

APPROVED

**TOWN OF PELHAM
PLANNING BOARD MEETING
April 6, 2015**

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

The Vice Chairman Roger Montbleau called roll:

PRESENT: Peter McNamara, Roger Montbleau, Paddy Culbert, Jason Croteau, Mike Sherman, Selectmen Representative William McDevitt, Alternate Tim Doherty, Planning Director Jeff Gowan

ABSENT: Paul Dadak, Alternate Joseph Passamonte

Mr. McNamara opened the meeting by welcoming Mr. McDevitt who will now serve as the Selectmen's Representative for the Planning Board.

Mr. McNamara then appointed Mr. Doherty to vote in Mr. Dadak's absence.

ELECTION OF OFFICERS

Mr. Culbert made a motion to nominate the existing slate of officers. Mr. Doherty seconded the motion.

MOTION: (Culbert/Doherty) To elect Mr. McNamara as Chairman; Mr. Montbleau as Vice Chairman; and Mr. Dadak as Secretary.

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

OLD BUSINESS

PB Case #PL2015-0001

Map 7 Lot 4-180-17

TWO M CONSTRUCTION, LLC - Benoit Avenue - Proposed 2-Lot Subdivision

Mr. McNamara announced that the case would be continued. The applicant's representative requested date specification to the Board's April 20, 2015 meeting which would allow for additional time to review the engineering comments.

PB Case #PL2015-0002

Map 41 Lot 10-245

PJ KEATING COMPANY - 2 Bridge Street - Proposed improvements to the site and storm water management facilities

Mr. Culbert stated he would be requesting a site walk. Mr. McNamara replied they would set a date after hearing from the applicant.

Mr. Stephen Benben of Triton Environmental, representing PJ Keating Company and Ms. Kendra Naroki Environmental Health and Safety Manager for PJ Keating came forward to discuss the proposed improvements to the site and storm water facilities located at 2 Bridge Street. During their last hearing with the Board Mr.

Benben presented storm water treatment plans. In the course of the hearing there were a number of questions that lead to a design review by Steve Keach of Keach Nordstrom (Board's engineering design review firm). Mr. Benben told the Board they had addressed each of Mr. Keach's comments and prepared a revised plan set. He was seeking a conditional approval if possible.

Mr. Benben spoke of the two items they were unable to comply with: 1) wetland delineation (50ft. boundary of Wetland Conservation District 'WCD'); and 2) completed boundary survey. He explained PJ Keating had contracted with a Wetland Scientist to delineate the wetland but were unable to have it done due to the weather and remaining snow cover. At this time, they showed a 50ft. offset from the wetlands on the plans. They've updated the plan to pull back the grading that was previously creeping into the wetland area. The revised plans show the disturbance area as being outside the WCD; however, the lines may change once reviewed by the Wetland Scientist.

Mr. McNamara questioned if Mr. Keach had seen the revised plans. Mr. Benben replied he'd sent an electronic copy, but due to time limitations didn't believe Mr. Keach had seen them yet.

Mr. Doherty noticed the name Draco Homes on the plans being reviewed. He's worked as a subcontractor for Draco Homes for thirty years and was presently working on the property behind the Keating site. He asked if anyone would like him to step down from the Board. Mr. McNamara asked Mr. Doherty if he could be objective and impartial when judging the case. Mr. Doherty answered yes; he hadn't realized the property he was working on was next to the applicant's site. Mr. McNamara questioned if Draco Homes had any stake in the Keating matter. Mr. Doherty was not aware of any. He then asked the applicant if they were aware of Draco Homes having any interaction with Keating. Mr. Benben wasn't aware of any communications with abutters, other than notification of the hearing. He stated no one had contacted them directly. There were no further questions, concerns or objections to Mr. Doherty remaining seated.

Mr. Benben spoke of the boundary survey. He explained they had a partial survey with the boundaries being shown based on tax maps and GPS maps. He stated P.J. Keating was willing to complete a boundary survey but had not done so yet based on winter weather. He believed they had been in contact with a local surveyor to conduct the survey.

Mr. McNamara invited Mr. Keach forward for the discussion. Mr. Keach called attention to a letter report he prepared dated February 26, 2015 addressed to Mr. Gowan. That letter culminated a set of revised plans that he had just been handed; therefore, he had not had the opportunity to review them. He spoke of the application, which was somewhat unusual for the Board to review since it wasn't a land use development project. He explained it was an industrial project that would bring the storm water management on the site into the current century. He noted a majority of the land wasn't within Pelham's jurisdiction, it was located in Dracut, MA, but at the same time, the northeasterly portion of the property (east side of Rt. 38) would largely be devoted to storm water management. Mr. Keach believed the design of the proposed storm water management facility were text book in following the New Hampshire Department of Environmental Services ('DES') – Alteration of Terrain ('AOT') requirements. The majority of items contained in Mr. Keach's letter were the requirements for the applicant to demonstrate compliance with the local land use ordinances and regulations. He stated a perimeter survey is a requirement for any application coming in front of the Board. With regard to wetland delineation, Mr. Keach understood there were some wetland boundaries shown on the plan that had been taken from a public sector document and weren't site specific. Given the nature of the Zoning Ordinance with the WCD, there was a question as to if and how much work would be done in the WCD and whether a Special Permit was required. He believed the applicant submitted a well prepared application with a fairly complete narrative containing a lot of information relative to the purpose and intent of the application and the processes that would be implemented for storm water management. There was also good detail regarding the use of the portion of property situated in Pelham that wouldn't be devoted to storm water and would be used for reclaimed asphalt processing. Mr. Keach was fairly confident that the applicant's

consultant would be able to address his comments/concerns, with the exception of the two items spoken about (boundary survey and wetland delineation) due to timing.

Mr. Doherty asked if there were any specified hours of operation, particular to the stone crushing equipment. Mr. Keach didn't see anything at the time he drafted his letter in February. Mr. Benben replied they didn't have specific hours laid out for the asphalt recycling. He noted it wasn't a new use or operation for the site. He explained they were continuing the same use, but making a more formal location for it to be done. Currently a subcontractor brings a portable crusher to the site for a period of approximately three weeks in the Spring to process as much as they could; the material is then stockpiled on bare earth in the location near the existing vehicle maintenance shop. The proposal shows a formal area for work to be done that will be paved and curbed so any precipitation could be collected and treated before being discharged. Mr. Doherty wanted to learn how many hours per day the crushing operation would be active. Ms. Naroki told the Board their standard hours of operation especially for the rap crushing were Monday-Friday for approximately ten hours per day starting at about 7am. She reiterated that the crushing occurred in the late Spring and lasted for approximately three weeks.

Mr. Gowan confirmed that the crushing operation currently occurred near the maintenance shed located in Dracut, MA. Mr. Benben answered yes. Mr. Gowan understood that the proposal was to have the operation move to the Pelham. Mr. Benben explained that the portable crusher was located next to the maintenance shed; the stockpiles crossed over the State line. He used a displayed plan to show the location being discussed. Mr. Gowan spoke to the questions/answers the Board would be interested, such as the type of operation and hours of such that would be located in Pelham. Operations located in Dracut, MA, were Dracut's responsibility. He noted any operational changes and parameters would need to be outlined in any Notice of Decision.

Mr. McNamara opened the hearing to public input. No one came forward.

Mr. McNamara questioned when the perimeter and wetland delineations would occur now that the ground was relatively clear. Mr. Benben was hopeful for them to be done in early Spring; however, the schedule would be at the determination of the wetland scientist. Mr. McNamara believed the Board would need to conduct a site walk to better understand the proposal.

There was a brief discussion regarding the site walk and what should be delineated for the Board to review. A site walk was scheduled for May 2, 2015.

The plan was date specified to the May 4, 2015 meeting.

NEW BUSINESS

PB Case #PL2015-00005

Map 28 Lot 2-12

STYS-GLANCE, Mary Ann, Owner / LAMARRA, Richard, Applicant – 61 Burns Road - Proposed 2-Lot subdivision

Mr. Montbleau 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. Kurt Meisner of Meisner Brem, representing the applicant, came forward to discuss the proposed subdivision. He explained that the existing parcel contained approximately 112 acres. They were proposing to cut out a 5-acre ('farm house lot') toward the front of the parcel, which would leave 107 acres. That remaining parcel will maintain more than enough frontage to be a legal lot. He reviewed

the subdivision proposal and showed that an existing driveway will continue to access the farm house and outbuildings currently on the parcel. The applicant was seeking to maintain a life estate after the subdivision was complete. Mr. Meisner showed the topographic survey and noted there were no wetlands on the site being subdivided. The existing well and septic system are shown on the plan. A waiver request was submitted to Section 11.04 – lot shape; the proposed parcel consists of two rectangle shaped areas ('L' shape) so they could capture the existing access driveway, farm house and outbuildings.

Mr. McNamara questioned if the proposed plan was sufficiently detailed to be accepted for consideration. Mr. Gowan answered yes.

MOTION: (Culbert/Montbleau) To accept the proposed subdivision for consideration.

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

Mr. Gowan spoke to the proposal. He noted there would be a large area remaining; however, it wasn't an unusual situation. He liked that that parcel being divided off the main parcel contained several acres and had the plenty of frontage. He stated he didn't have any issues with the proposal. He understood the reason for the lot shape and didn't feel it was laid out to try to 'squeeze area'. If there were future development, it could be done in a geometrically appropriate fashion in terms of lot lines given how the subdivision was laid out.

Mr. McNamara read aloud the waiver request to Section 11.04 – lot shape. Mr. Culbert made a motion to accept the waiver request for consideration. Mr. Montbleau seconded the motion.

Mr. Culbert questioned why the proposed lot had a 'jog' (making it 'L' shaped). Mr. Meisner replied they were trying to keep the driveway and field area included in the subdivided lot. He told the Board there was no current plan for further development of the remaining parcel. However, should there be future subdivision, the remaining area could be laid out to have rectangle lots with appropriate frontage along Burns Road. The owner was trying to keep the 5acre lot as close to its present state as possible.

Mr. Gowan inquired about the status of the property and wanted to know if it was primarily agricultural or wooded. Mr. Meisner replied he had not been on the rear portion of the 112 acres. He believed the land was generally agricultural near the front; but was wooded along the side and back portion.

Mr. Sherman wanted to know what frontage would remain for Lot 2-12 along Burns Road after the five acres were subdivided off. Mr. Meisner estimated over 500ft.

MOTION: (Culbert/Montbleau) To accept, for consideration, the waiver request to Section 11.04 – lot shape.

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

Mr. McNamara opened the hearing to public input. No one came forward to speak.

MOTION: (Culbert/Montbleau) To approve the waiver request to Section 11.04 – lot shape.

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

MOTION: (Croteau/Sherman) To approve the subdivision.

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

ADMINISTRATIVE

Mr. Gowan spoke to the projects the Board had to undertake during the year: 1) Zoning – implement workforce housing and sunset senior housing; 2) establish a Capital Improvement Plan ('CIP') committee; and 3) Master Plan revision ('clean up') – \$10,000 budget approved by voters to do so.

Mr. Culbert stated he would volunteer to be a CIP member. He questioned if alternate Board members could be on a committee and/or chair a committee. Mr. Gowan answered yes.

Mr. McNamara asked Board members to decide what committee they would like to be involved with. He commented if people didn't volunteer, he would have to make appointments. The Board would have further discussion at an upcoming meeting.

Mr. Gowan then told the Board he was working with Green & Green Company (Case #PL2014-00026 Map 35 Lot 10-193 & Map 36 Lot 10-191-1 / 1-5 Garland Lane now called Pasture Lane) to modify trail easement language to be addressed in the easement documents, homeowner's documents and within the plan set. Information will be brought back to the Board once he has the document in hand.

Mr. Doherty commented that the Garland development should have at least had a trail system within the property if it wasn't going to have one going through it. He noted all conservation subdivisions were required to have a trail system. He suggested that the Master Plan subcommittee discuss protecting the Town's precious resources. Mr. Gowan replied there are situations where a trail system is created for the residents within the development. He said the recent case was different because the trail system crossed through the property and was open to the public.

DISCUSSION – Legal

Mr. McDevitt told the Board at their convenience, he would be happy to discuss the Selectmen's position on the use of the New Hampshire Municipal Association ('NHMA') opposed to Town Counsel Attorney Rattigan. There was a specific case the Board continued because they wanted Town Counsel's legal opinion, not an opinion from NHMA. Mr. McDevitt stated he wasn't aware that there was a specific matter. He explained the Town ran into a problem with legal expenses over the last 4-5 years in which the Town had significantly over expended the legal budget. The legal budget consists of unexpected situations as well as controllable things (to a certain extent), such as defensive checking, legal advice, liable law, employee situations, tax deeds etc. The Selectmen discovered NHMA offers legal advice and has an extremely well qualified attorney. They came to the conclusion to go to the NHMA attorney as many times as possible. A few months ago the Selectmen started directing almost all their legal questions through NHMA and thus far had been quite satisfied. This change has nothing to do with dissatisfaction with Attorney Rattigan. The Selectmen were aware there may be some exposure in making the change in the event there was a law suit based on the advice received. Mr. McDevitt understood the attorney making the opinion would be hired to defend the opinion. He believed most of the cases that cost the Town money were extremely well vetted, but the Town was still sued. He commented that the Selectmen were trying to bring legal expenses under control.

At the least, Mr. McDevitt stated if there was a specific case where the Planning Board wanted to speak with Attorney Rattigan, they should forward something in writing to the Selectmen. He noted he didn't have the authority to give an authorization. This could be done pending resolution to situation regarding legal expenses to everyone's satisfaction.

Mr. McNamara explained part of his frustration was the Board being blind-sided by the situation and not told until after-the-fact. He said the Planning Board was on different footing than most of the departments, being that they are an elected Board with statutory authority coming from the State. They had the authority to pick experts. Mr. McNamara commented that most of the Board's legal inquiry (i.e. site plan) would be reimbursed by the applicants. He believed the current situation would rarely occur. He felt if an attorney knew they'd have to stand behind an opinion prior to giving one, they would lend more substance to their opinion. Mr. McNamara noted Attorney Rattigan doesn't provide simple yes/no opinions. He often makes suggestions to possibly avoid court and/or suggestions to make the Board's position more defensible 'in the event' of a law suit. He felt that guidance was worth the money Attorney Rattigan was being paid because of knowing his track record and the fact that he knew the Town and the Board. He didn't feel the Planning Board had run up legal expenses unnecessarily. Mr. McNamara stated it might be a solution for the Planning Board and Zoning Board to have a budget line item amount for legal in the event the expense can't be billed to an applicant.

Mr. McDevitt believed the Selectmen intend to use Attorney Rattigan and would probably expect the Planning Board to do the same thing. He suggested if the Board felt a situation was going to escalate they should let the Selectmen know. As the Selectmen's Representative to the Board, he will carry that message back to the Selectmen if necessary. Mr. McNamara noted when situations arise as part of an application, time is an issue with the Board having a statutory requirement to keep applications moving. Mr. McDevitt understood and offered to discuss the particular case with Mr. Gowan.

Mr. Doherty was concerned because he felt abutters and attorneys from adjoining cases got together in the same evening and tried to manipulate the Board into something the Board shouldn't be manipulated on. Mr. McNamara replied any applicant had the right to bring counsel in to provide an opinion.

SITE WALK – May 2, 2015

PB Case #PL2015-0002 - Map 41 Lot 10-245 - PJ KEATING COMPANY - 2 Bridge Street

DATE SPECIFIED PLAN(S)

April 20, 2015:

PB Case #PL2015-0001 - Map 7 Lot 4-180-17 - TWO M CONSTRUCTION, LLC - Benoit Avenue

May 4, 2015:

PB Case #PL2015-0002 - Map 41 Lot 10-245 - PJ KEATING COMPANY - 2 Bridge Street

MINUTES REVIEW

March 16, 2015

MOTION: (Culbert/Montbleau) To approve the meeting minutes of March 16, 2015 as amended.

VOTE: (6-0-1) The motion carried. Mr. McDevitt abstained.

ADJOURNMENT

MOTION: (Montbleau/McDevitt) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:15 pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary