

**APPROVED**

**TOWN OF PELHAM  
PLANNING BOARD MEETING  
November 3, 2014**

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

The Secretary Paul Dadak called roll:

**PRESENT:** Peter McNamara, Paul Dadak, Tim Doherty, Paddy Culbert, Alternate Joseph Passamonte (left prior to meeting adjournment), Selectmen Representative Robert Haverty, Planning Director Jeff Gowan

**ABSENT:** Roger Montbleau, Jason Croteau, Alternate Mike Sherman

Mr. McNamara appointed Mr. Passamonte to vote in Mr. Montbleau's absence.

Mr. McNamara then reviewed the agenda for the present meeting and announced the date specified cases.

**OLD BUSINESS**

**PB Case #PL2014-00005**

**Map 17 Lot 12-180**

**EAH REALTY TRUST – 956 Bridge Street – Proposed 8-Lot Conservation Subdivision and Seeking a Special Permit to construct a road through the Wetland Conservation District.**

Mr. McNamara announced that the application had been withdrawn.

**PB Case #PL2014-00019**

**Map 32 Lot 1-16-24 - SKYVIEW ESTATES, LLC – Skyview Estates Phase II - Majestic Avenue – Proposed Conservation Subdivision (19 Residential Lots & 2 Open Space Lots)**

Mr. Shayne Gendron and Mr. Michael Gospodarek of Herbert Associates came forward to discuss the proposed subdivision. Mr. Gospodarek understood from the last meeting they had covered basically all of Keach Nordstrom's comments (Board's engineering review firm), with the exception of the detention ponds and road profile. He provided the Board with a plan that highlighted the original road profile and the revised profile proposal. During the revision process, there were discussions about blasting. Essentially, they were trying to minimize the amount of blasting that would occur on the site. The original plan required approximately 9,000 cubic yards of blasting; the alternative would be approximately 40% less, 5,000 cubic yards. An estimates spread sheet was prepared and provided to Mr. Gowan. A waiver has been submitted to the road slope requirement of 3% for 100ft. at an intersection; the plan shows 96ft. Mr. Gospodarek told the Board that Steve Keach had reviewed the plans and had no issue with either roadway design. He added if the Board wanted to decrease it more, he questioned if the Board would consider a 50ft. tangent to allow the vertical curves to begin sooner and be less affected by the ledge.

Mr. Gospodarek told the Board they've had correspondence with Mr. Keach that indicated everything they'd addressed was okay. The changes dealt mainly with detention basin 2, for which additional construction detail and sequence of events was detailed on the plan. They also added a detail for how de-watering would occur if necessary.

Mr. McNamara stated the reason the Board requested the change to the road profile was in an effort to minimize blasting because of the problems that have occurred. At the applicant's expense, a peer review was conducted on the blasting report that was done. The Board was in receipt of the Lancer Insurance report (claim #160125 for Ted and Celia McGlynn, 9 Scenic View Drive) prepared by Vibration Dynamics dated July 24, 2014; peer review opinion of the report prepared on October 22, 2014 by Terracon; and revised comment of October 31, 2014 by Terracon. Mr. McNamara briefly discussed the contents of the reports and read aloud selected portions that applied to the case in front of the Board. He noted they were all public documents available at the Planning Department.

In reviewing the peer review document Mr. Doherty read that Terracon had received copies of the McGlynn well installation and service records. He questioned why the Board wasn't provided with copies of those records as part of the report. Mr. McNamara replied the Board members weren't experts, so they requested expert review. Mr. Gowan believed the McGlynns would be happy to provide their records to any member of the Board. In this case, he wanted to be sure when he took Terracon out for review, they would have access to the site and the McGlynn's location. It was at that time the McGlynn's offered the information. It didn't occur to him that any member of the Board wanted to see those records; however they were easy to make available to review.

Mr. Culbert asked if there was a possibility for Pennichuck to supply water to the McGlynn's or anyone else. Mr. McNamara believed that specific question was raised during initial discussions to which the Board was told it couldn't be done for various reasons.

Project owner and developer, Mr. John Gargas came forward for the discussion. He spoke of their agreement with Pennichuck, in terms of limit and supply and water deployment, wouldn't support offsite distribution of water. He stated there was no excess capacity.

Mr. Culbert understood the Town's blasting regulations required testing for those within 500ft. and suggested possibly increase that requirement to 1,000ft. Mr. Gowan informed that the Planning Board didn't have the authority to make changes; that responsibility stayed with the Fire Department and the Board of Selectmen. However, if the Planning Board reached a consensus for expanding the territory, they could make a recommendation to the Selectmen. Mr. Culbert asked Mr. Haverty if he could send a message to the Selectmen. Mr. Haverty responded if there was a consensus by the Planning Board he would be happy to forward it along to the Selectmen. Mr. Culbert asked if the Board could make that consensus at the present meeting. Mr. McNamara suggested first hearing from Mr. Keach and having a full discussion. Mr. Dadak recalled a few years ago the State admitting it was difficult to get sufficient water in the area of Sherburne Road (up on the hill). He believed there was a minor change in zoning so the Board could request that a developer prove they had adequate water before proceeding with a project. Mr. Gowan refreshed the Board memory; phase I was submitted in both conventional and conservation forms. There were discussions about the wells the ability to provide enough water for the project. In the context of those meetings, he couldn't envision the Board requiring the owner to supply water offsite, although there had been a conversation about possibly doing so as an option. The project Mr. Dadak referred to was the Vineyards, which Mr. Gowan believed was a senior development that never got enough wells to satisfy the needs of the

project. Mr. Dadak recalled there being specific language for the Sherburne Road area of Town that indicated a developer had to prove they could achieve adequate water. He added if there wasn't specific language, the Board may want to consider including verbiage.

Mr. Gargasz told the Board that both Pennichuck and the Department of Environmental Services ('DES') had stringent requirements on a developer in terms of what had to be proven out before they agree to take on a water system. He explained when the initial independent review was conducted, the reviewers took the information from Vibrations, individuals on the Scenic View Drive, Fire Inspector John Hodge, but they hadn't taken information from anyone on the project side. Therefore, Mr. Gargasz requested additional facts to be considered, such as their requirement to conduct a 72hour pump test (2004) with remote monitoring wells (for residences within the area with one being on Skyview). This was followed up in 2011 by a five day continuous test with no negative effect on residential wells. These tests were conducted to prove adequate capacity and to show there wouldn't be a negative effect on the surrounding.

To follow up with Mr. Culbert's question, Mr. Doherty asked if Pennichuck could supply downstream water through the development; to answer, he believed they should have that ability. He recalled the project had a 'stub' with a large enough pipe into Town property to allow Pennichuck the potential to supply water downstream, if an individual was willing to pay for such. He believed this was supposed to have been done as part of the original project. Mr. Gargasz replied at their expense they put lines in from the pump house through to the Town's right-of-way. In reviewing project (separate from the debate on blasting) he believed there was an issue on the Town side regarding granting an easement to Pennichuck. Also, Pennichuck takes a conservative approach in terms of having many years of operation before they would consider additional bedrooms, or irrigation. Hypothetically, Mr. Doherty questioned if Pennichuck could get water off the property and send it through the development to downstream houses. Mr. Gargasz believed it was a hypothetical situation with about a dozen things that would stand before it and reality. He didn't feel at this time it was a situation collectively, between him, Pennichuck and the Town they would take into consideration.

Mr. Gowan told the Board he was Pelham's representative on the Merrimack Valley Water District; that District has a seated member of Pennichuck. During those meetings, Mr. Gowan has and will continue to push for water expansion in Pelham. Pennichuck is resistant to expansion. He noted any expansion would need to go in front of the Selectmen for consideration and be paid by the Town.

Mr. Culbert understood (from correspondence of James Vernon) there was at least one well on Scenic View Drive that was monitored. He questioned where it was located in comparison to the McGlynn's property. Mr. Gargasz noted Mr. Vernon had changed employment. He's submitted a request to DES for information; DES needs to pull records from the archives. He said the collective memory of Mr. Vernon and Scott Bogas (of Skillings) was the house is near the top of the street on the left, being approximate to the McGlynn residence; there was no negative effect during that monitoring. He understood if there had been a negative effect, DES wouldn't have allowed them to move forward.

Mr. Culbert stated he contacted the blasting superintendent with FE Sergeant (in Maine) who told him it was very possible that the blasting that occurred effected the McGlynn's well and questioned why fracking hadn't been done to the well. To date, Mr. Gargasz stated they were trying to figure out cause and effect and summarized the information that was being reviewed to zero in on a conclusion.

Mr. McNamara asked Steve Keach of Keach Nordstrom (Board's engineering review firm) to come forward and speak to the items brought up by Mr. Gospodarek, specifically the changes to the detention and the road profile. Mr. Keach came forward to discuss his most recent review letter dated October 15, 2014. There were a number of 'housekeeping' items, such as State permits being received, need to include approval condition for a performance guarantee, ownership documents, and governance of open space. He told the Board he requested an adjustment to the detention pond and was forwarded (by Mr. Gospodarek) a drawing on October 28, 2014 plan sheet #PC8, which satisfied that comment with the revision. There was an open waiver request specifically to Appendix I, BB, 21 of the Subdivision Regulations that requires a minimum platform length of 100ft. to a grade of not more than 3% to any 'T' intersection with a stop condition. The phase II roadway to the phase I network has a proposed tangent length of 87ft. from the edge of pavement. Due to the low volume of traffic that would operate on the phase II roadway and the implications of being able to one day construct the road down to the Burton property; Mr. Keach had no problem with the waiver request. Other than the items he spoke of, he told the Board they had a clean set of drawings.

With regard to the road profile, Mr. Keach received the drawing from Mr. Gospodarek a few weeks ago and subsequently received volumetric estimates of the delta between bedrock removal necessary to build previously presented plans (9,610 cubic yards) versus the alternative removal (5,840 cubic yards). Mr. Keach said he 'planted the seed' of reviewing vertical alignment as a way to mitigate risk of additional blasting. He hoped that the volume delta would have been far greater than it ended up being. To Mr. Gospodarek's credit, he prepared a reasonable modified vertical alignment that Mr. Keach noted may take a waiver, but wouldn't be an unreasonable thing to do. Public safety wouldn't be impacted. If directed, Mr. Gargas told the Board they would follow the revised road profile.

Mr. Gowan spoke of the process. He didn't believe the waivers for the road profile changes had been submitted. He advised if they were going to proceed, the waivers should be drawn up quickly and request Mr. Keach's comment regarding such. He would then take the waivers to the Highway Safety Committee ('HSC') to seek their opinion/support. Mr. Keach reiterated he had hoped for a greater delta and didn't believe the proposed delta of 3,800 cubic yards was worth it. He commented by the time they were done, the amount of bedrock removal would shrink. For clarification, Mr. McNamara understood Mr. Keach to say he recommended that the Board retain the original road profile. Mr. Keach believed the road profile was ultimately the applicant's decision; the proposed revision didn't achieve the outcome he hoped. He noted they would know more about the bedrock after clearing and grubbing for the road bed, which he believed might be a better time to make an evaluation and possible field adjustment. Doing so would allow everyone to understand what they were truly dealing with, rather than guessing. There may be a combination of cap rock, which could be removed by mechanical means, and solid rock that may require blasting. Mr. Keach appreciated the flexibility of Mr. Gargas. There was a consensus of the Board to proceed with the plan as originally drawn up depending what is found on site; at that point, the object would be to lessen blasting as much as practical. Once on site a determination can be made whether a field change could be done, or if the situation is significant enough to bring it back in front of the Board. Mr. Keach believed Mr. Gospodarek prepared an upward parameter in what was presented to the Board. He commented when dealing with cap rock, removal of such didn't necessarily mean blasting would occur.

PUBLIC INPUT

Mr. Jim Fischer, 19 Scenic View Drive felt the discussion about blasting was reasonable and suggested (as discussed at a previous meeting) holding a bond. Mr. McNamara replied if the Town accepted money in the form of a bond, the Town would in effect become the insurer and be held liable in terms of what should be civil liability. Presuming it could legally be done, he didn't feel the Board or the Selectmen would be in favor of doing so. Mr. Fischer suggested a bond may give the Town more incentive to 'watch' so there wouldn't be additional problems. Mr. McNamara responded that the 'watching' was regulated by the ordinance, which was governed by the Fire Department and Board of Selectmen. It was his understanding that Pelham's Blasting Ordinance was stricter than most cities and towns within the State. He felt what happened was unfortunate and realized it caused harm to people in the area. He believed the board would be going outside of their authority if they were to require a bond. Doing so would also open up other questions, such as who would administer, how to determine what's held, what circumstances would it be released and what would occur if someone claims a problem. He felt the problems for the Town weren't work the potential solution.

Mr. Fischer understood there was an amount of water allegedly usage per day based on the number of homes. He reminded the Board of a photograph he submitted at a previous meeting (with multiple hose connections to an external water faucet), which would throw those numbers off. Mr. Gowan stated there will be no further irrigation systems as shown in that photograph. Mr. Fischer wanted to know the Board's definition of irrigation. As Mr. Gowan understood, after checking with the gentleman who designed the water system, it was defined as underground irrigation systems. However, it was his opinion that the setup of multiple hoses attached to one external faucet (as shown in the photograph supplied by Mr. Fischer) flew in the face of the restriction. Mr. Fischer had a copy of a letter from DES reminding that their approval included a prohibition on irrigation. He then spoke of his concern for that approval being based upon 192 bedrooms with 64 homes. He wanted to know what would occur in the future if a homeowner wanted an addition. Mr. Gowan replied they were limited to 3-bedroom homes, which could not be exceeded. Mr. Fischer inquired if the Planning Department was keeping track of the number of bedrooms. Mr. Gowan responded there would be no house within the subdivision built in excess of three bedrooms. He stated any room with a closet was considered a bedroom. The homeowner's documents will contain all the restrictions. Mr. Fischer stated his concern was he didn't want people to have water problems in the future.

Cecilia and Edward McGlynn, 9 Scenic View Drive came forward to address the Board. Ms. McGlynn was thankful for the Terracon report (peer review of blast findings report). She felt it clarified her beliefs of what occurred after the blasting. She suggested with the next phase coming in, which would be closer to her home, that water testing be done again. She noted when the water table was tested in 2011, there were forty blasts done and since that time there had been closer to 160 blasts. She believed it may be time for new testing. Mr. McNamara recalled the Terracon revised report suggested it was difficult to determine cause and effect. Testing was not the prerogative of the Board to compel; however, they could suggest to the Fire Department and Board of Selectmen that Pennichuck conduct additional tests. Ms. McGlynn understood. She felt the report from Terracon was helpful because it indicated that blasting could, and did cause damage. In looking at the information within blast report and knowing that the water table had been lowered and damage was caused to their well, she felt information should be updated. She wanted to know what Mr. Gargas would do with the information contained in the report and to repair her well. Mr. McNamara responded it wasn't the prerogative of the Board and hoped the McGlynns and Mr. Gargas could come to a conclusion out of court.

Mr. McGlynn called attention to the fact that the report pointed in their favor and indicated something anomalous happened to impact their well. He told the Board something had to be done and hoped for resolution before the meeting. He was disappointed there had been no meaningful contact with anyone from the development since the report. Since they were moving forward with correcting the situation, Mr. McGlynn was extremely concerned about additional blasting and the development moving closer to his property. He understood they would need to go in front of the Board of Selectmen regarding blasting to request additional monitoring and other requirements. He hoped the Planning Board would make a recommendation for the Selectmen to carefully review the situation. Mr. McGlynn commented that several people in the neighborhood had experienced an impact because of the situation. He noted there were others within the neighborhood that didn't want to come forward and have their names on record for having water problems as it may affect a future sale of their home. Going forward he felt additional monitoring should be conducted and a Town official should be on site for every blast to ensure it was done per plan. They were previously told there was no way they could have felt the blast; however, several in the neighborhood did and reported such. Mr. McGlynn said there was either some geological feature transmitting energy to his property, or something wasn't going according to plan.

Mr. McNamara stated the Board would take whatever steps within the ordinance and New Hampshire law as allowed. He noted blasting was not an exact science and there was no test to definitively state what previously happened. He appreciated the McGlynn's situation and told them the Board would discuss what recommendation to forward to the Board of Selectmen and Fire Chief.

Ms. Rosemary Fischer, 19 Scenic View Drive told the Board they received a letter in September from Skyview Estates asking for cooperation in ensuring safe drinking water for both their neighborhood and the Skyview Estates community. They were asked to be careful about what they dumped in their yard etc. to maintain the safe quality of drinking water. The letter indicated her property was within the SWPA for a public water system, activities on her property that affect ground water can also affect the public water supply. Ms. Fischer commented in the past they raised concern that everything was linked together with regard to water and received assurance that it wasn't. However, now they're being told they're connected. She questioned why they were now receiving letters. She also informed that there were large trucks at the development site leaking fuel into the ground and leaving huge fuel stains. She wanted to know if that action would affect their wells.

Mr. Gargas explained as part of the DES process with regard to the water system was the boiler plate letter (described by Ms. Fischer) was predefined and included a specific radius for it to be sent out to. Mr. McNamara asked if it was simply a matter of course for such letter. Mr. Gargas answered yes; letters were prepared by the water engineer and sent out accordingly. He noted they tried to keep a clean site because they too had concern about drinking water. He stated the Pennichuck agreement was very specific with regard to in-ground irrigation. The covenants were very specific about prohibiting in-ground irrigation. Mr. Gargas had a specific conversation with Pennichuck about above ground hoses and told it was perfectly fine. He'll go back to take another look; the purpose of the hoses was to get the lawn going. He told the Board that the limitation was the total bedroom count of 192. Pennichuck was also concerned about consuming too much water. A ledger is being kept to show how many bedrooms have been built per lot; some homes may have two bedrooms, some may have four bedrooms. The overall number of bedrooms cannot exceed 192.

Mr. Gowan questioned if they planned to build any homes with more than three bedrooms. Mr. Gargas responded because they now have a couple two-bedroom homes, they have a four-bedroom

home option but have not built one to date. Mr. Gowan stated the homeowner's documents would need to be reviewed to ensure the rights of one home don't eclipse the rights of another. Mr. Gargasz believed the language within the document covered that aspect. They tried to take various things into consideration, for example somebody may purchase two lots and build a six-bedroom house.

In terms of well testing, Mr. Gargasz stated it was not free and was a rather extraordinary expense. He appreciated the gravity of the situation and the feelings particular to those residing on Scenic View Drive. The requirement is a 48 hour test. He explained that the 72 hour test pre-dated his involvement in the development. Subsequently a five day continuous test was conducted and considered by Pennichuck and DES to be a serious double check of the system.

Mr. McNamara felt the abutter (Ms. McGlynn) brought up a valid point that the data may have changed since the blasting occurred. With DES being satisfied with prior testing, he didn't have an answer. Mr. Gargasz told the Board he was taking everything very seriously and felt bad that the McGlynn remains unresolved. He was pressing things as fast as was possible by taking steps such as the independent review, which had cost thousands of dollars. The updated report has been submitted back to the insurance company, which he hoped would come to a resolution. Although it was an inexact science, he remained committed to a final resolution.

Mr. Passamonte wanted to know if homeowners were going to be allowed to have hoses to irrigate their lawns. It was Mr. Gowan's opinion, regardless of what DES states, there would be something wrong with a home having as many hoses above ground as they would with an underground distribution system. Mr. Passamonte recalled through discussion a statement being made that there would be no irrigation. Mr. Gowan knew it wasn't a flat out 'no irrigation' statement because he discussed with Bruce Lewis (water engineer) about the community garden within the development, which would need irrigation. He specifically asked Mr. Lewis if a hose could be run from a spicket. DES had some distinction between above and below ground watering. Mr. Passamonte reiterated there had been a discussion about there being no irrigation. Mr. Haverly questioned if watering a lawn with a single hose was considered irrigation. Mr. Passamonte believed a person watering their lawn for a period of time may have the same effect as if they had an irrigation system. He said the previous discussion centered on water usage. Mr. McNamara considered one person with one hose was a lot different than the photograph previously submitted by Mr. Fischer that showed multiple hoses connected to an above ground source. Mr. Gargasz pointed out that the Pennichuck covenants were specific regarding no in-ground irrigation and further they would be monitoring consumption. Consumers will be charged for their water usage, which creates a disincentive to overuse. He believed Pennichuck had the ability to restrict irrigation should they believe that consumption was going too high. Mr. Dadak added that Pennichuck sets the rules for no irrigation, they also have the ability to enforce such rules.

Mr. Culbert questioned if any thought was given to using polymer granules that expand to absorb water (such as rain water) and release it slowly. Mr. Gargasz understood those granules worked well for things like trees and shrubs, less so for grass when the seed is on the surface. He told the Board they had many conversations with Pennichuck and water consumption. They explored mat irrigation, mats are placed 2in-3in under the soil and provide 60% efficiency over an in-ground irrigation system since there is no evaporation. The mats are coupled with moisture sensors placed in the soil that would trigger underground irrigation when needed. However, Pennichuck wouldn't consider the technology. Mr. Culbert commented in the past he had a 100ft.x100ft. garden that he didn't water in three years after adding 10lbs of polymers (at a cost of approximately \$20).

Mr. Fischer referenced Exhibit E of the transfer agreement between the developer and Pennichuck, which specifically reads (in capital letters) 'no irrigation'. Included was a letter from Mr. Pendleton (sp?) that reads prohibition of irrigation of the system became a condition of the system approval with DES. He displayed on the overhead projector, a photograph from his telephone of the multi-hose connection to the external faucet on one of the homes constructed within the development. The photograph was previously submitted to the Board for the case file.

Mr. McNamara closed public input and brought the discussion back to the Board. He questioned the meaning of 'no irrigation'. Mr. Gowan responded Pennichuck closely watched water consumption. For clarity he will request an explanation from DES of the limitation. He noted he would not be policing the water usage as Pennichuck would certainly fulfil that role.

Other than conditions for approval, Mr. McNamara asked what the Board wanted to recommend to the Selectmen and Fire Chief regarding blasting. Mr. Gowan clarified that either entity had authority under the Blasting Ordinance so a recommendation could be worded to the Fire Department and/or Board of Selectmen. To anyone in the public who wanted to pursue further, he suggested beginning with the Fire Chief and Fire Inspector John Hodge because if they concede to broadening the scope the Selectmen wouldn't need to get involved.

Mr. Culbert would like to expand the 500ft. limit for notification, survey or anything else related to blasting. He referenced verbiage contained in the Terracon report. Mr. Gowan pointed out even with an expansion to 1,000ft, the McGlynn's property is located approximately 1,900ft. away. He believed at some point the Fire Department may push back at some point. Mr. Culbert stated blasting may be a way of life for some people given Pelham's terrain. Mr. Gowan indicated the Board or members of the public could seek an expansion of the survey distance for blasting. He wanted to understand Mr. Culbert's recommendation and qualify such. Mr. Haverty referenced the ordinance and read the guidelines for pre-blast condition surveys and required distances being either 500ft., 750ft, or 1,000ft respectively. To capture the concerns, Mr. Gowan suggested possibly requiring not less than a 90-day permit being issued for phase II. Mr. Haverty pointed out that a 90-day permit was for a volume of 15,000cubic yards, which was beyond what the application believed to be necessary and at the same time only pushed notification out to 1,000ft. He reiterated the McGlynn's property was 1,900ft. away from the blast site. Mr. Gowan added he scaled the distance himself. Mr. McNamara noted a portion of the Terracon report indicated some of the damage was not due to blasting.

Mr. Passamonte left the meeting. There were five seated Board members.

Mr. Gowan suggested having a clean recommendation. This was the biggest blasting project in Pelham; with no criticism to the Fire Department, pulling a 30-day permit never made sense to him.

Mr. Doherty believed one of the biggest problems was having a State driven ordinance that they try to cater to Pelham's needs. He pointed out there were some areas within Town that blasting wouldn't affect anyone's well because of the sandy soil. A one-size fits all ordinance didn't work.

Mr. Culbert asked for the Board's opinion to expand the 500ft. limit. Mr. Haverty suggested first raising the question with the blasting administrator (Fire Inspector John Hodge). Mr. Culbert agreed. Mr. McNamara suggested the Board recommend that the Fire Inspector increase the protections to

include perhaps a 60-day blasting permit and increase the 500ft. limit. It could be left general enough for the Inspector to then go to the Selectmen with the recommendation. Mr. Gowan believed the Fire Chief has total authority without going to the Selectmen. Mr. McNamara stated the Board could also request increased on-site supervision of blasting when particularly deep or sensitive. Mr. Gowan informed Inspector Hodge was present on all blasts and the only one qualified to do so; he didn't see how it would make a difference to have additional personnel.

Mr. Doherty asked if they should also look into making the ordinance territorial, since certain sections of Town historically have poor water. He wanted to know if certain sections could have different standards. Mr. McNamara replied the Board was making the request to Inspector Hodge with regard to the particular case in front of the Board. He said further discussion about the ordinance could be deferred to another time. Mr. Haverty believed there was something geologically different about the area of the development. He understood expanding the radius of the notification and survey to an extent, but while trying to be reasonable to the developer in terms of them incurring cost, he wondered if they ought to extend the radius to something reasonable and include people beyond that who have suffered difficulties during the past blasts. Mr. McNamara added where it could be demonstrated.

Mr. Gowan told the Board blasting appeared to be the only issue that seemed in the way of granting a conditional approval. He suggested making a general recommendation to the Fire Department that would leave the Fire Chief latitude; understanding he would hear concerns from residents. The letter could request consideration to increase the survey area for Skyview, phase II given recent impacts to Skyview wells. This wording would be the Board's way of asking for consideration, but at the same time leave it general. Mr. Culbert agreed to Mr. Gowan's suggestion. No objection was spoken by other Board members.

Mr. Gowan stated the only thing remaining for a conditional approval were: 1) receipt of State permits, 2) adequate bond and plan compliance escrow as recommended by Keach Nordstrom, 3) verification of homeowner documents (Town Counsel review), and 4) final letter from Keach Nordstrom indicating their satisfaction.

Mr. McNamara asked that the letter to the Fire Department include having the Blasting Administrator make inquiry to DES and/or Pennichuck regarding the adequacy of the prior well testing.

**MOTION:** (Culbert/Dadak) To approve the Site Plan with conditions stated: 1) receipt of State permits, 2) adequate bond and plan compliance escrow as recommended by Keach Nordstrom, 3) verification of homeowner documents (Town Counsel review), and 4) final letter from Keach Nordstrom indicating their satisfaction.

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

Mr. Gowan noted that the Planning Board could revisit any decision within 30-days of that decision.

**MOTION:** (Culbert/Dadak) To approve the waiver request to Appendix I, BB, 21 – maximum roadway slope of 3% be provided for a length of not less than 100ft.

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

**PB Case #PL2014-00026**

**Map 35 Lot 10-193 & Map 36 Lot 10-191-1**

**GREEN, Richard; GREEN & COMPANY – 1-5 Garland Lane – Proposed 46-Lot Conservation Subdivision (*Special Permit for Yield Plan and 20% Density Offset of 7 lots was granted on July 7, 2014*)**

Mr. Joe Coronati of Jones & Beach Engineers, representing Green & Company, came forward with Mr. Michael Green to discuss the proposed conservation subdivision.

Mr. McNamara understood Steve Keach of Keach Nordstrom (Board's engineering review firm) had reviewed the plan and provided a voluminous response letter to which the applicant would respond.

Mr. Coronati told the Board that Mr. Keach had conducted a thorough review and in turn they make approximately 95% of the suggested changes; remaining items will be discussed with the Board. He noted they met with the Conservation Commission and conducted a site walk which lead from Garland Lane nearly to Fineview Circle. They are scheduled to meet back with Conservation on November 12<sup>th</sup> and hoped for a recommendation at that point. Mr. Coronati spoke of the continuation of the water system, for which they had been drilling and developing five wells in the field. They've received the amount of water necessary and were ready to go to the State to have those wells pump tested. With regard to the fire protection system, Mr. Coronati told the Board he met with a fire protection engineer who reviewed the proposed cisterns and suggested minor changes. The plan proposes two 15,000gallon cisterns that will cover the entire 46-lot subdivision. Once those plans for those cisterns are complete a meeting will be set with Fire Inspector John Hodge. For permitting aspects of the drainage system, the Alteration of Terrain application has been submitted to the State. Using the displayed plan, Mr. Coronati highlighted a lot line adjustment to provide additional green/open space between the development and the first lot on Fineview Circle (14 Fineview Circle Map 36 Lot 10-362).

Mr. Coronati spoke of items Mr. Keach brought forward in his review letter, which were related to the road that they had requested waivers on. He requested the Board's opinion regarding such. The waivers were to: 1) reduction of pavement width from 24ft. down to 20ft. for cul-de-sacs; 2) four locations where tangent length of 100ft. is required; 3) K value; 4) 100ft. of 3% slope at an intersection – they have approximately 40ft.

Mr. Dadak informed he was contacted by the Chairman of the Border Riders snowmobile club who called attention to the density offset criteria compliance. He didn't recall the location of the existing trail, or where the proposed trail connection would be located. The Border Riders wanted to ensure that the trail system was addressed within the plan. Mr. Coronati replied that the revised plans showed (to the best of their ability) the location of the existing trail. There's a section that runs through the field which they were unsure where it lead to. Mr. Gowan had kept an eye on the trail system to ensure it was included. The proposal contemplated cooperation with the abutter (Mr. Shepard) for a trail easement. Everyone agrees the trail is important and discussions have been occurring to determine the best way to provide accommodation. He was confident about resolution so the trail connectivity would remain.

Mr. Steve Keach of Keach Nordstrom (Board's engineering review firm) came forward for the discussion. He received an updated submittal on Friday, October 31<sup>st</sup> and spent time reviewing the information. In reference to his review letter of October 17<sup>th</sup>, Mr. Keach believed when he conducted a thorough review of the recent plan submittal most items will have been addressed. An updated review/comment letter will be forthcoming.

In connection with the four separate roadway design waiver requests, Mr. Keach supported the pavement width reduction for the cul-de-sacs; however, he believed prior to the Board taking action the Highway Safety Committee ('HSC') would also need to review. He was hesitant to provide a recommendation on the other waiver requests, as he had not yet thoroughly reviewed the plans. He noted the waivers for the K value and the platform at the Garland Lane intersection were purpose driven and needed to work together to achieve an outcome. Mr. Keach said the requirement for the 100ft. minimum tangent was basically to accommodate super elevation, which they don't put on low speed roads. He's asked Mr. Coronati to demonstrate there was sufficient sight distance somewhere on the frontage of each lot. He stated he wanted additional time to review the proposals.

Mr. McNamara inquired if the drainage studies had been completed or if they were still in process. Mr. Keach replied the drainage calculation submitted with the initial application was a very well done detailed piece of analysis. He had a number of comments contained in his letter of October 17<sup>th</sup> dealing with drainage that were requesting the details to be pulled from the analysis and inserted into a design document. There are three or four storm water management basins proposed around the perimeter of the site. He simply wanted the qualitative and quantitative information to come together, which he suspected would happen once he reviewed the plans.

Mr. Keach referred to Section 11.11, A,4 and Appendix VI of the Subdivision Regulations, which required submittal of a hydro geologic survey for any subdivision contemplating a ground water withdrawal of over 20,000 gallons per day. The current proposal of 46 homes (containing 3-4 bedrooms) would exceed this. Mr. Keach commented the proposal would have a community water system, was fundamentally different from the scrutiny a plan would receive that had a 46 lot subdivision with 46 wells for which the DES would have little to no involvement. He stated because of the scrutiny of the quality and quantity that will ultimately be part of the permitting process, he didn't feel there would be additional data (or scope of study) beyond what the applicant would have to do for the DES that would be warranted. He suggested requesting a copy of the information in lieu of having the applicant conducting a parallel study. The Board had no objection to Mr. Keach's recommendation.

In closing, Mr. Keach felt by the time the item was taken up again by the Board that his review comments would become very manageable by virtue of the work done by the applicant.

Mr. McNamara opened discussion to public input. No one came forward. He brought the discussion back to the Board. He asked how long the applicant needed before coming back in front of the Board. Mr. Coronati believed they could have a lot of the items wrapped up by November 17<sup>th</sup>.

Mr. Doherty pointed out that the Board hadn't yet discussed standards of approval for the Special Permit. He stated the recreational trail will need to be included in that discussion and satisfied, as it seems to be put off from meeting to meeting. Mr. Coronati responded that the trail was one of the many offsets; however, it was shown on the plan and they had been actively working toward resolving its location.

The plan was date specified to November 17, 2014.

## **NEW BUSINESS**

### **PB Case #PL2014-00033**

#### **Map 1 Lot 5-112**

**TAG/TACTICAL ARTS GROUP – 1 Industrial Drive – Site Plan Review to permit the expansion of existing uses to include a tactical training facility. The business would utilize the northerly portion of the site within an existing gravel/dirt stockpile area of the site.**

Mr. Dadak 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.

Mr. McNamara understood Mr. Gowan had made an initial determination. Mr. Gowan said he made an initial determination that the proposed location seemed to be the appropriate district for the stated activity; the Town has no specified district. At this point he held off making a formal written opinion.

Mr. Joseph Maynard of Benchmark Engineering, representing North Pelham Realty Trust and TAG/Tactical Arts Group, came forward to discuss the site plan. He said the property consisted of approximately thirty acres and was located at 41 Industrial Drive, with access along Industrial Drive and Sullivan Road. The land is currently zoned Industrial and currently approved as a 'contractor's yard'. A number of the existing uses will remain. They were seeking to expand on some of those uses already permitted to include the training area of the site utilized by the TAG organization.

Mr. McNamara inquired as to what the existing uses were. Mr. Maynard replied there were a number of 'contractor yard' uses, such as stock pile materials, equipment storage, trailers, trucks, excavators, and other various uses. With regard to the property itself, there was a bond in place to restore portions of the site because in the 1980's it was virtually obliterated. Since North Pelham Realty Trust had the property they had worked towards the total overall restoration.

The TAG organization would like to utilize the northeastern portion of the property (approximately 4-5 acres), which until this time has been utilized for the storage of trailers for Williams Scotsman and a number of stockpiles (consisting of loam, sand etc.). There are a couple 'pit' areas, highlighted on the proposed plan that TAG will use for fire arms training and qualifications, which are excavated to be approximately 20ft.x40ft.and 12ft-15ft. in depth.

Mr. Maynard described TAG as a tactical arts group that has trained in New England for the past twenty-five years. They focus on safe and practical realistic fire arm self-defense skills for both law enforcement and non-law enforcement individuals.

Mr. McNamara wanted to know if the proposal was in essence a firing range, or training such as for the military. Mr. Thomas Brown, 63 Stevens Drive, Goffstown, NH came forward to discuss the type of training, which was not military. Problem solving training scenario is usually one shooter presented with a tactical problem that involves shoot and no-shoot targets using common sense and acting within the bounds of the law. The training area has no structures. Mr. McNamara asked if they contract out to organizations or individuals. Mr. Brown stated they only deal with qualified

students who have demonstrated proficiency and safety with firearms. They must also provide proof of good character, which may include a background check. Training is not open to public; TAG is very careful about who they allow to participate. Mr. McNamara questioned how many employees there would be. Mr. Brown replied TAG itself didn't have employees as it was a partnership organization. During a TAG match/event there may be up to 10-20 people on site. Mr. McNamara wanted to know how many days per week they would operate. Mr. Brown answered typically it was one day per week. At times there may be individual qualification/training that would occur on weekends.

Mr. Culbert questioned if there were any State requirements for TAG to operate. Mr. Brown answered no; he was certified by the State to qualify armed guards, armed private investigators and retired officers. TAG itself has no requirement to have any kind of State issued permit or license.

Mr. Dadak understood TAG had operated in the State for approximately twenty five years. He questioned what other sites were used. Mr. Brown responded they had shot at various gun clubs and venues across New Hampshire.

Mr. McNamara read in the submitted information that as TAG's business needs expand, they would come back in front of the Board for additional site plan removal. Mr. Maynard explained if the general location and setup worked out for TAG, they would like to purchase some of the property from North Pelham Realty Trust and create their own facility. He understood any expansion of that nature would require them to come back in front of the Board. Currently it wasn't financially feasible to do anything at a larger scale. At present Mr. McNamara asked if they would lease. Mr. Maynard answered yes. Mr. McNamara saw that the Town of Hudson NH was noticed as an abutter. Mr. Maynard explained Hudson was on the other side of the frontage that ran along Sullivan Road. He noted Sullivan Road (or the nearest house in Hudson) was almost 1,000ft. from where they would be working. Mr. McNamara asked about the Windham, NH portion. In looking at the plan, Mr. Maynard guessed they would be 500ft-600ft. to the nearest house on the other side of Beaver Brook (in Windham). Mr. McNamara questioned if the Town of Windham, NH was notified. Mr. Maynard answered no; however, the Windham abutter was notified.

Mr. Haverty confirmed the plan was not to operate an open range; it would be a range used for training and certification purposes. Mr. Brown reiterated the area would not be open to the public; the area would be exclusive to the TAG training purposes.

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

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

#### **PUBLIC INPUT**

Mr. Rory Doherty, 33 Sullivan Road, Hudson, NH was concerned about safety, given the fact that his house was located close by. He wanted to know what assurances there were against stray bullets and what could be done for sound barriers.

Mr. Brown replied safety was paramount to TAG. The manner a run is staged was by having one qualified shooter shooting a scenario and one Range Officer shadowing that individual to make sure the shooter maintains safety. Unlike many shooting events during which Range Officers watch

people shoot, their Range Officers are trained to take possession of a fire arm or guide the shooter to maintain safety should something happen.

Mr. McNamara asked if the fire arms were exclusively pistols. Mr. Brown said it wasn't exclusive, but most of their fire arms were pistols. Mr. McNamara wanted to know how many rounds were fired during a session. Mr. Brown explained TAG may run a no-shoot scenario during which a fire arm didn't need to be discharged to solve the problem, or a scenario could run up to possibly twenty rounds. Scenarios can run anywhere between a few seconds to a few minutes.

The abutter, Rory Doherty heard testimony about the approximate size of the shooting area and the approximate distances from houses. He asked if the Board would review that information in more detail. Mr. McNamara asked Mr. Maynard what supervision was on site. Mr. Maynard told the Board that the area presently had existing burrowed pits; they weren't survey/located; however the sizes and depths were paced off. With the use of satellite imagery, the pits are able to be scaled to show they're located approximately 1,000ft. in distance away from Sullivan Road. Mr. McNamara specifically wanted to know if anyone had to go to the site and approve the business. Mr. Maynard answered no; not to his understanding. Through what was stated, Rory Doherty heard the area was an open range that provided no guarantee something wouldn't ricochet out. Mr. McNamara didn't believe that to be the testimony. Mr. Brown explained 'ricochet' is based on something hitting a hard surface and bouncing out of the range. There would be no hard surfaces in the range for anything to ricochet out. He further explained typical gun clubs having a high berm were at a height of 25ft. Mr. Maynard believed there was at least a 40ft. elevation change from the base of the pit to the parking area. Given that information, Mr. Brown pointed out that the potential impact area to catch a stray round at the site would be nearly twice the height of what would be found at a gun club. He couldn't testify that it was impossible to launch a round out; however given the angle of the pit if there was a stray round it wouldn't land anywhere near Mr. R. Doherty's area.

Mr. McNamara questioned if Mr. Gowan had been to the site. Mr. Gowan responded he had been to the site (in general) many times, but hadn't walked the 'pit' area. Mr. Maynard provided the Board with photographs of the area.

Rory Doherty was very concerned about having no guarantee that a bullet wouldn't leave the pit. He commented he spends time with his son in the front yard of his home, which was approximately 1,000ft. away. Mr. Brown reiterated given the height of the berms, it would be impossible to land as close as 1,000ft. He added that no gun club or open air area could make a guarantee, if a person were to break the rules. He stressed to the Board that their safety protocol would prohibit someone from breaking rules because they have a Range Officer present. He reiterated with the height of the berms and level of safety and monitoring attached dramatically exceeded (by at least a magnitude of 10) anything that would occur at the local fish and game clubs.

Mr. McNamara wanted to know if the area was secured during times when TAG wasn't present. Mr. Brown replied there was no fence. Signs will be posted notifying that it was private property and no trespassing would be allowed. Mr. Maynard pointed out there was gated access to get in and out of that area of the site by vehicle. Rory Doherty felt his safety concerns hadn't been addressed. Mr. McNamara told him the Board would discuss all concerns.

In reviewing the photographs, Mr. Dadak had Mr. Maynard orientate which direction (i.e north, south) they represented. Both pits are estimated to be 15ft. deep; an instrument was not used to make determination.

Mr. Carl Gene, 31 Sullivan Road, Hudson, NH told the Board he had safety and property concerns. He stated his property had been devalued in the past seven years due to the economy and now there was contemplation of having a gun club in his neighborhood. He understood there were different scenarios that may occur; as example a no-shoot situation, or there could be a situation where twenty bullets are fired off within seconds. There could be a scenario in which pistols would be shot, but the applicant didn't rule out the use of rifles. Mr. Gene believed there would be (sound) echoes. He commented that different gun clubs, such as in Nashua, Hudson that couldn't shoot guns anymore because people didn't like it. He pointed to the brook (on the plan) and said he knew the neighborhood on the other side had children. During the summer, he was aware that children went down the brook in tubes. He reiterated there were a lot of children in that area and stated fenced wouldn't keep them out. Mr. Gene enjoyed weekends at his home, which is when the site would be active. He didn't see how the activity could be put in the corner of Pelham next to neighboring residents.

Ms. Connie Gene Russell, 31 Sullivan Road told the Board she was a certified real estate appraiser in the State of New Hampshire. She believed the property would be devalued due to the proposed club. She noticed that the people residing 500ft. away (Whispering Winds Adult Community) weren't present to represent themselves. She's appraised those properties and believed the people would be really upset if they knew what was happening at the meeting. Mr. Gowan stated those people should have been notified. Mr. Maynard stated they had been notified and called attention to the abutter's list. Ms. Russell replied there was a huge neighborhood in that area. She stated the club would definitely devalue her home and believed it would drop approximately \$30,000-\$40,000 in value.

Mr. Haverty didn't see how dollar figure could be quantified since homes were compared against similar houses in other areas. Ms. Russell believed consideration should be given to what was happening in other cities that have gun clubs. Mr. Haverty replied the meeting wasn't the forum for a debate. He was pointing out the difficulty in legitimizing the claim that a house would be devalued by the figures being stated. It should be submitted as a fact for consideration. The Board can't deal in supposition. Ms. Russell replied they could do so, but had very little time to prepare.

Given the facts presented, Mr. Haverty understood the proposed wasn't a gun club. He stated it was an organization providing training with fire arms that would be conducted on a limited basis. It was a false characterization to say the proposal was a 'gun club'. He used Pelham Fish & Game as example, with operation hours seven days per week until dusk (at times with illumination until 10pm). Mr. Haverty stated the Board would base their decision on the information provided, which limited the operations. The proposal was not to have an open range to the public seven days a week. Ms. Russell told the Board there was nothing to stop them from doing more. Mr. McNamara said the Board may consider reasonable restrictions.

Mr. J.R. Gauthier told the Board he owned the property for approximately 20 years and has used it as a range during that twenty years. He said the group was looking for a place to provide training, and he believed that was something he could do for them. He told the Board he had tenants. He explained the property was a disaster when he took it over and slowly was trying to reach the end of a restoration. In order to do so, he needed permanent occupants and the proposal seemed to be a

feasible alternative. Mr. Gauthier stated he used the property for his own use (with fire arms) for twenty years with not one complaint about noise or safety. He felt he was doing the right thing by coming to the Board and was surprised about the neighbor's reaction.

Mr. Dadak reviewed the list of notified abutters and saw that the notification for the Whispering Pines Adult Community in Windham went to their representative. Mr. Gowan said the requirement for such communities was to notify the homeowner's association. It was their responsibility to disseminate to other members. Mr. Maynard told the Board he went to Windham's assessing department and obtained the most recent homeowner's association contact information.

Ms. Emma Greenhalgh 39 Sullivan Road, Hudson, NH wanted to better understand the magnitude of the activity. She was extremely concerned about legitimizing a business coming into a neighborhood and hearing hours of shooting. She understood the Board may place restrictions, but testimony was given that the applicant may expand further. In reference to home values, Ms. Greenhalgh knew surrounding environments were reviewed and had an impact. She recently had her home appraised and lost value because of being located across from an industrial area. She didn't know what would happen when an appraiser found out they had guns going off. She was concerned about the noise and what would be done to mitigate that noise.

Mr. McNamara asked for more specific information regarding the scope of the activity. Mr. Brown explained there was a weekly TAG match/event lasting typically a couple hours one day per week. During that period each pit would have one shooter at a time, meaning there would be no more than two people shooting simultaneously in separate pits. If a (specialized) class was scheduled they would typically be on a Saturday and Sunday. They were infrequent classes, possibly one per year. There were training classes that may occur every couple months on a Saturday/Sunday, which would also have limited people shooting during a limited timeframe. Mr. Brown explained a qualification was different. There may be 4-5 people lined up shooting simultaneously at a static target at various distances to fulfil State proficiency requirements for armed guard or private investigator.

Mr. Haverty questioned what type of training occurred during the classes. Mr. Brown replied the classes were emulated based on the John Farnam proficiency training for hand guns; John Farnam is one of the top trainers in the country. Mr. Haverty confirmed that those training classes would be for individuals who were proven to be proficient and safe with a fire arm. Mr. Brown stated that was correct. They would maintain the Range Officer safety oversight.

Ms. Greenhalgh questioned how long shooting would last during training sessions. She wanted to understand the total hours shooting would occur. Mr. Brown replied during training classes there would be sporadic shooting throughout the two-days. He noted it would not be constant shooting because there were periods during which instruction would occur, practice periods and additional time to set/re-set targets.

Prior to granting any approval, Mr. Culbert wanted to see a similar facility in operation. Mr. Brown questioned what aspect he would like to view. Mr. Culbert stated he would like to see a session. Mr. Brown asked if he referred to a TAG event. Mr. Culbert answered yes. Mr. Brown replied he could watch an event in Pelham (at Fish and Game). Mr. McNamara questioned if the proposed activities were being performed elsewhere. Specifically if there was an existing client base that would be transferred from somewhere else to Pelham, or if new business was being generated. Mr. Brown

replied the goal was to see if they could transition from Pelham Fish and Game to the proposed location.

Mr. Doherty felt the location was an inappropriate place for the proposal. He commented that gun ranges belonged at gun clubs. He was going to suggest speaking to Pelham Fish and Game about having their activities there. He recalled when Canobie Fish and Game came to Pelham, they were forced to join with Pelham Fish and Game and have one gun club in Town. He didn't want to second guess where a stray bullet was coming from. He felt if they were already located at Pelham Fish and Game, they should remain there. Mr. Brown noted there were certain safety concerns at Pelham Fish and Game, such as the height of the berm and the impact area being full of rocks from which rounds often ricochet. He pointed out the proposed site contained soft sand, which didn't ricochet. He stated Pelham had 1,600 members and although it was a big area, the facilities were being taxed by people trying to gain access. In addition he spoke of the concerns with Pelham's tactical pits with members who don't maintain the type of safety TAG maintains. They would like to be in a safer environment.

Mr. Haverty offered a response to Mr. Doherty's comments that a stray bullet in Pelham didn't necessarily come from Pelham Fish and Game. People shoot all over Town on different pieces of property both private and in forests. Shooting can't be kept in one centralized location. He hears hunters nearly every weekend behind his house on Town property. Mr. Dadak also resided near conservation land and had seen (hunter's) vehicles parked virtually every day.

Mr. McNamara would like to see the site. Mr. Gowan suggested since the Board already had a scheduled site walk for Saturday, it might make sense add the site to the schedule. This would give people the opportunity to see how the site was set up.

Mr. Gowan suggested notifying the Town of Windham. Mr. Maynard stated he would do so.

A site walk was scheduled for November 8, 2014 beginning at approximately 10:45am.

The plan was date specified to December 15, 2014.

**SITE WALK – November 8, 2014 – beginning at approximately 10:45am**

PB Case #PL2014-00033 - Map 1 Lot 5-112 - TAG/TACTICAL ARTS GROUP – 1 Industrial Drive

**DATE SPECIFIED PLAN(S) -**

**November 17, 2014**

PB Case #PL2014-00026 - Map 35 Lot 10-193 & Map 36 Lot 10-191-1 - GREEN, Richard; GREEN & COMPANY – 1-5 Garland Lane

**December 15, 2014**

PB Case #PL2014-00033 - Map 1 Lot 5-112 - TAG/TACTICAL ARTS GROUP – 1 Industrial Drive

**MINUTES REVIEW**

**October 20, 2014** – deferred due to lateness of meeting.

**ADJOURNMENT**

**MOTION:** (Haverty/Culbert) To adjourn the meeting.

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

The meeting was adjourned at approximately 10:15pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary