. He believed there needed to be some balance with the boards and conservation commissions. In this case they hadn't spent time with the yield plan because it had been (previously) voted on and approved by the Board. He said they would be happy to review it. He added if they were moving in the direction of having to fully engineer the already approved yield plan, it would be a complex thing and the Board may end up with a plan with a different number of lots but not as good for the environment. He asked that the Board provide them with feedback.

Mr. Gagnon told the Board he wasn't asking for more engineering on the yield plan and didn't think the new engineering firm needed to re-do the yield plan. He thought the Board needed to look at the yield plan and think about the prime wetland to see what lots couldn't be built with the additional buffer. He believed they just needed to take a different look at the yield plan and have understanding of the prime wetland. Mr. Doherty commented he wanted the Board to have this discussion in the applicant's presence and had stopped it from occurring prior to the meeting. He wanted to raise the question about the yield plan. He said the Board had the ability to adjust lots due to the fact that the proposal is through an innovative land use. He commented the Board would have to decide at some point how many lots would be knocked down because of a faulty yield plan and then determine if there would be bonus density because they currently may have an additional 6-8 lots too many. Having those extra lots could affect drainage. Assuming it could be done, Mr. Doherty felt having the proposal move forward as a conventional development would be a massive disruption.

Mr. Montbleau believed the Board should discuss and give direction to the applicant regarding the road layout. Mr. Culbert agreed the discussion between the applicant and Board was in regard to the road. Mr. Cote pointed out the conservation road layout was different than the conventional layout. He asked which layout the applicant was seeking guidance for. Mr. Montbleau replied they were seeking guidance regarding the road layout for a conservation subdivision. Mr. Gendron responded the Board may take some lots away from the project, but the roadway layout would remain the same based on the Currier Road right-of-way and connection to Peabody Lane. He noted they had already made the promise to make improvements to Peabody Lane and would like to move forward with the proposed layout. He pointed out if the Board cut the number of lots down it would only make the situation better not worse.

Mr. Gowan spoke about the discussion at the HSC meeting. He said the HSC was concerned about not having two ways in and out from every lot; as soon as the Fire Chief saw the proposed plan, he commented the end to end road was exactly what they wanted. Mr. Gowan stated the idea of the middle road was a nightmare for the Town; it would create a steep road and drainage hassle because it would need to tie into existing drainage. He understood there were some impacts to abutters on Peabody but understood those impacts were easily mitigated; the HSC directed the applicant to show the abutter (Priscilla Pike-Church) examples of driveways with the length and slope being proposed for her property. Mr. Gowan informed the Board the HSC would vehemently object to the development roadway ending in a cul-de-sac without connecting to Peabody Lane. He explained without

the connection through, the improvements to Peabody Lane and the drainage wouldn't occur and further there would be new drainage problems created by having the road come down to Currier Road. He reiterated the HSC was unanimously in favor of the proposed road layout. He said it was important for wetland impacts and buffering for the abutters. He hoped the Board did the right thing so the drainage problem and road width on Peabody could be taken care of.

Mr. Montbleau commented he originally had the same opinion as Mr. Lynde regarding the middle road, but after reading the HSC report several times and reviewing the site in person, he saw the HSC's point. He believed the Board needed to listen to the HSC.

Mr. Gowan discussed when he first got involved with planning, he thought all roads needed to be straight and level; however, the proposed road has nice topography and curvature that adds a traffic calming component. Mr. Gendron pointed out they included a profile for Ms. Pike-Church's driveway (page 21 of plan set). The design was done based on the proposed roadway that puts her driveway on a rise from the street of approximately 4% (2.5 feet). Mr. Montbleau asked when Ms. Pike-Church could view an actual example of such. Mr. Gendron believed they could set up a meeting during the next couple weeks.

Mr. Montbleau stated he agreed with Mr. Gagnon's ideas and thoughts regarding the issue of the prime wetland. He appreciated the information being brought forward so the Board didn't send any mixed messages to the applicant.

#### PUBLIC INPUT

Ms. Kim Jewett, 4 Peabody Lane told the Board her house was at the entrance to the proposed new street off Peabody Lane. She was concerned with the amount of traffic that would be forced down Peabody Lane if the middle road wasn't built. She said it wouldn't be just the traffic from after houses were built, she was concerned with the construction traffic. These concerns were for her quality of life. She believed having more entrances to the development would be better. She asked if the applicant wanted to construct something other than a road, such as a well or detention pond, in the middle of the development. Mr. Gendron answered no. He pointed out Steve Keach of Keach Nordstrom (Board's engineering firm) identified a 'middle' road as onerous to build because of the steep slope; there is a 50-foot right-of-way which would allow for a road but left no room to treat any drainage. He said water would come down the hill and flow into a series of basins out to Currier Road. From Currier Road, the drainage would have to flow approximately 3,000ft. through piping until it reached a detention area on the applicant's property. He said it didn't make a lot of sense to have the number of basins or upgrades along Currier Road that would later need to be maintained by the Town; there isn't a lot of benefit for such a short section of road. Mr. Gendron pointed out that the Fire Chief, Police Chief and Road Agent also supported not having the middle road. Ms. Jewett inquired where water (from the development) would flow. Mr. Gendron replied water would stay within the roadway in the drainage system (basin swales and treatments). Ms. Jewett reiterated her concerns regarding the roadway and having an additional access. Mr. Montbleau explained the middle road was an idea that was reviewed (by the HSC) and determined it wouldn't solve any problems and instead would create more problems (according to the report received by the Board). Ms. Jewett asked if they could use the middle road for construction purposes and then shut it down. Mr. Gendron didn't think it would make a lot of difference to the amount of traffic that would come in and out of the site. He pointed out Peabody Lane needed extensive work; currently it's 9%-11% at Ms. Pike-Church's property and they would be reducing it to a 5% slope. He said the area would be opened up given they are doing all new drainage and giving a good size property as right-of-way to the Town so Peabody Lane could be straightened and moved away from Ms. Pike-Church's property. He didn't see there would be a lot of savings by having a construction road onto Currier but would have that discussion with the Board.

Mr. Montbleau spoke about his experience with having a large development (65 homes) constructed behind his house. He discussed the manner in which developments were constructed and said the construction isn't nearly as intrusive as he imagined it would be. Ms. Jewett wanted to know if she could speak to the Town about routing

the construction trucks from the other entrance if they started having a problem (on Peabody Lane). Mr. Montbleau said they could work something out. Mr. Gowan stated the Board had the authority to work with the applicant to determine a construction entrance; however, when working on Peabody there may be some disruption. He said projects could take a couple years and the Board can mitigate situations and set the hours of construction. He told the public the HSC was adamant that the project couldn't be 'phased'; the entire road had to be built at one time.

Mr. Gowan read aloud the HSC letter (dated January 28, 2020).

Mr. Bruce Jewett, 4 Peabody Lane reiterated his wife's concern regarding their quality of life and how the development would be located directly in front of his house; he would view forty houses instead of open land as he currently did. He didn't think the proposed plan looked like what they saw during the site walk. Mr. Gendron reviewed the displayed plan and stated there hadn't been any changes with the alignment of the proposed road or Peabody Lane. He pointed out the current location of Peabody Lane. He believed the proposed road was still staked on site. He explained they were giving a piece of their land to the Town to be able to realign Peabody Lane; they will be straightening it out (moving it south of the existing location).

Ms. Anisa Joyce, 46 Currier Road told the Board she wasn't present for previous meetings and wanted to speak about drainage. She understood there was intention to have a retention pond where her back yard ended. Mr. Gendron replied they had a proposal for a retention pond on their lot 10-351-20; however, it hadn't yet been finalized (size and type of detention) because they need the Board to take action on whether or not the 'middle' connection (of the road) to Currier Road was needed. That action will affect the drainage throughout the project. Mr. Gowan recalled discussion that the proposed detention would be bio retention. Mr. Gendron explained bio retention treated stormwater and infiltrated it back into the ground through a layer of mulch and filter coarse material; during a heavy rain event the pond would hold water for approximately 48 hours. By design the pond will infiltrate stormwater back into the ground and not resemble a classic retention area that fills with water. Bio retention are typically planted with a native vegetation. Ms. Joyce questioned what would be on top of the retention pond. Mr. Gendron replied the top of bio retention is usually a mulch material (with plants) and below would be a 'loamy' gravel material (filter coarse). Ms. Joyce asked if children could fall into the retention pond. Mr. Gendron replied it was a shallow area with a 3:1 slope and a few feet deep. Ms. Joyce had young children and wanted to know if anything would surround the retention area. She added the back yards of the existing homes (along Currier Road) were already very wet; she voiced concern for the situation getting worse. Mr. Gendron stated they had no proposal to remove trees from the existing lots. He added there had been previous discussion and had no problem having heavy screening or fencing around the pond area to keep children safe. He reiterated the pond would be shallow and not something to 'fall into'. It doesn't hold enough water for someone to drown; it will remain dry most of the time. Ms. Joyce inquired if there was any information regarding the impact of the retention pond bringing bugs/mosquitos into the area. Mr. Gendron didn't have data.

Ms. Joyce asked if there would be any impact to the property taxes in and around the area to support the subdivision. Mr. Gowan believed the houses wouldn't be less than \$400,000; therefore, would be tax revenue positive for the Town. He noted the developer had a recent project off Sherburne Road with similar houses being proposed on similar sized lots. Ms. Joyce wanted to know what help would be expected from the Town to help support the project from the time when the project starts to be built and when new owners began paying property taxes. Mr. Gowan advised the Town wouldn't own the project road until it was completely finished and the road wearing coat 'wintered over' and scrutinized by him, the Road Agent, Town engineer and members of the Planning Board. He said the impacts being discussed were the impacts to be avoided; not impacts caused by the project. Ms. Joyce asked if there would be additional cost to the Town because of the project. Mr. Gowan replied if the project was built, (based on what they were reviewing, Peabody Lane would be improved, and a lot of the drainage would be captured. He saw no additional costs to the Town until the project is built. He noted there would be residents living in the development prior to the Town accepting the road. Ms. Joyce understood the trees along the property line were paid for by the Town. Mr. Gowan told her the Planning Board made the original owner plant the trees (costing \$80,000) when the frontage lots (along Currier Road) were

constructed. He hoped the Planning Board established a new no-cut zone, unless there was an absolute need to cut the trees. Ms. Joyce spoke about her property and wanted to know what could be done so her lot could have a tree line to buffer from the project. Mr. Gowan replied it wasn't unusual for the Board to review buffering. Mr. Montbleau explained the review/approval process during which the Board had an opportunity to ask the applicant for a buffer and take abutter concerns into consideration. Currently, they were reviewing the road. Ms. Joyce pointed out the trees at the back of her property weren't actually on her property. Mr. Montbleau replied the Board could discuss the tree line and a no-cut buffer with the applicant.

Attorney Cronin spoke to the concerns regarding the detention pond and explained they weren't simply built to a developer's 'whim'; there are industry standards and Department of Environmental Services ('DES') controls in place. Those controls take into consideration standing water, leaching, flow and safety. He said it wasn't a new concept; standards had to be met prior to occupancy permits being issued. With respect to taxes, Attorney Cronin said projects aren't reviewed based on their revenue. He said most towns had more than one impact fee assessed for new developments; New Hampshire has a unified system with assessments based on full fair market value.

Christine and Albert Lemieux, 90 Currier Road told the Board they were major abutters to the project. Ms. Lemieux indicated they had chosen not to speak for a few months as they were trying to work with the applicant (Mr. McCarthy) and engineer. She said they were advised if they decided to stay, they should be on the record in case they appealed. She stated they weren't a fan of the proposed road as it immensely impacts their current rural setting. She's currently waiting on a survey to show exactly where the road will be located in relation to her home. Ms. Lemieux pointed out there were approximately six houses abutting them on one side and a road going through an area that was currently really private. She said currently no one could see her home and with the development (their property) would be road front and change their lives. She indicated a lot of things had been told to them but had nothing in writing. She was told her property lines may change. She was also told the applicant would consider a no-cut area along her property and she would be shown exactly where the road would be located. At present, she hasn't had her questions answered. Ms. Lemieux heard discussion regarding the third road disappearing and people walking through property (and her yard) because they can't fence the area due to the location of the gas line. She said they currently let snow mobiles, 4-wheelers and people go through the property. She reiterated their privacy would completely change and they had a lot of concerns that needed to be on the record. She would like to work with the owner and engineer to get answers to their questions; everyone had been cooperative, but they didn't have any answers to specific questions. Ms. Lemieux explained they had maintained the right-of-way but didn't quite understand what they owned and didn't own. She said the property was complicated and they didn't have an easement, although they had maintained the road which was over a tenth of a mile. Using the displayed plan, Ms. Lemieux showed the Board the location of her home (formerly the Kirby's house).

Mr. Doherty asked how water would be handled off the southern access. Mr. Lemieux mentioned there was an existing waterway on both sides of Currier Road. Currently all the water from their driveway flowed down (to the south). He also noted the snowmobile trail was also located on the south of the property and questioned how it would be affected. Mr. Gendron referenced page 24 of the proposed plan set that showed the road profile. Based on the topography he described where a retention area would likely be located. Mr. Doherty noticed a 'stray' lot (to the south) and believed if the WCD was increased to 100ft buffer it would not be buildable and asked if it would be a potential retention area. Mr. Gendron said they could do something there as well; however, it was short of the low point. He said he would like to review the wetland and confirm they had the correct edge for the prime wetland. Ms. Lemieux believed the 'stray' lot (to the south) may be underwater.

Mr. Paul Diamantopoulos, 11 Peabody Lane thought it was good that the Conservation Commission Chairman (Paul Gagnon) spoke earlier so the engineer and developer had knowledge of the issues. He discussed his property and the fact that he was bounded on two sides by the development. He believed the previous plans showed a 25ft. no-cut area along the south side of his property line; however, the present plans didn't include it. He believed during the last meeting the engineer (Peter Zohdi of Herbert Associates) indicated the abutting lots

on his other property line would also include a no-cut zone. Mr. Gendron stated the plan being displayed was to illustrate the roadway layout and didn't show everything; page 5 of the plan set showed the 25ft no-cut buffers were still in place. Mr. Diamantopoulos clarified the area he was referring to. Mr. Gendron explained there was previously an area of open space behind the proposed lots and the area Mr. Diamantopoulos referenced to the east of the gas line. He said the Board previously asked them to get rid of the smaller open space lots and make them contiguous into the proposed lots. He stated the buildable area was closer to Thistlewood Road; there was a 50ft gas line easement between Mr. Diamantopoulos' property and the buildable area. He offered to put the area back into open space or leave it alone and add a no-cut buffer. Mr. Diamantopoulos said leaving it alone would greatly impact his privacy because of the gas line right-of-way. He noted the gas company came through every 2-3 years and clear cut their easement. He wanted to have a buffer and slow drainage toward his property.

To resolve Mr. Diamantopoulos' concerns, Mr. Gendron asked the Board if they preferred an open space lot area abutting his property or a no-cut buffer. Mr. Diamantopoulos asked if the area could be designated open space and no-cut. Mr. Gendron explained a no-cut zone was a simple line that could be added to the plan, otherwise they had to dedicate a piece of open space land that would need to be deeded separately from the lot. Mr. Montbleau suggested having the 25ft. no-cut zone. There was a brief discussion where the 25ft. no-cut area would be located; Mr. Gendron pointed out they had no control what cutting occurred within the gas easement area.

Mr. Diamantopoulos commented Peabody Lane had been done over a few years ago; however, the pavement in the area of the cul-de-sac was breaking up. He wanted to know if the proposed improvements would create a 'bottleneck' in the center of the road. Mr. Gendron replied the applicant had agreed to widen the section of Peabody Lane (from the development road to Currier Road) that was currently one-lane (in width) up to a two-lane road per Town standard. He said they wouldn't be making any improvements in the area of the cul-de-sac. Mr. Lynde was considering coordinating the project with the Town's Road Agent to see what else needed to be done in the area and get it all done at once. He also wanted to try to take care of as much of the water issues as possible and would bring the conversation to the Selectmen. Mr. Diamantopoulos understood a community well was being proposed and questioned where it would be located. Mr. Gendron pointed out the location on the proposal.

Ms. Suzanne Larson, 39 Currier Road showed the Board the general location of her property using the displayed plan. Her concern with not having the third road was the additional traffic going through the Island Pond/Cara Lane/Currier Road intersection.

Mr. Joe Norkiewicz, 14 Island Pond Road came forward to congratulate the Board for their effort and listening to the people residing in the area. He said the Board was doing a tremendous job and wanted to make sure something positive was being said.

Mr. Doherty questioned if there would be more water or less water onto Peabody Lane without the middle access. Mr. Gendron replied Peabody Lane wouldn't be affected very much because with or without the middle road he had to handle drainage and send the flow somewhere; the pre- and post-development numbers would need to match. Mr. Doherty inquired if there would be less water coming down onto Currier Road without the third (middle) access. Mr. Gendron replied not necessarily. Mr. Doherty reiterated his question regarding drainage to understand if the net flow of water off Thistlewood Road onto Peabody Lane. Mr. Gendron replied it would be lessened slightly because he wouldn't have any water coming off the high point from the connection road down onto Peabody Lane. Mr. Doherty understood there would be less flow. Mr. Gendron explained he had to look at the site as 'a whole' both pre- and post-development; it made a huge difference in the drainage numbers by taking out the center road component so he wouldn't have to chase water 3,000 feet down Currier Road.

Mr. Lynde asked if the HSC discussed traffic sight distance to the north when exiting Peabody Lane. Mr. Gowan replied it was discussed in terms of being improved geometry. He said the existing sight distance where Peabody Lane meets Currier Road is not that great and there's a road alignment problem. He said straightening the road

(Peabody Lane) would make the area safer. He noted with the proposed number of houses, the number of daily vehicle counts wouldn't be significant from the project. He said the Board had it in their authority to ask for a traffic analysis; however, it's not a huge project that would be likely to cause challenging numbers. Mr. Gowan pointed out that the proposed improvement to Peabody Lane would make the road safer by having better alignment, better sight distance and water (drainage) interception. He added that the Police Chief, Fire Chief, Road Agent were 'tickled' with the plan as opposed to having the other drainage (down a center road) to deal with. He understood people may be nervous about the unknown and how many cars would travel down the road but by having two ways to access the development the daily trips wouldn't be so significant to create traffic jams. He said the improvement to sight distance and signage should meet all the safety concerns the HSC had an opinion about. Mr. Lynde stated he was concerned. Mr. Gowan said having a third road may result in fewer trips, but there would be a drainage nightmare as it would be a lot of drainage flowing down to an old road that already had drainage it and not much right-of-way to work in. He stated the Road Agent was very concerned about inheriting the problem (of the additional road/drainage).

Mr. Bergeron understood the applicant was in front of the Board primarily for the road considerations but earlier in the meeting the Conservation Commission Chairman provided input regarding the number of lots. He said the question whether or not the project should proceed as a conservation subdivision hasn't been voted on and believed they needed to have some resolutions. He learned that the original yield plan affected some prime wetlands which would have bearing on the yield. He asked the applicant if they would be able to accept the Conservation Commission's recommendation for a reduction of lots. Mr. Gendron replied they could review the yield plan and wetland situation. He believed the Board had taken jurisdiction on the plan. Mr. Gowan answered yes. Mr. Bergeron said they had, but they hadn't voted to accept a conservation subdivision. Attorney Cronin's memory of the testimony by the Conservation Commission Chairman was to see the development remain as a conservation subdivision. In response to questions raised, he said Mr. Gendron would review the yield plan and recognized it was an issue for the Board. He added when they come back in front of the Board, they will have a better answer regarding the number of lots. Mr. Bergeron said before he could make a recommendation, he wanted to know that information because any reduction in the number of lots would affect drainage. He said he had additional questions about drainage elevations. Attorney Cronin pointed out if the lot numbers were reduced it would be a net-net benefit and didn't see there would be any downside in voting to approve the proposed road (layout). He didn't see any harm in the Board making a decision regarding the road as it would allow Mr. Gendron to do calculations and specific analysis of what lots they would be able to sacrifice. Mr. Bergeron said with Keach Nordstrom not in attendance, the Board had no one to provide input on calculations. He said an abutter brought up a question regarding the retention pond. He wanted to know the base elevation of the pond in relation to the abutter that voiced concerns. He had questions about what sort of capillary action changes would happen due to the water flow being directed into the area. He believed not having the third road would affect how much of the water would need to be brought in that direction.

Mr. Gendron pointed out Steve Keach brought up the point (in the HSC letter) about getting rid of the middle road because it would be a drainage nightmare. He said they were currently in front of the Board to get direction regarding the roadway layout but the Board was moving the conversation toward the number of lots and how He guessed he was currently at the worst case scenario regarding the number of lot and believed the Board wanted to take lots away not give him more. He said if he could have a decision from the Board (on the roadway) he would be able to move forward with a drainage design to be submitted to Mr. Keach. He noted anything he designed would be able to handle the number of lots the Board cut the plan down to in the future.

Ms. Kirkpatrick heard the testimony from the abutters at 90 Currier Road regarding a question about easements and surveys. She questioned if it was premature for the Board to approve a road if the rights were unknown. Mr. Gendron replied there was an existing right-of-way that ran through the property for the roadway; they weren't going through the abutter's property to get to Currier Road. He believed Mr. Zohdi (from his office) had already met with the abutter several times. He said they needed to mark the roadway so the abutters could see its location. He reiterated the proposed roadway would be within a right-of-way. Ms. Kirkpatrick felt it was hard for the Board to say yes to a road when there were questions regarding the road survey, location of right-

of-way and the maintenance of the land. Attorney Cronin believed the abutter's comment was they had productive comments but nothing in writing; they (abutter) wanted testimony on record. He believed they still wanted to work to get things done. With respect to concerns regarding easements, layout etc., Attorney Cronin advised those things were beyond the scope of the Planning Board and well settled (in the courts) in New Hampshire especially with a recent case involving 'right-of-way/prescriptive easements. In that case the planning board had a question whether to act and the court's position was its not a question for the planning board to determine private rights. He said with the proposed project, the (abutter's) house on the lot had a minimum of a prescriptive easement that allowed them access. He stated it was dangerous place to go for the Board to delve into the value of the easement and render opinions on something that was irrelevant. He said if the plan was approved it wouldn't change the character of the easements; if title work wasn't done properly the owner (of the project) would have a big problem on their hands. Attorney Cronin didn't feel it was fair to the applicant for the Board to delay things because they were concerned about an easement.

Mr. Bergeron understood easements and prescriptive rights-of-way and asked if it was unfair for the Board to be concerned whether the applicant could get a dedicated 50-foot right-of-way. Attorney Cronin agreed they may want to look at it; however, the present question was if the middle road needed to be included or not. Mr. Bergeron wanted to know if the applicant would have a fight with the abutter to obtain the right-of-way. Attorney Cronin replied the area had been surveyed. Ms. Kirkpatrick's question was in relation to the road on the south given the question raised by the abutters at 90 Currier Road. Mr. Gendron had the Board reference page 4 of the plan set that indicated the right-of-way was clearly bounded, surveyed and part of the property. Mr. Bergeron said that would satisfy the Pelham Site Plan review regulations for road widths because it would later become a dedicated right-of-way, unless the project was a conservation subdivision with a privately owned roadway. Mr. Gendron said they would be proposing a Town road. Mr. Bergeron asked for confirmation that the right-of-way width would be able to meet the Town's standards. Mr. Gendron answered yes; there was an existing 50-foot right-of-way that ran up through the property.

Mr. Montbleau believed the Board had heard a lot of testimony and asked if they wanted to take a consensus or vote. Mr. Gowan asked that the Board take a vote for the record.

Mr. Montbleau asked for a motion to give the application direction on the road. He said the Board heard a lot of testimony and received a report from the Town's officials (Highway Safety Committee) that was read into the record. The HSC preferred not to have the middle road. Given the recommendations, Mr. Montbleau didn't feel a decision should be difficult. Mr. Doherty felt it would be a simple motion to follow the Highway Safety Committee's recommendation to not use the middle section of road; however, he believed they should first have a consensus because there were Board members who wanted the middle road. He said taking a vote could result in the motion failing. Mr. Montbleau believed the Board should pull a vote as they had heard a lot of information and received a letter from the HSC. Mr. Doherty offered the following motion:

**MOTION:** (Doherty/Dadak) To follow Highway Safety Committee's recommendation.

**HAND VOTE:** (5-2-0) The motion carried.

Voting in favor were: Mr. Montbleau, Mr. Dadak, Mr. Doherty, Ms. Kirkpatrick, Mr. Steele.  
Voting in opposition were: Mr. Lynde and Mr. Bergeron.

The case was date specified to March 16, 2020.

### **NON-PUBLIC SESSION**

Request to enter non-public session per RSA 91-A:3 (L)

**MOTION:** (Lynde/Bergeron) To enter into non-public session per RSA 91-A:3(L)

**ROLL CALL** (7-0-0) The motion carried.

**VOTE:** Roger Montbleau-Yes,  
Cindy Kirkpatrick- Yes  
Paul Dadak – Yes  
Jim Bergeron- Yes  
Tim Doherty- Yes  
Derek Steele - Yes,  
Selectmen Representative Hal Lynde-Yes

Joining the Board in non-public were: Alternate Paddy Culbert, Alternate Richard Olsen, Alternate Bruce Bilapka, Alternate Selectmen Representative Kevin Cote, Planning Director Jeff Gowan

Public session recessed at approximately 9:20pm

The Board returned from non-public session at approximately 9:54pm

**MOTION:** (Lynde/Dadak) To adjourn non-public session.

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

**MOTION:** (Lynde/Dadak) To seal the non-public meeting minutes indefinitely.

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

The public meeting was reconvened.

## **NEW BUSINESS**

### **Case #PL2020-00002**

#### **Map 6 Lot 4-175-1**

#### **PAWTUCKET ROAD LANDHOLDINGS, LLC - 32 A&B - Valley Hill Road - Proposed 3-Lot Subdivision consisting of duplex style units**

Ms. Kirkpatrick read the list of abutters aloud. There were no persons present or who hadn't been notified who asserted standing in the case.

Representing the applicant was Mr. Karl Dubay of the Dubay Group. He explained the parcel was previously permitted for a duplex lot with a 14-foot driveway. The parcel is located off Valley Hill Road and contains approximately eleven acres. He said the applicant asked his company to amend the access to be a 22-foot road with three duplex lots; the intent was to meet the regulations of a standard subdivision and a road. He didn't believe Keach Nordstrom (Board's engineering firm) had started their review. He looked forward to working with Town staff and Highway Safety Committee. He understood the Board may have issues/concerns and indicated they would take their time to work everything out. He noted they hadn't received any review comments and weren't privy to non-public discussions. Mr. Dubay asked the Board for direction with the understanding the case would be continued to a subsequent meeting.

Mr. Montbleau informed the Board wanted to send the plan to Keach Nordstrom for review as they had a lot of questions to be answered. He understood the driveway was going to be proposed as a road. Mr. Dubay answered yes. Mr. Montbleau understood the Department of Environmental Services ('DES') had become involved due to the size of the excavation activities; the Board was waiting for their opinion.

Mr. Gowan stated the plan was complete enough for the Board to accept it for consideration.

**MOTION:** (Dadak/Kirkpatrick) To accept the plan for consideration.

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

There was brief mention regarding when the case could be date specified to.

Mr. Doherty noticed a culvert on Brown Avenue and questioned if water sheet flowed toward the applicant's property. Mr. Dubay answered yes. He referenced sheet two of the plan set that showed existing conditions. Water flows under the applicant's property by traversing from the east to the west; there is a 1,400SF wetland impact that was permitted for a 14-foot driveway and associated culvert. He stated it would be upgraded for a roadway-type culvert. Mr. Doherty inquired what was currently in place for the driveway crossing. Mr. Dubay believed the owner installed, per the issued wetland permit, a culvert on their property. He offered to survey the existing conditions of the culvert currently under the property. He wasn't sure if it was a temporary culvert for the operations on the property or a permanent situation for the roadway but will have the information at the next hearing. He said they will create an as-built for the new culvert and noted it may or may not be the same culvert for the design change of the roadway. He noted the impact would still be the same, but the culvert inverts may be different. He offered to forward information and designs to Town staff and Keach Nordstrom for review.

Mr. Gowan noted the regulations speak to maintaining a 3:1 slope from the roadway and questioned if it was achievable with a 22-foot travel way. Based on the road utility plans and cross-sections, Mr. Dubay spoke about the proposed 22-foot wide roadway, shoulders and guardrail and 1:1 stabilized slope. As it goes into the final design it will most likely result in a 1:1 stabilized (engineered) system, not just riprap on top. He understood that design would need to be reviewed by Town staff. Mr. Gowan believed the proposal was definitely a candidate for a site walk, possibly in advance of the applicant's next meeting with the Board. Having been on site he felt the Board should see the property in addition to the plan. Mr. Dubay offered to stake the centerlines prior to the site walk. Mr. Montbleau believed the Board should hear from Mr. Keach prior to walking the site. Mr. Gowan agreed as Mr. Keach may offer suggestions that would cause potential changes in the field.

#### PUBLIC INPUT

Mr. Darren Martin, 21 Benoit Avenue told the Board he resided at that address for seventeen years. He informed the Board he and his wife opposed the plan. Mr. Martin recognized every landowner had a right to develop their land. He spoke about the property and stated he was surprised to see the land had been clear cut and virtually demolished by a lot of heavy equipment (i.e. rock trucks, excavators, backhoes). Mr. Martin stated he was okay with the original approved plan for a single house but when they saw what was happening on site it became evident something else was going on. He heard mention of a 14ft. driveway and commented the area looked similar to a road. He said it looked like the developer used the approval of a single duplex as a launch pad to tear apart the entire property. Mr. Martin spoke about the applicant's property and recalled there were pools and other aspects he thought would have been protected by wetlands, but it was now all destroyed. He said they couldn't do a site walk to see what is out there because rock trucks had torn the area up. He told the Board he was very concerned with what was really going on in the area. He said the original approval wasn't in the vicinity of what was occurring.

Mr. Doherty questioned if Mr. Martin's comment regarding 'rock trucks' were articulating (off road) dump trucks. Mr. Martin said they were the same type of truck as in the television program 'Gold Rush'. Mr. Doherty

asked if the trucks drove on the road. Mr. Martin replied he couldn't see because his property was on the back side of the applicant's lot. He believed the trucks were still parked on the property. He said before snow came the trucks were parked in the area where the first duplex had been approved. He added the Board would be able to see the property had completely torn to pieces. Mr. Doherty questioned if the property had been stumped (trees cut and stumps pulled). Mr. Martin answered yes; from what he could see from his property. Also, from what he could see there was no silt fencing or protection. He said when his house was built there was silt fencing and hay bales staked out everywhere to control runoff. From his property he can see the wetland buffer on the applicant's lot which had no protection. He encouraged the Town to look into the situation and make sure the 'jewel' of a wetland in the area was actually being protected. He didn't know what other rules went along with wetland protection. In looking at the plan he was concerned as it seemed the houses were going to be backed up to the Wetland Conservation District ('WCD') buffer. He was also concerned over time future residents would clear further into the wetland area similar to what occurred at another location on Valley Hill Road where the land was clear cut down to the water. He asked the Board to consider moving the houses closer to the road to allow for space between the back of the house and the WCD.

Mr. Martin told the Board the map being presented (by the applicant) is inaccurate. He stated he purchased a little over an acre (in 2012) from a previous owner that was registered at the Registry of Deeds. The map doesn't reflect his land; half of his back yard is being shown as the applicant's map. He asked that the information be corrected so the maps being present to the Board were accurate. Mr. Cote questioned if any of the trees were cut on his property. Mr. Martin answered no (not by the applicant). He noted after he purchased the land, he had cut a few trees, but not in the area of the wetland or WCD. He ended by telling the Board there were a lot of residents in the audience earlier in the evening to speak to the proposal; however, due to the length of the first hearing there were only two people remaining in the audience to speak. He encouraged the Board to have another period where the public could come forward and speak during a more reasonable hour. Mr. Montbleau replied the case would be continued to March 16<sup>th</sup> for further discussion and public input. He stated the plan would be sent out for engineering review, the Board would conduct a site walk and there would be further input and discussion. Mr. Martin hoped someone would confirm that the 50ft WCD buffer had been maintained. Mr. Cote stated the buffer had been maintained. Mr. Martin said he would consider it a 'slap in the face' to the Planning Board for someone to get approval for a single house and then go back and clear cut an entire large property as a launching pad for the activity taking place. He again encouraged the Board to review the site. He believes the privilege given by the Town (through a variance) had been abused. He wondered what the next phase would bring since there was a large section of land between where the houses would be in the direction of the pipeline. He wouldn't be surprised if there was an additional request to further subdivide the property.

Mr. Joel Peglow, 25 Brown Avenue which is the last abutting house at the end of the cul-de-sac. He said his property line abutted the applicant's property for a few hundred feet. He said he grew up in Town and had purchased the property approximately five years ago. He explained he had young children and direct visibility into the large bulb of what was now almost entirely clear-cut open space. In walking out his back door could clearly see preparations are being made for more than just a single family. The cleared area was to the maximum extent as if additional property was being prepared. His primary concern was privacy. Mr. Peglow told the Board his background was in engineering. He indicated he reviewed the plans and saw the setbacks to the wetlands and other properties were very minimal. The roadway may or may not be adequate for the quantity of people that would live in three duplexes. Mr. Peglow was concerned with having additional traffic brought onto Valley Hill Road. He understood the plan was under consideration and there would be subsequent discussion. He stated his primary concerns were privacy. The plan didn't seem consistent with the other types of housing in the immediate or surrounding area and neighborhoods; there are no duplexes. He questioned the motivation for the variance when it was (appearing) to benefit the maximization of the value of the property by building.

Mr. Doherty inquired if there were any trees or foliage remaining for a buffer to Mr. Peglow's property. Mr. Peglow replied there was some but couldn't put a dimension on it without walking the site. Mr. Gowan believed the Board would probably schedule a site walk at a subsequent meeting and wanted him to be aware abutters were welcome to attend. Notification of such would occur during a meeting and not by separate notification.

Mr. Gowan stated because the Board had accepted the plan for consideration the applicant was expected to put in all erosion controls and cease all other work until the Board reached further conclusion. Mr. Montbleau made it clear the Board hadn't accepted the plan for the applicant to continue. Mr. Dubay understood the Board asked for the following: 1) install all erosion controls, 2) cease all activity (other than installing erosion controls), 3) post wetland placards as previously required. He will speak to the landowner about the project. He believed they should do an as-built to show tree lines and verify the lot lines with monumentation. He said it would be helpful for Mr. Gowan to send an email outlining the requirements. Mr. Gowan stated any disturbed area needs to have erosion controls without disturbing the wetland area.

Mr. Culbert inquired about the current width of the driveway. Mr. Gowan replied he measured earlier in the day and found it to be 24ft across the flat area not counting the slopes. Mr. Dubay reiterated he would like to do an as-built of the existing conditions to establish the facts. He will forward his notes to compare with Mr. Gowan to ensure nothing is missed. Mr. Montbleau confirmed Mr. Dubay was clear on the fact the Board wanted all activities to cease. Mr. Dubay answered yes and requested Mr. Gowan forward a letter documenting the facts. He believed the applicant had permits to do certain things. Mr. Gowan replied the applicant may have permits to do certain things, but they had not proposed doing something else; therefore, all activity needed to cease other than erosion controls. He said he would put the information in a correspondence.

**DATE SPECIFIED PLAN(S)** – March 16, 2020

Case #PL20219-00024- Map 35 Lots 10-200, 10-312 & 10-351 - NEIL FINEMAN 2018 TRUST & LEMIEUX, Albert III & Christine - Currier Road, Peabody Lane & Bridge Street (Route 38)

Case #PL2020-00002 - Map 6 Lot 4-175-1 - PAWTUCKET ROAD LANDHOLDINGS, LLC - 32 A&B - Valley Hill Road

**ADJOURNMENT**

**MOTION:** (Lynde/Kirkpatrick) To adjourn the meeting.

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

The meeting was adjourned at 10:35pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary