



## **DISCUSSION**

### **Discussion of establishment of PB subcommittee to focus on the 2022-2028 Capital Improvements Program (CIP).**

Mr. Thomas stated that they expected to hear back from all the department on input by late June for the Capital Improvements Program. He noted that they usually have four meetings between June and July and then they present it to the Planning Board at the August meeting. He added that after that they go to the Selectmen and then to the Budget Committee. Mr. Thomas stated that they would begin to work in late June once the information requested from department heads is received. It was noted that Mr. Thomas was chair last year and worked on it the previous two years.

Mr. Doherty asked Mr. Thomas if he was willing to be the chair again and Mr. Thomas replied that yes, he was.

**MOTION:** (Bergeron/Masse-Quinn) To appoint Mr. Sam Thomas as head of the Capital Approvements Program (CIP).

**ROLL CALL VOTE:** Mr. Cote – yes  
Mr. Bergeron – yes  
Ms. Masse-Quinn – yes  
Mr. Montbleau – yes  
Mr. Doherty – yes  
Mr. Thomas – yes  
Mr. Bilapka – yes

(7-0-0) The motion carried.

Mr. Thomas asked Ms. Masse-Quinn to join the committee and she agreed.

Mr. Bergeron stated he would join in the subcommittee and Mr. Doherty appointed him.

Mr. Montbleau stated that he was the chair a couple of years ago and it is an interesting committee to see how the inner workings of the expenditures of the town are. Mr. Montbleau noted that it was an easy committee to be a part of, as most of the work is done by other people. Mr. Thomas agreed that it is a lot of fun.

## **PUBLIC HEARING REGARDING CHANGES TO LAND USE REGULATIONS**

Mr. Doherty appointed Mr. Bilapka and Mr. Thomas to vote in place of Mr. Dadak and Ms. Kirkpatrick

Mr. Doherty stated that the Land Use Regulations needed to be updated as a result of the Open Space Zoning Ordinance that was approved by voters on the March 9<sup>th</sup>, 2021 ballot. He noted that if any changes were to be made, a second public hearing would take place on June 21, 2021.

Mr. Cote mentioned that Attorney Ratigan suggested that wording be put in regarding workforce housing. Mr. Cote felt that it was a reversal of what they were trying to do with the Workforce Housing Subcommittee. Ms. Beauregard replied that Attorney Ratigan suggested the language to give the Board some flexibility. She noted that the added wording would not force the Board to make any type of

recommendation or decision, but it gives them the ability and leeway to do so. Mr. Cote reiterated that he felt that putting anything in this part is counterproductive to what they were working on.

Mr. Lynde's stated that his only concern was that if they were to not have something on the books, the State could get involved. Mr. Montbleau agreed with Mr. Lynde. He stated that they needed to be able to support Attorney Ratigan's position if he needed to defend them in court. He added that Attorney Ratigan was trying to give them the tools they need to protect themselves.

Mr. Cote commented that he felt that Attorney Ratigan did not give them any tools, just some wording they should add. He noted that he was not disagreeing that there should be something for workforce housing, just that he did not think this was place to add it.

Mr. Bergeron stated that he could see both sides and everyone needed to understand that the subcommittee has started meeting and that he has been keeping tabs on it and helping as much as he could working towards a stand-alone ordinance for workforce housing. He stated that he felt it was too general and did not use the words workforce housing.

Mr. Cote suggested under the section of definitions (pages 9-10) under words and terms, they could define workforce housing there, directly quoting the State Statute RSA674:58.

Mr. Doherty stated that he had no objection to adding a definition. It is just a definition and that it would not give them any abilities or flexibilities under innovative land use to do anything with it. Mr. Bergeron stated that he agreed with Mr. Doherty. He stated that he thought everyone needed to understand that ADUs and other multifamily housing all contribute to the housing stock and definition that Mr. Cote was suggesting to be inserted.

Mr. Cote expressed that he felt like putting a definition of workforce housing into the zoning could mirror what they were working would make more sense. Mr. Doherty replied that they could do that, but that Attorney Ratigan was trying to use the suggested wording as a tool. Mr. Doherty stated that he understood that the words "workforce housing" were not suggested but saw this as a way to cover the Town by using the words "regional affordable housing needs." He noted that having it in the innovative land use regulations could give the Board the authority to have some jurisdiction over proposed workforce housing developments. Mr. Doherty asserted that the suggested wording would not make them do anything they did not want to do and would allow them to work with an applicant to ensure it is a good plan.

Mr. Lynde asked if it was possible to tie it all together. He suggested adding wording like "affordable housing, sometimes referred to as workforce housing, ADUs, multifamily housing, etc."

Mr. Bergeron stated that he felt that the Board was headed in the right direction, but that this should be a conversation between the workforce housing subcommittee and Attorney Ratigan so that they could comprise language together. He stated that he felt that they needed time to think about it and give the subcommittee the opportunity to discuss it with Attorney Ratigan first. Mr. Montbleau stated that he agreed with both Mr. Bergeron and Mr. Doherty.

Mr. Cote noted that it is stated in RSA 674:59 that "*a municipality shall not fulfill the requirements of the section by adopting voluntary inclusionary zoning provisions that rely on inducements that render workforce housing developments economically unviable.*" He stated he is not a lawyer, but if they just throw workforce housing wording somewhere but did not make it viable, it is useless. So, if workforce housing is just mentioned in the ordinance, but the ordinance does not make it economically viable, they are still not in compliance.

Mr. Doherty responded that it at least gets the Planning Board involved in the decision-making process. He added that he believed that was what Attorney Ratigan was trying to do – give them something to get them back involved in the process so that they do not get left out of that decision-making process.

**MOTION:** (Cote/Masse-Quinn) To table Attorney Ratigan’s insert under section 205-1 in the Land Use Regulations.

**ROLL CALL VOTE:** Mr. Cote – yes  
 Mr. Bergeron – yes  
 Ms. Masse-Quinn – yes  
 Mr. Montbleau – yes, reluctantly  
 Mr. Doherty – yes  
 Mr. Thomas – yes  
 Mr. Bilapka – yes

(7-0-0) The motion carried.

Ms. Masse-Quinn stated that there was a reference to condominium agreements on page 65, but her understanding was that condominiums were not allowed. Mr. Doherty replied that it was a different definition of condominiums than she was thinking of and that type of agreement could be on anything, even open space. Ms. Masse-Quinn replied that it sounded like a homeowner’s association. Mr. Doherty replied she was correct.

Mr. Montbleau asked the members of the workforce housing subcommittee how close they were to finalizing a plan for workforce housing. Mr. Cote stated that the subcommittee was looking to add the words workforce housing back into the definitions of ADUs and multifamily homes. He noted that they were not looking to create a standalone ordinance at this time, just get the wording back into the zoning. Mr. Montbleau asked for a timeline and if they would need a public hearing for the changes made. Ms. Beauregard stated that there would not be a public hearing for it and that it would go to the voters because it is a change in zoning. Mr. Montbleau responded that it would not be until sometime next year if the voters were to pass it.

Ms. Masse-Quinn noted that they were trying to utilize their existing housing stock that they have now to ensure that the Town is protected according to the statute. She added that they need to make sure that they have a clear understanding of the existing stock and that the Board understands how to get those numbers. She wants to keep the Town rural.

**MOTION:** (Cote/Masse-Quinn) To add the definition of workforce housing as it is written in RSA674:59, section 201-2 Definition of Words and Terms.

**ROLL CALL VOTE:** Mr. Cote – yes  
 Mr. Bergeron – yes  
 Ms. Masse-Quinn – yes  
 Mr. Montbleau – yes  
 Mr. Doherty – yes  
 Mr. Thomas – yes  
 Mr. Bilapka – yes

(7-0-0) The motion carried.

Ms. Beauregard stated that she would add this in for the next hearing.



Mr. Bergeron stated that he had a list of suggested language changes and additions/corrections to some portions of the land use regulations. He stated that there were several mentions of “and/or” that he wanted to be changed to just “and.” He noted that the way it is currently written, it is possible that the Planning Board might not have the final say on a plan and that it could be left up to the town council. He asserted that he did not want a non-elected person to approve something that the elected body did not agree with. Mr. Doherty replied that it would never go straight to the town council, it would need to be referred to the town council by the Board.

Ms. Beauregard explained that it is usually a condition of approval that the agreements come into the satisfaction of town council. It is usually quite a bit after approval and before the signing of the plans. She asked if Mr. Bergeron would be asking the applicants to come back with their legal documents after approval. She stated it is usually one of the things that would be add as a condition of approval.

Mr. Bergeron asked Ms. Beauregard if, when those conditions are set by the Planning Board and town council reviews them, are they always set in the plan before the plans are signed? Ms. Beauregard replied that yes, they have to show the conditions of approval on all recordable plans. She added that any documents that get sent to the town council get reviewed with the final plan along with the notice of decision. Mr. Bergeron asked that when those are set that the notes get passed along to the attorney. Ms. Beauregard replied that anything they wanted to be sure was in their agreements, they will want to be sure is in their motions.

Mr. Cote questioned some of the wording around the Planning Board’s flexibility relative to density offsets since they are not given any density offsets in current zoning. Mr. Doherty replied that it was there because under innovative land use, the Planning Board has the ability to vary zoning. He explained that they would have the ability to change the zoning to allow an increase in density if someone were to be pushed back in front of the Board.

**MOTION:** (Cote/Bergeron) To rescind the prior motion to Table Attorney Ratigan’s insert under 205-1.

Mr. Bergeron asked Mr. Cote to read the section in section 205-1 verbatim as it will be written. Mr. Cote read it in full and Mr. Bergeron stated that he felt that maybe when he sees it in type next week he will feel differently.

Mr. Montbleau read the editor’s note stating that Attorney Rattigan felt that this provided the Board with a safety net until such time as the workforce ordinance is on the books.

**ROLL CALL VOTE:** Mr. Cote – yes  
Mr. Bergeron – yes  
Ms. Masse-Quinn – yes  
Mr. Montbleau – yes  
Mr. Doherty – yes  
Mr. Thomas – yes  
Mr. Bilapka – yes

(7-0-0) The motion carried.

Mr. Bergeron stated that he had numerous comments that had to do with small items that the thought the Board had issues with in the past. He wanted the Board to consider the language used regarding lot shapes, as there was language in the regulations that contradicts itself. He felt that this section should be cleaned

up. Mr. Bergeron suggested some language changes. Mr. Montbleau replied that he would like time to think on those changes. He stated that he could not think of an objection but had not had time to think about it. He suggested a workshop day to focus on some of those changes. Mr. Bergeron agreed with this. He stated he had at least five more changes throughout the remainder of the ordinance that had nothing to do with open space. Mr. Cote agreed that it would be better to move on and then address the other issues at a later workshop.

Mr. Doherty asked Mr. Bergeron to go through his other points quickly. Mr. Bergeron stated that the section on test pits had contradictions within it. He noted that in the section on general provisions on submissions of applications that “Planning Board” be substituted for “Planning Director” as it shows up as Planning Board everywhere else.

Mr. Cote urged the Board to move on and save these changes for a future meeting, as they had a very full agenda in front of them. Mr. Bergeron and Ms. Masse-Quinn agreed with Mr. Cote.

Mr. Doherty opened to the Public to speak on section 205 only. As no one came forward, Mr. Doherty closed the discussion to the Public.

**MOTION:** (Montbleau/Cote) To accept the proposed changes to Section 205-1 of the Land Use Regulations.

**ROLL CALL VOTE:** Mr. Cote – yes  
Mr. Bergeron – yes  
Ms. Masse-Quinn – yes  
Mr. Montbleau – yes  
Mr. Doherty – yes  
Mr. Thomas – yes  
Mr. Bilapka – yes

Vote: (7-0-0) the motion carried

Mr. Doherty closed the public hearing.

Ms. Beauregard informed that the second public hearing would be on June 21, 2021 noting that per EPA standard some regulations need to be on the books by the end of June to meet the Town’s obligations. She suggested that maybe they could get someone from GeoInsight to come in to explain some of the changes a little more.

Mr. Bergeron asked if they could ask the representative from GeoInsight if the MS4 regulations could possibly be a standalone document outside of the land use regulations. He stated that he would feel more comfortable having it as a standalone document than imposing it in the land use regulations. Mr. Doherty replied that they could discuss it further at the June 21, 2021 meeting.

## **OLD BUSINESS**

### **Case #PL2021-00005**

**Map 30 Lots 11-157, 11-158, 11-162, & 11-163**

**CROOKER, Kevin & Constance & TERRY, Angela – 2 & 4 Andover Street and 3 & 5 Methuen Street – Lot Line Adjustments between lots 11-157 & 11-158 and 11-163 & 11-162 (Note: This case has requested continuance and will not be heard at this meeting).**

It was noted that the applicants asked to be date specified to the June 21, 2021 meeting due to wanting to meet with the Zoning Board on their June 14, 2021 meeting.

## **NEW BUSINESS**

### **Case #PL2021-00011**

#### **Map 1 Lot 5-107-1**

**ANGELOSANTO, Timothy – 4 Dick Tracy Drive - Minor Site Plan Review for proposed 24' x 30' steel building with garage space.**

Mr. Doherty appointed Mr. Culbert and Mr. Thomas to vote in place of Mr. Dadak and Ms. Kirkpatrick.

Ms. Masse-Quinn 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. Timothy Angelosanto came forward to address the Board. He noted that he wanted to install an unheated metal garage for storage of overflow materials.

**MOTION** (Montbleau/Cote) To accept the site plan change for consideration.

**ROLL CALL VOTE:**

- Mr. Cote – yes
- Mr. Bergeron – yes
- Ms. Masse-Quinn – yes
- Mr. Montbleau – yes
- Mr. Doherty – yes
- Mr. Thomas – yes
- Mr. Culbert – yes

(7-0-0) The motion carried.

Mr. Culbert asked if the applicant would keep any combustible material in the shed. The applicant replied they would not. He noted that he would only be storing sheet metal and duct work.

Mr. Timothy Angelosanto replied no, it would just be sheet metal and duct work because they are bursting at the seams.

Mr. Montbleau ask if there was any internal drainage in the building and if the applicant was looking to put any external lighting on the building. Mr. Angelosanto replied no to both questions. He noted that there would not be any internal lighting either.

Mr. Doherty opened the discussion up to the Public. As no one came forward, Mr. Doherty closed the discussion to the Public.

**MOTION** (Culbert/Cote) To approve the site plan change.

**ROLL CALL VOTE:**

- Mr. Cote – yes
- Mr. Bergeron – yes
- Ms. Masse-Quinn – yes
- Mr. Montbleau – yes

Mr. Doherty – yes  
 Mr. Thomas – yes  
 Mr. Culbert – yes

(7-0-0) The motion carried.

**Case #PL2021-00012**

**Map 29 Lot 7-27-1**

**CROSSROADS BAPTIST CHURCH – 43 Atwood Road - Site Plan Review for proposed addition of two modular classrooms on an existing developed site & seeking a Special Permit to permit a portion of the detention area to be located within the Wetland Conservation District.**

Mr. Doherty appointed Mr. Bilapka and Mr. Thomas in place of Mr. Dadak and Ms. Kirkpatrick

Ms. Masse-Quinn 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. Shane Gendron, of Herbert Associated, came forward to represent the applicants from Crossroads Church. Mr. Giampa also came forward to address the Board. Mr. Gendron informed that they came before the Board for a minor site plan change for the addition of a modular classroom to run a school out of the Church. He noted that they now have 82 students enrolled and are looking to have at least 90 in the fall. He explained that they needed more space to accommodate more students and were looking to add two new modular classrooms. He explained that they tried to be vigilant of where the detention area and WCD were and tried to configure the site plan in a way so as not to impact them. He noted that they had already brought this to Conservation for input. Mr. Gendron noted that they reconfigured the parking and added some additional spaces to the northwest corner of the site. He explained that the school and church would operate at different times, so there was not a need for additional parking as the school only required about 30 spaces.

Mr. Doherty asked if a condition of approval could be that there be no parking in parking spot 95 during school hours, as it was the closest spot to the building. Mr. Gendron accepted this. Mr. Doherty asked if the detention area would be disturbed in the WCD. Mr. Gendron replied that the area is already disturbed, and they were just reconfiguring the area. Mr. Gendron noted that he would be meeting with Conservation again at their next meeting.

Mr. Thomas asked if the applicants had looked at the well and septic, and if they could sustain the addition for classroom size and students. Mr. Gendron replied that the well would be of no issue. He stated that they may need to look into the septic system when they get into the building permit phase, but it is currently handling the load and has not had any issues.

**MOTION** (Montbleau/Cote) To accept the site plan review for consideration.

**ROLL CALL VOTE:**  
 Mr. Cote – yes  
 Mr. Bergeron – yes  
 Ms. Masse-Quinn – yes  
 Mr. Montbleau – yes  
 Mr. Doherty – yes  
 Mr. Thomas – yes  
 Mr. Bilapka – yes

(7-0-0) The motion carried.

Mr. Doherty opened the discussion to the Public. As no one came forward, Mr. Doherty closed the discussion to the Public.

**MOTION** (Montbleau/Masse-Quinn) To approve the site plan review, pending a letter of support from the Conservation Commission.

**ROLL CALL VOTE:** Mr. Cote – yes  
Mr. Bergeron – yes  
Ms. Masse-Quinn – yes  
Mr. Montbleau – yes  
Mr. Doherty – yes  
Mr. Thomas – yes  
Mr. Bilapka – yes

(7-0-0) The motion carried.

**Case #PL2021-00013**

**Map 31 Lots 11-33 & 11-34**

**KLECZKOWSKI, Charles M. Jr, Charles M. Sr & Lucille T. and Conservation Commission c/o Paul R. Gagnon – Blueberry Circle - Proposed Lot Line Adjustment.**

Ms. Masse-Quinn 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. Paul Gagnon, of 103 Dutton Road and the Conservation Commission, came forward to address the Board. He stated that he was looking to acquire 40 additional acres of open space. He informed that he was looking for two votes from the Board – one for general support for the acquisition of the 40 acres of land and the other for a lot line revision.

Mr. Gagnon explained that the area they were looking to purchase was on the boarder of Massachusetts and is a very important ecological site that the Conservation Commission would like to preserve. He informed that it would be \$225,000.00 for the 40 acres, which is less than \$6,000.00 per acre. He stated that there was a complication because the purchase and sales agreement was written in 2019, where the Town would purchase all 40 acres, but a small portion of that has a cell tower on it under the ownership of the Kleczkowski's. He stated that the cell tower would remain in the Kleczkowski's ownership until the cell tower is no longer needed; after that, it the land would then become the Town's land. Mr. Gagnon informed that the cell tower sits on about 14.3 acres of land. He noted that if they are not able to carry out the lot line adjustment, Mr. Kleczkowski would get to control those 14.3 acres until the cell tower is not longer needed and they would not be able to use the land (they would not be able to create trails or timber harvest). He explained that the lot line adjustment would leave the parcel with the cell tower on it to just 3.7 acres and the remaining acres would be usable to the Town at the point of purchase. Mr. Gagnon stated that Mr. Kleczkowski would not be able to do anything additional with that land and only use it for the cell tower on it; and once that tower is no longer in use, it must come down and the land will be turned over to the Town at no additional cost.

**MOTION** (Montbleau/Cote) To accept the plan for consideration.

**ROLL CALL VOTE:** Mr. Cote – yes  
Mr. Bergeron – yes

Ms. Masse-Quinn – yes  
 Mr. Montbleau – yes  
 Mr. Doherty – yes  
 Mr. Thomas – yes  
 Mr. Bilapka – yes

(7-0-0) The motion carried.

Mr. Doherty thought that it was a great idea to try to conserve that land and thought it would be a shame to have to wait to utilize the land that Mr. Kleczkowski owns. Mr. Gagnon replied that there is a trail already on that portion of the land, but without the lot line adjustment, they will not be able to open it up, maintain it, or put it on Town maps.

Mr. Culbert asked how tall the tower is. Mr. Cote replied he thought it was about 125 feet tall. Mr. Culbert asked what the fall zone is for the tower. Mr. Gagnon replied that it is about 4 acres, which is why Mr. Kleczkowski would be keeping that land. He stated that way, the Town would not be liable if the tower were to fall.

Mr. Thomas asked if there was an agreement in place for disbanding the tower once it is no longer in use. Mr. Gagnon replied that as that did not relate to the Conservation Commission, he could not answer that question and that it would be a question for American Tower. Ms. Beauregard replied that there was a bond in place so that the Town could remove the tower if the owner fails to.

Mr. Cote asked why Mr. Gagnon was there for the lot line adjustment and not the owner. Mr. Gagnon replied that he had written permission from Mr. Kleczkowski to represent him for the lot line adjustment. Mr. Doherty added that Mr. Gagnon had done this numerous times in the past in this manner.

Ms. Masse-Quinn asked if the abutters would still maintain their privacy after the Town acquired the 40 acres. Mr. Gagnon stated that it would become like any other forest in Town. Ms. Masse-Quinn asked if there would be buildings, subdivision, open space, or anything on the property. Mr. Gagnon replied that there would only be possibly a timber harvest, but nothing else as this land was to be used for conservation purposes. He added that this means that no building can happen on that land and that if the voters approve it as a Town forest, then there is another layer of protection added. He stated that the most that would happen is that a small area might be created for a few cars to park and a few trail heads.

Mr. Doherty opened the discussion to the Public.

Mr. Larry Horgan of 32 Blueberry Circle came forward to read a letter. He stated that the neighborhood had retained an attorney and that he wanted to read the letter from the attorney into the record. Please see the attached document to these minutes.

Mr. Doherty asked what the letter was referring to in reference to mention of “numerous changes to the plan.” Mr. Horgan replied that the original plan for the site was 1.25 acres of land to the cell tower and thought that Mr. Gagnon’s numbers were off. Mr. Gagnon tried to explain the lot line adjustment with visual on the screen for the Board and abutters. Mr. Gagnon explained that Mr. Horgan was likely referring to the numbers of the area prior to the Town having it surveyed. Mr. Gagnon explained, again, how the lot line adjustment and land acquisition would work. Mr. Doherty added that if the lot lines are not revised, then the abutters would not be able to utilize that land for 30 or more years. Mr. Gagnon replied that was correct and that they would co-own the land with everyone else in Pelham. Mr. Gagnon reiterated that they are hoping to purchase the land to prevent any building of any kind on the land. He stated that the only question was how soon the Town could utilize all of the land based on whether or not the lot line is revised.

Mr. Horgan stated that the original plan stated that the cell tower would only be on 1.25 acres of land, and now it had 3.75 acres of land. He stated that was more than a couple hundred feet for a fall zone. Mr. Gagnon asserted that it was never 1.25 acres of land, it was 1 +/- acre in the purchase and sales agreement. He noted that 3.7 acres is more than 1.25 acres, but he was unaware of fall zones at that time. Mr. Gagnon stated he was unclear on what the issue was. Mr. Horgan replied that the neighborhood did not want the cell tower.

Mr. Montbleau stated a point of order that the purpose of this case was not to readdress the cell tower. He asserted that the cell tower was already approved and that this was for a lot line adjustment. He stated that Mr. Gagnon was making logical sense and that this would be beneficial to the Town's people. Mr. Horgan stated that he was just there to read the letter from the attorney and ask the Board to reconsider making any decision.

Mr. Doherty asserted that they could not reopen the cell tower case unless they were making an adjustment to the site plan, like moving the location of the cell tower, moving the location of a driveway, or making adjustments to the plan about what they were looking to do. He explained that changing lot lines on a drawing is not changing the site plan.

Mr. Horgan stated that for a project of this magnitude and impact, the neighborhood is very disappointed that the Board chose not to conduct a site walk of the area. He stated that he was personally against the lot line adjustment. He added that he loves open space and would rather have ten houses in the area opposed to the cell tower.

Ms. Ada Peters of 167 Ruby Road in Dracut, Massachusetts came forward. She stated that she is a direct abutter to lot 11-33. She stated that when this case was before the Zoning Board, it was for 1.25 acres. She informed that the attorney for American Towers argued that the tower would fall vertically and not horizontally, so they asked for a variance for the fall zone. She stated they were very disappointed and not there to argue what had already been done. She stated that the Town put a cell tower in their backyard, and they were worried that with land triple the size of what was proposed, the owner could put an additional cell tower in. Mr. Doherty asked Ms. Peters if she had looked at the site plan. He stated that the tower currently was on 14 acres of land and that no lot line adjustments had come before the Board before this one. He stated that the tax records show the tower on 14 acres of land.

Ms. Peters argued that the Zoning Board approved only 1.25 acres and a variance for the fall zone and change the zoning of the parcel. She stated that they tried to argue that this would affect property values, but they were told that they were not allowed to make that argument and that the Zoning Board accepted the appraisals given by the realtor they hired. She stated that the map they showed depicted the cell tower much further away from the houses but that it is only 300 ft from some of the abutter's homes.

Mr. Cote made a point of order that the zoning for the parcel was not changed, just that there was an allowance for a cell tower in a residential area. He stated that the zoning of the lot did not change to industrial and that it was still residential that allows a cell tower.

Ms. Peters reiterated that the land was for 1.25 acres. Mr. Gagnon replied that he did not understand what she meant. He stated that he never went before the Zoning Board and that the purchase and sales agreement was signed when the Zoning Board approved it. He noted that he came to a Planning Board meeting, but there was no plan with 1.25 acres on it and that the Zoning Board did not approve anything with 1.25 acres in relation to this plan. Ms. Peters reiterated that the application was for 1.25 acres. Mr. Doherty asked whose application stated that. She replied that American Tower's application stated it. Ms. Beauregard noted that the easement itself was not changing in any way.

Mr. Gagnon asserted that he was not doing anything with the tower and had nothing to do with the Zoning Board. He explained, again, that he was only there to acquire 40 acres of land, but it sounded to him like the residents would rather have Mr. Kleczkowski continue to own somewhere between 14 and 19 of those acres for the next 30 +/- years. Ms. Peters replied that was not true. Mr. Gagnon stated that it sounded to him like the residents were hoping that by stopping the lot line adjustment it would stop the tower, which would not be the case. Ms. Peters stated that they were aware that could not happen because the Town had already decided for them, but they were worried something additional could happen.

Mr. Doherty stated that what Ms. Peters is stating is highly possible if the Town does not purchase the property and approve the lot line adjustment. Mr. Montbleau told Ms. Peters that they were not there to discuss the cell tower; they were there to discuss the lot line adjustment from the Conservation Commission to protect land for habitat. Mr. Doherty asked Ms. Peters if she was going on record that she would rather see houses and a cell phone tower than the Town purchasing the land for conservation. She replied that was not what she was saying, she said she meant that she would rather have had houses than a cell phone tower. She stated that she was trying to stress that their concerns were that another industrial development would be put in the location. Mr. Doherty replied that they would need to go back in front of the Zoning Board for that.

Mr. Montbleau reiterated again that they were buying all of the land including the 3.75 acres that the tower is on – they just will not be able to utilize it until the tower is done. He stated that it will be Town property and that they will not be able to build on it.

Ms. Kati Wallace of 57 Blueberry Circle came forward. She stated that most of the neighbors were on the same page and that seeing the 3.75 now was a big concern for them. She stated they were worried that additional trees would be taken down or additional structures would be put up on that land. She stated that the neighborhood opposes anything that would allow more land to be given to allow additional structures for telecommunication purposes on that land. Mr. Doherty clarified that Mr. Gagnon was not trying to increase the ability of the cell phone tower people to use more of the land and that if the Town did not purchase the land, anything could happen. He added that the plan that Mr. Gagnon proposed would not allow the cell phone tower company to make any changes and that for anything to happen, it would need to come back before the Board.

Mr. Mike Ausevich of 8 Falcon Drive came forward. He showed a comparison from the original plan to what it is now. He stated he was concerned what else and how else the plan would be impacted. Mr. Gagnon stated that he believed the abutters were confused that the fencing around the tower was the lot line around the tower. He stated that the fencing was staying where it was and that the lot is currently 14.3 acres. He added that there is no change to the road or to the fence or to the remainder of the plan. Mr. Doherty repeated that they would need to come to the Planning Board if they wanted to make any kind of site plan change. He stated that the lot line adjustment had nothing to do with the footprint of the area inside the fence.

Mr. Ausevich asked if the 3.75 acres of land would be in control of the current landowner until the cell phone tower is no longer in use. Mr. Gagnon stated that the 3.75 acres, which is currently still 14 acres, would be owned by Mr. Kleczkowski to obtain rent on the tower. He stated that once the tower is no longer in use, it becomes land for the Town. Mr. Gagnon stated that he would rather it be 1.25 acres of land as well, but they need it to be the 3.75 because of the fall zone. He stated that the smallest they could get the parcel was 3.75 acres and that Mr. Kleczkowski would not be able to do anything else to it besides collect rent until the tower is no longer in use. He noted that if Mr. Kleczkowski were to just walk away, there is a bond in place to take the tower down. He stated that if they did not do the lot line adjustment, then Mr. Kleczkowski would still own the full 14 acres around the cell tower instead of just the 3.75. Mr. Ausevich



stated that he did not want to argue with conservation. He stated he felt better knowing that nothing else could be done without coming before the Zoning Board or Planning Board.

Ms. Michelle Johnson came forward via telecommunications. She stated that she understood the concerns about the tower falling on Town land. She stated that Blueberry Woods is adjacent on the northeast corner of where the tower is location, which is also Town land. She asked why that was allowed to be in the fall zone, if the whole reason for the 3.75 acres was to avoid the tower falling on Town land. Mr. Gagnon stated that he believed she was correct, and that American Towers went to the Zoning Board to get approval for the fall zone into that specific Town land. He stated that decision had nothing to do with him and it was one of the variances that the Zoning Board approved. He stated that she was correct and that there is a liability for the Town there. Mr. Cote stated that it was not relevant for this discussion. Ms. Johnson asked why it was not considered relevant, if this plan was asking that the fall zone be within Mr. Kleczkowski's land, but the variance allows the fall zone to be on Town property. Mr. Bergeron replied that he was not answering her question but explained that the last 25 feet of the tower belonged to the Town of Pelham, so it would be the Town portion of the tower falling into Town land. Ms. Johnson agreed that was probably correct since the original plan was to be 100 feet and that the additional 25 feet were from the addition from the Town.

Mr. Doherty closed the discussion to the Public and brought it back to the Board.

Mr. Bergeron stated that any plans for development in that area would be severely diminished by the lot line adjustment. He stated that if Mr. Gagnon's plan proceeds, then Mr. Kleczkowski goes into the agreement that his land has a covenant and he is limited to the use that he has been granted variance from, nothing else. He stated that the Town gains an interest in this property even though he will technically still own it. He stated that the land that the tower is on will become Town land and that they would have tremendously strong legal standing for any additional sue of the land. He stated that it seems very logical that the Town has a stronger standing if this should go down to 3.75 acres instead of the 14 acres.

Mr. Doherty confirmed that Mr. Gagnon has a purchase and sales agreement, and it states that if it stops being a cell tower, the town gets the land. The purchase and sales is an additional restriction. He asked Mr. Gagnon if he was looking for a recommendation from the Planning Board to the Board of Selectman that he be allowed to expend funds to purchase this property.

Mr. Bergeron asked if there was a purchase and sale agreement locked in now under agreement and Mr. Gagnon confirmed that there was.

**MOTION** (Cote/Montbleau) To approve the lot line adjustment.

**ROLL CALL VOTE:**

- Mr. Cote – yes
- Mr. Bergeron – yes
- Ms. Masse-Quinn – yes
- Mr. Montbleau – yes
- Mr. Doherty – yes
- Mr. Thomas – yes
- Mr. Bilapka – yes

(7-0-0) The motion carried.

**MOTION** (Masse-Quinn/Montbleau) To recommend to the Board of Selectmen the purchase of the 40 acres.

**ROLL CALL VOTE:** Mr. Cote – yes  
 Mr. Bergeron – yes  
 Ms. Masse-Quinn – yes  
 Mr. Montbleau – yes  
 Mr. Doherty – yes  
 Mr. Thomas – yes  
 Mr. Bilapka – yes

(7-0-0) The motion carried.

Mr. Doherty thanked everyone for their input and told them if anything happens, they will be notified of any changes at all to that site plan.

**Case #PL2021-00014**

**Maps 10 & 11 Lots 13-2-1 & 13-3**

**MAGIERA, Donald and James W. Petersen Built Homes, LLC – Bridge Street (Rt. 38) - Seeking to subdivide 2 duplex lots from the parcel's existing frontage along Rt. 38 and to submit a Conventional Subdivision yield plan & preliminary Open Space Subdivision plan for Special Permit approval. If a Special Permit is approved, the applicant will submit a fully engineered Open Space Subdivision plan to be considered by the Planning Board which shall be a new application subject to abutter notification.**

Ms. Montbleau recused himself from the case. Mr. Doherty appointed Mr. Culbert, Mr. Thomas, and Mr. Bilapka to vote in place of Mr. Montbleau, Ms. Kirkpatrick, and Mr. Dadak. It was noted that they had all of the alternate members voting on this case.

Ms. Masse-Quinn 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. Joseph Maynard of Benchmark Engineering came forward to represent the applicants. He explained that there were two properties being discussed. The first is Map 13 Lot 2-1, which is 31.3 acres, and Map 11 Lot 13-13-3, which is 37.5 acres. He informed that the larger property has frontage along Route 38 and the smaller lot falls along the line of Salem, NH. He informed that there is also a stub out to Maple Drive but any access to Maple Drive would require wetlands filling and CO impacts.

Mr. Maynard stated that the first part of the project would be to subdivide two, two acre lots of property. The two lots would have frontage on either Young's Crossing or Route 38. He explained that the second part of the project, which has the remaining 33 acres, would be to do an open space development under the new Open Space Ordinance that was adopted. He noted that to satisfy the open space requirements, they prepared a conventional subdivision yield plan that incorporates a Town road into the property from Route 38. He stated that the road would extend about 2,000 feet in length and end in a cul-de-sac. He stated they were looking to add 17 lots shown on the plan that would meet the frontage and land requirements under the subdivision regulations.

Mr. Maynard stated that looking at the plan from an open space development standpoint, they took the number of lots achieved through the yield plan conventional layout with the 33 acres of land to work with. He stated that of the 33 acres, 16.6 would be for open space, which is about 50% of the total area they are using for the project. He stated that 5.1 acres of that would be wetlands. He explained that they were trying to keep a fragmented undeveloped black of land to the rear of the Town along the Salem line. He stated that the open space layout road would be about 1,500 feet in length and be similar to the conventional layout. He stated that the lots range in size from 30,000 square feet to about 1 acre with all of the lots having 125 feet of frontage. He noted that all the sites would be serviced by onsite wells and septic systems.

Mr. Cote asked on Lot B of the duplex lots, how close the driveway would be to the intersection. Mr. Maynard replied that it would be in about 200 feet; the other lot would have frontage and would exit out onto Route 38. Mr. Cote asked about the irregularity of Lot B. Mr. Maynard replied that he spent some time on those two lots, but because of the jog that is in the property line in that corner of the lot it makes it difficult to maintain that two acres that they are trying to achieve on those lots.

Mr. Doherty asked Mr. Maynard how he thought that putting two duplexes on the frontage lot in front of the parcel would be protecting the frontage lands on the road to the maximum extent possible. Mr. Maynard replied that there are three wetlands on the property. He explained that the tractive area they are trying to make work as open space, there is a substantial buffer that is associated with the wetland complex.

Mr. Lynde asked if there were houses currently on Lots A and B. Mr. Maynard replied no and that the land was undeveloped.

Mr. Doherty stated that the plan worked under the conventional subdivision, but not under the open space ordinance. Ms. Masse-Quinn stated that she was under the impression that the whole parcel needed to be used for open space subdivisions. Mr. Doherty stated that what was before the Board did not meet their zoning and was not a good example of how the open space should look. He noted that he liked the conventional plan.

Mr. Bergeron explained that the subcommittee that worked on the new open space language tried to take away the density bonus and instead allow a reduction in lot size and frontage. He stated that he would be very reluctant to approve a special permit for this site where the applicant had taken two lots for duplexes and then left the remaining 15 for open space. He noted that this would set a bad precedent that the Board should not go down. He stated that he was not in favor of approving the open space conservation as it was presented.

Mr. Doherty noted that putting the duplexes in was a direct conflict to the Purpose and Intent of the open space ordinance. Mr. Culbert agreed.

Mr. Maynard asked for additional feedback and comments from the Board, as this was the Town's newest ordinance. He explained that he would like as much input as he could get so that if the Board is unhappy with how the plan looks now, he can ask to be date specified to fix it in a way that the Board would be happy with. He noted that without the Board's input, he is interpreting the ordinance in a way that the Board did not necessarily intend.

Mr. Doherty felt that this location was better for a conventional subdivision that could lend to some connectivity for the Town.

Mr. Cote stated that he felt that the open space subdivision could lend to connectivity as well as the preservation of wetlands, flat plains, among other things. He noted that while the applicant was not

providing connectivity, they were preserving 16 acres of wetlands which connect to other wetlands as well. He asserted that this could still be a good case for an open space subdivision.

Mr. Bergeron asked Mr. Maynard if he had any discussions with DOT on access points yet. Mr. Maynard replied that he had a preliminary discussion with them. He informed that he is allowed three access points along that road because this piece of property was not subdivided prior to 1971 and he has adequate site distance.

Mr. Bergeron stated that many of the members would like to see an open space subdivision, but not in the way it was presented. Mr. Bergeron asked Mr. Maynard to ask for more specific questions about what he was looking for regarding input, as the Board would not design the plan for him. Mr. Maynard replied that the biggest takeaway he was receiving was that anything that has direct frontage was not acceptable. He replied that he understood that Mr. Doherty did not believe this was a food site for an open space project, and he disagreed with that.

Mr. Cote stated that his main problem was with Lot B of the duplexes. He noted that there could be additional problems associated with Lot A, but it could be a give and take from his opinion. He suggested that Lot A be used as a frontage buffer, and he could concede Lot B because of where it is. It was his opinion that it was a give and take with the Town getting 16 acres of open space and reducing the road by 500 linear feet.

Ms. Beauregard asked if lot 17 would also need to maintain 200 feet on an existing Town or State Road.

Mr. Bergeron noted that there had been instances in the past where the Board did not look closely enough at yield plans and then realized it later. He stated that they liked the open space but did not want two additional duplexes on Route 38. He noted that the applicant would have the right to do so in a conventional subdivision, but not in the open space subdivision.

Mr. Cote asked Mr. Bergeron what if Lot A remains untouched and is preserved as open frontage. Mr. Bergeron replied that he did not want to tell the applicant what to do. He noted that plan would be better, though as Lot B would show woods along Route 38 and a driveway on Youngs Crossing.

Mr. Bergeron noted that Lot B was polygonal in the open space subdivision. Mr. Cote asked if Lot B would stay that way with the removal of Lot A. Mr. Maynard replied that if he got rid of Lot A, he would be able to reconfigure it to be a more conventional lot shape. Mr. Bergeron noted that if that is done, then it becomes a totally open space concept. Mr. Maynard replied that he would still want to subdivide Lot B so that he could generate that lot now while permitting the rest of the property to give the client something to do.

Mr. Thomas asked Mr. Maynard if he was saying that Lot B could be squared off and made into two lots under open space. Mr. Maynard replied no, that he could make Lot B one lot and make Lot A his buffer. He added that he would put that lot elsewhere in the subdivision off the backside. He stated that Lot B would remain two acres.

Mr. Bergeron asked what waivers the applicant was requesting. Mr. Maynard replied that he was requesting a few on the conventional yield plan relative to the building box requirement and for the well radius to be in the setback. Mr. Bergeron expressed that he was concerned about the layout and lot shapes.

Ms. Masse-Quinn stated that she liked the acreage on the open space yield plan and that she was really impressed. Mr. Culbert corrected her that she was looking at the conventional plan. Ms. Masse-Quinn agreed that she was mistaken and that she liked the acreage in the conventional plan.

Mr. Maynard noted that each lot would have its own individual well and septic systems. He stated that they performed a number of test pits in the area and was not concerned with the septic or well.

**MOTION** (Culbert) To accept the conventional plan for consideration.

As there was no second to the motion, the motion failed.

Mr. Doherty replied that the conventional plan was not being presented to the Board. Mr. Culbert countered that both plans were being presented. Mr. Bergeron asked if the motion were to pass and the conventional plan was accepted for consideration, would that lock out the potential for an open space plan.

**MOTION** (Culbert/Cote) To accept the yield plan for consideration

**ROLL CALL VOTE:**

- Mr. Cote – yes
- Mr. Bergeron – no
- Ms. Masse-Quinn – no
- Mr. Montbleau – yes
- Mr. Doherty – yes
- Mr. Thomas – no
- Mr. Bilapka – yes

(4-3-0) The motion carried.

Mr. Doherty opened the discussion to the public.

Mr. Jason Labonte of 40 Lancaster Crossing of Salem, New Hampshire came forward. He informed that the wildlife in the area was plentiful. He explained that he had a conversation with a conservation officer where there was mention of vernal pools. He asked if there were any reports on that. Mr. Maynard replied that DES regulated vernal pools and that there are some on the Salem Town line on the property. He stated that the Town has a 50' CO buffer from those vernal pools. Mr. Labonte asked how they enforce that and how does a plan get approved that is on wetlands. Mr. Maynard replied that the Town requires any plan that is approved by the Board to have documentation about the limits of the 50' conservation overlay district that the Town has. He explained that if this plan were to be approved as an open space subdivision, then they would look into a homeowner's association, and as a group, they would own that space. He explained that if the conventional layout were to be approved, then the individuals who own the lots inclusive of the bugger or wetland would own that area. He stated that a property owner could clear cut up to the 50' line if they chose to. He stated that if it was an open space area, the homeowner's association would have guidelines on how to preserve the 16 acres of open space. He explained that this meant that people could not just clear cut it, but they could go in for cleanup and forestry management to clear out dead trees. Mr. Labonte agrees that he would rather see the frontage buffer on Route 38 rather than a duplex. He noted that maintaining that nice road frontage is key in a rural town like Pelham. He stated he was in favor of the open space plan.

Mr. Paul Yeaman of 18 Koper Lane came forward. He noted that he was an abutter to the southeast corner of the proposed plan. He informed that a large area of that lot was clear cut about 10 years ago which led to him losing about 10-20% of the trees on his lot. He informed that the land is very sloped and there is significant wind that greatly picked up once those trees were cleared, resulting in a damaged ecosystem. He added that the loss of trees also resulted in erosion problems for the area. He stated that if the conventional plan moves forward, that it is important to consider the effects that clearing the lots on the

wetland bordering side of the property would have. He suggested possibly leaving additional buffer zones to try to protect the ecosystem from more erosion issues. He added that lot 2 on the conventional plan could cause safety issues if it had a driveway near where Young's Crossing and Bridge Street meet.

Mr. Bergeron commented that this is why he voted against accepting the plan because there is not enough detail.

Mr. John McCullah of 28 Koper Lane came forward to address the Board. He informed that he was a direct abutter to the project. He stated that the plan seems indefinite at the moment and would strongly recommend the Board to send it out to the engineering department.

Ms. Rachel Shipulski of 20 Koper Lane came forward. She informed that her property was right next to the Yeamans. She stated that she wanted to second what was said about the buffer and wildlife. She informed that there is a large stream outside of her stonewall that runs off to Harris Pond. She explained that when the clearcutting happened 10 years ago, they took down some of the trees that had red tail hawk nests in them. She asserted that she did not think that was okay. She stated that whatever cutting that happens in the area will affect the wildlife. She asked the Board to consider adding additional buffers than what is currently proposed.

Mr. Jim Peterson, the developer of the property, came forward to address the Board. He explained that he tried the open space plan to try to save as many trees as he could, as he is a wildlife guy. He noted that he sold his home in Hudson and made sure that 38 acres went to conservation land before he sold it. He explained that the open space lots are smaller, so they cannot cut as many trees down. He stated that he has built over 200 homes for the Town and that people often clear cut their yards to open them up when they move it. He believed that the open space plan was the better design, but would respect whatever decision the Board made.

Mr. Doherty closed the discussion to the Public and brought back to the Board.

Mr. Bergeron asked Mr. Doherty what his opinion was. Mr. Doherty replied that they either continue with the open space development or have the applicant go with the conventional plan.

Mr. Doherty asked the members what they wanted to do. Mr. Cote, Mr. Thomas, and Mr. Bilapka stated they were all in favor of the open space layout. Ms. Masse-Quinn stated that she was in favor of the open space plan, as it would get rid of one of the duplexes. Mr. Culbert stated that he was leaning towards the open space plan as well. Mr. Bergeron stated that if the duplexes were gone, he would support the open space plan, which would also address the abutters' concerns.

Mr. Doherty stated that in a residential open space, duplexes are off the table; they would need be all single-family homes. Mr. Doherty told Mr. Maynard that if he can take the duplexes out of the equation, then the Board is leaning towards a residential open space subdivision. He stated that it was clear that the Board preferred the idea of an open space subdivision for the area. He stated that they could send the yield plan to engineering to see if it was viable for that land, and if it was, then Mr. Maynard could try to continue with the open space subdivision to try to come up with something palatable to the Board.

Mr. Maynard asked if he was going to send it to Mr. Keach for review of the yield plan and continue him to a specific date to come back and discuss those comments. Mr. Doherty confirmed with the Board that they wanted to send the yield plan off to engineering. If it is a valid subdivision, Mr. Maynard would need to come back with a new application for the open space subdivision.

Mr. Maynard asked if they would date specify him to come back and review Mr. Keach's and conservation's comments so that he does not have to re-notice.

Ms. Beauregard agreed that the Board would need to vote to approve the yield plan for him to continue on with his open space subdivision. She added that they would want Mr. Keach's and conservation's comments to vote on the plan.

This case was date specified to July 8, 2021

## **DISCUSSION**

**Pelham Planning Board to review and revise their current by-laws.**

It was noted that, due to time, this would be discussed at a future meeting.

## **DATE SPECIFIED PLANS**

### **June 21, 2021**

Second Public Hearing Regarding changes to Land Use Regulations

Case #PL2021-00005 - Map 30 Lots 11-157, 11-158, 11-162, & 11-163 – CROOKER, Kevin & Constance & TERRY, Angela – 2 & 4 Andover Street and 3 & 5 Methuen Street

### **July 8, 2021**

Case #PL2021-00014 – Maps 10 & 11 Lots 13-2-1 & 13-3 – MAGIERA, Donald and James W. Petersen Built Homes, LLC – Bridge Street (Rt. 38)

## **ADJOURNMENT**

**MOTION:** (Bilapka/Cote) To adjourn the meeting.

**ROLL CALL VOTE:** Mr. Bilapka – yes  
 Ms. Culbert – yes  
 Mr. Cote – yes  
 Mr. Bergeron – yes  
 Ms. Masse-Quinn – yes  
 Mr. Thomas – yes  
 Mr. Doherty – yes

(7-0-0) The motion carried.

The meeting was adjourned at approximately 11:50 pm.

Respectfully submitted,  
 Jordyn M. Isabelle  
 Recording Secretary