

APPROVED

**TOWN OF PELHAM
PLANNING BOARD MEETING
November 2, 2015**

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

The Secretary Paul Dadak called roll:

PRESENT: Peter McNamara, Paul Dadak, Paddy Culbert, Joseph Passamonte, Alternate Tim Doherty, Alternate Mike Sherman, Selectmen Representative William McDevitt, Planning Director Jeff Gowan

ABSENT: Roger Montbleau, Jason Croteau, Alternate Robert Molloy

Mr. Doherty and Mr. Sherman were appointed to vote in the absence of Mr. Montbleau and Mr. Croteau.

OLD BUSINESS

PB Case #2015-00016

Map 22 Lot 8-130

52 WINDHAM ROAD, LLC - 52 Windham Road - Special Use Permit and Site Plan Review for proposed mixed use development consisting of a 1500SF retail building and 15 townhouse condominium units in the Mixed Use Overlay District

Mr. David Jordan of MHF Design Consultants and Mr. Brian McGowan the project proponent came forward to discuss the proposal. Mr. Jordan stated during their last meeting (October 5th) there were some concerns expressed and good feedback that has resulted in a number of amendments. A concept plan was displayed for public review. The commercial space on Windham Road was previously 1,500SF (one story) and is now being shown as a 1.5 story building with approximately 2,800SF. The building maintained the farmer's porch and has a patio/gathering space in front that connect to the sidewalk. There is no end user at this time; however the envisioned use would be a professional office/specialty service. The parking lot immediately behind the building has been increased. To address density, the number of buildings was reduced from six down to five. Each residential unit will have two-bedrooms, which will reduce the number of residents and septic requirements. With regard to usable open space, there is a sidewalk running the length of the development out to Windham Road with connectivity to the retail building in front. Areas have been set aside for passive recreation, most notable was the area at the end of the turn-around within the south end of the property. This area will provide a snow storage location in the winter. A gazebo will be located at the end of the turn-around that will tie into the trail system/walking path (running north, parallel to Beaver Brook). A neighborhood garden is being proposed on the north side of the entrance. Mr. Jordan discussed screening and privacy measures, such as running a stockade fence for basically the full length of the development along the south. They've added a 6ft. stockade fence between the commercial portion of the site (on the south) and the first townhouse unit. Each residential unit will have privacy fences that extend approximately 15ft from the porch. The recreation (open space) area will have a split rail fence to define the area. At the project entrance the first unit on the north has been pulled in to increase the side setback from 15ft to approximately 25ft. The previously proposed landscape plan will remain in effect.

Mr. Jordan summarized the applicant's approach to the project and how they believed it complied with the Mixed Use Zoning District ('MUZD') regulations. He outlined the purpose of the MUZD and noted that the project would provide an increase in housing types and business opportunities currently not available in Pelham. The target market is a first-time homebuyer, working professional, empty-nester etc. and the target price point is approximately \$260,000-\$280,000. Mr. Jordan discussed the associated costs of doing the

proposed development. They looked forward to making a successful project that the Board and town people could be proud of.

Mr. McNamara understood that Keach Nordstrom (Board's engineering review firm) had not reviewed the plan changes. Mr. Jordan answered no.

Mr. Doherty referred to a letter from Keach Nordstrom dated August 13, 2015 that references letter reports dated May 26th and July 31st. He questioned how it was possible for the Keach Nordstrom to have been working on the project, since it had only come in front of the Board for the first time in August. He said the Planning Board had a designee they used to meet with applicants and they didn't have the right to act on behalf of the Board. He wanted to know if that had occurred, or if the applicant had gone to the Board's engineering review on their own.

Mr. Gowan stated there was nothing wrong or inappropriate about someone speaking with Mr. Keach to get his early opinion. He noted that was a practice followed for many years and didn't know where it was thought to be any violation of the Board. Mr. Doherty replied if it was a subject application dating back to May or July, why wouldn't the Board have known about it. He said applicants were supposed to come in front of the Board and not have Mr. Gowan act on their behalf. Mr. Gowan felt 'acting on the Board's behalf' was a stretch in this instance. He said it was reasonable and encouraged for a plan to go through a significant amount of review. Mr. Doherty felt doing so was circumventing the public. Mr. Gowan said working in advance to get some clarity on a project didn't circumvent the Board's authority or an abutter's opportunity to speak. Mr. Doherty referenced the book 'The Planning Board in New Hampshire' that was provided to Board members by the Planning Department. He then read aloud a section with regard to the Board designating someone to review material provide for the design review; the designee may engage in non-binding discussions with the applicant after the abutters and general public have been notified. Mr. Gowan said there was nothing inappropriate or in conflict with what was referenced. He stated he made no decisions on behalf of the Board, except for minor in-field changes on projects. He said in the past he received complaints that applications didn't have more scrutiny before they came to the Board for the first time.

Mr. McNamara noted there was an item under new business that had already been preliminarily reviewed by Mr. Keach, which gave the Board an advantage. Mr. Doherty questioned who was having preliminary review. Mr. Gowan explained in some instances Keach Nordstrom would take an early look at an application (at the applicant's expense) if there was a challenging project. Mr. Doherty commented that the Board had not seen preliminary plans in quite some time. He didn't feel that when a plan was first presented it shouldn't be at the point of only dotting 'I's' and crossing 'T's'.

Mr. McDevitt stated the Board was conducting a public hearing on a matter in front of them; the discussion was not the matter in front of them. He understood that the review process had been in place for a long time. He said the Board could decide to change it at a separate meeting, but it shouldn't be done at the expense of the abutters or the applicant.

Mr. McDevitt said there was no argument as to whether mixed use was allowed, but the density still bothered him. The wording within the MUZD that caught him was '*traditionally found in neighborhoods in town centers throughout New England*'. He couldn't think of a town center that looked like what the applicant proposed. From looking at old maps and present day town centers in the area, the proposed (commercial building with a number of houses behind it) seems non-traditional. Although he understood the number of residences would offset the cost of the development, but that wasn't the Board's concern. He reiterated that the proposal wasn't a traditional use.

Mr. Passamonte referenced page 12 (Table) of the Zoning Regulations that spoke to multiple detached dwelling structures. As Zoning Administrator, Mr. Gowan didn't feel that section applied to the project because not one of the proposed structures were detached or stand alone. He said within the 'allowed' section

it specifically states ‘townhouses’ and also indicates that the business and residential aspects need not be connected. If the Board desired, he will seek legal interpretation to that section of Zoning. Mr. Passamonte felt the section applied to the application. Mr. Gowan said the Zoning Administrator makes the initial interpretation. He noted the Zoning Administrator’s opinion could be appealed. Mr. Doherty didn’t understand why they would need legal opinion given that the language clearly stated ‘*multiple detached dwelling structures per lot*’. He said the proposal contained multiple dwelling structures that were detached from each other, which was a prohibited use. He felt it was the Board’s decision, not the Planning Director. He believed Mr. Gowan was overstepping his bounds. Mr. McNamara believed the Board was getting off track and called the meeting back to order. Mr. Gowan replied he was the Zoning Administrator and had to make an initial interpretation of what Zoning applied and what did not apply. Mr. Doherty didn’t feel the referenced language needed interpretation because it was clear. Mr. Gowan replied all words in Zoning required interpretation and it was his primary job as Zoning Administrator to do so.

With regard to the question of attached versus detached, Mr. Jordan felt if the Board reviewed the definitions in the Zoning Ordinance they would find separate definitions for attached and detached buildings. He said a detached building meant it shared no common walls and an attached building had at least one common wall. He noted each of the proposed units shared a common wall with another unit, meaning they are ‘attached’ dwelling units. Mr. Doherty stated they couldn’t have multiple detached dwelling structures. He said the language didn’t reference units, it referenced structures. He said language from other Zoning couldn’t be brought into the MUZD language.

Mr. McNamara asked Steve Keach of Keach Nordstrom to come forward. Mr. Keach stated he and Mr. Gowan had a discussion on the topic when the proposal first came in. Mr. Doherty asked why it had not come in front of the Board at that time. Mr. Keach replied he wasn’t sure. He said any zoning ordinance required interpretation, particularly a new one. The left side column of the table in the ordinance indicates townhouses are permitted in the district, the right side column states detached dwelling units are not permitted. He said he was familiar with the definition in the Zoning Ordinance referenced by Mr. Jordan and was also familiar with how to interpret zoning, as the courts have told them how to do so in the past. He said if there is a defined term in an ordinance it’s used; if there is no defined term, the common meanings of the words are used. He noted the common meaning of a detached unit is one that shares no common walls with another. That was how he read the ordinance and believed that was how Mr. Gowan and the applicant also read the ordinance.

Mr. Sherman stated he was on the (zoning) subcommittee and helped write the language. He said the language read how it was meant when it was written; the subcommittee didn’t want multiple structures on a property. He noted they sent the ordinance to the Nashua Regional Planning Commission and to legal to ensure they were doing things properly. The zoning then went to the Planning Board and then to the Town for approval. Mr. Sherman suggested if there was a problem, the Board should remand the applicant to the Zoning Board to request a variance.

Mr. Gowan stated he would await direction from the Board whether they wanted to seek legal opinion and/or remand the applicant to the Zoning Board. Mr. McNamara polled the Board. Mr. Passamonte and Mr. Sherman would like the applicant to go to the Zoning Board. Mr. Culbert wanted a legal opinion. Mr. Doherty would like the applicant to go to the Zoning Board. He didn’t feel legal needed to be involved at this time as they were already involved. Mr. Dadak felt the Board needed legal opinion to see if the applicant had to go to Zoning. Mr. McDevitt said Mr. Gowan was the Zoning Administrator and he would rely on his interpretation.

Mr. Doherty questioned how the application would be handled after the Board received legal opinion if members still wanted it to go to the Zoning Board. Mr. McNamara felt Mr. Gowan should issue an administrative decision on the interpretation of the language. That decision will go to the Board, if there is a disagreement, the applicant can appeal to the Zoning Board. Mr. Gowan asked the Board if they would like legal opinion. He felt it was important to do so with controversial items should they ever end up in court. Mr.

McDevitt said it would be worth speaking with legal if the item might end up going to court. Mr. Doherty said the 'sticking' point was whether legal can advise whether they could legally substitute 'structures' and 'units', which were different things. Mr. McNamara felt Mr. Gowan should be allowed to go to legal for opinion. Mr. Sherman reiterated that Town Counsel (Attorney John Rattigan) had seen and approved the language before it was submitted to the Board and approved by the Town. He was interested to see his opinion. Mr. Gowan noted getting legal opinion in the context of actual facts was a little different than in the abstract.

Mr. Passamonte questioned why the applicant wouldn't go back to the Zoning Board now. Mr. McNamara replied that neither the Zoning Administrator nor the Planning Board had made a decision. He said if the Board receives an opinion and votes against the applicant, the applicant could appeal to the Zoning Board. Mr. Passamonte noted the proposal contained a private road, and there was nothing in the MUZD about private roads. Mr. Gowan replied the MUZD didn't need to specify anything about a private road because it was allowed in the underlying district. He said the only place it seemed clarification was needed with regard to private roads was within the conservation subdivision language. He noted that the Highway Safety Committee would also review the road.

Mr. Doherty understood the Board would get a legal opinion on the wording for multiple detached dwelling structures per lot. He asked if it was Mr. Gowan's interpretation that there couldn't be individual houses. Mr. Gowan answered yes. He said the words of the ordinance had to be scrutinized. He agreed that the language needed to be 'dialed' in with the Zoning subcommittee, but at present had to work with the current language.

The case was date specified to the December 7, 2015 meeting.

PB Case #PL2015-00002

Map 41 Lot 10-245

PJ KEATING COMPANY - 2 Bridge Street - Proposed improvements to the site and stormwater management facilities and seeking a Special Permit

Mr. Stephen Benben of Triton Environmental, representing the applicant, came forward to discuss the proposed site improvement plan. He told the Board they were seeking conditional approval of the stormwater improvements. Since the last meeting, they reviewed the Wetland Conservation District ('WCD') in relation to the stormwater retention basin's encroachment. Revised plans have been submitted to the Board and to Keach Nordstrom (Board's engineering review firm) for consideration. Mr. Benben noted Mr. Keach replied with a positive letter of opinion on the project. He told the Board they were able to pull the limits of the basin completely out of the WCD; however there would be some disturbance during construction because the existing settling basin is currently in that area. They plan to fill in the settling ponds and bring them back up to topography; the area will be revegetated to grow on its own.

Mr. Benben understood from the last meeting there was a question whether an approval would be in relation to a special permit or the site plan. He stated they were seeking a special permit due to the disturbance that would occur in the WCD during construction.

Mr. McNamara read aloud the letter of opinion from the Conservation Commission dated October 23 2015. They voted unanimously (five in favor, none opposed) to send a positive recommendation to the Planning Board, with the caveat that every effort be made to move the detention pond to the south to reduce the WCD disturbance.

Steve Keach of Keach Nordstrom (Board's engineering review firm) came forward to discuss the plan. He received updated drawings that clarified the WCD and flood hazard areas. He noted there would no longer be a permanent encroachment on the northerly detention basin because it was pulled back. He said as a result of his opportunity to review plans, he issued a letter to Mr. Gowan on October 28th. He noted any approval

should be conditioned upon receipt of NH Department of Environmental Services Alteration of Terrain permit. He said the applicant would need to have a surety in place for erosion control and restoration.

Mr. Doherty spoke of the restoration surety and questioned what it would be restored to, since at present the area was a gravel pit. Mr. Keach said in his mind 'restoration' was getting grass to grow (no spoil piles) so there would be no erosion problem; in this case it should be brought to the line and grade of the ultimate proposal so the land is stable. Mr. Culbert asked if it was considered the same as reclamation. Mr. Keach answered yes.

Mr. Keach's single Zoning matter comment dealt with the 3,000SF that would be restored from the existing WCD impact. His question was if a Special Permit was needed for the restoration. If the answer is yes, the permit would need to be applied for and approved at some point during the process. He spoke of a narrative submitted as part of the original application that outlined the operation and practices used when conducting business on site that would improve water and air quality. He said that narrative captured a lot of information that couldn't/shouldn't be on a construction drawing. However, he suggested the Board recognize that the narrative was an integral part of the site plan, since a lot of the favorable outcome was prescribed in the text. Mr. Keach stated that the underlying intent and purpose of the application was to improve operations and water quality in an around the PJ Keating facility. There was no doubt in Mr. Keach's mind that implementation of the plan, as designed, would achieve that outcome.

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

Mr. Sherman said after walking the site, he felt the sooner the proposed work could begin, the better. Mr. Doherty felt they should issue the Special Permit to restore the WCD area so it would be on record.

MOTION: (Doherty/Culbert) To approve the Special Permit.

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

Mr. McNamara accepted a motion to approve the Site Plan with the following conditions:

- 1) The applicant receive a New Hampshire Department of Environmental Services Alteration of Terrain Permit;
- 2) A performance guarantee / surety for erosion and control in an amount to be determined by Mr. Keach and Mr. Gowan;
- 3) Restorative work, and work in general follow the ideal and spirit contained in Mr. Benben's narrative previously submitted as part of the application.

MOTION: (Doherty/Sherman) To approve the Site Plan with the stated conditions.

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

NEW BUSINESS

PB Case #PL2015-00021

Map 39 Lot 1-51-1

SESTON, Carolyn - Sherburne Road & Mammoth Road - Seeking a Special Permit to approve yield plan for proposed conservation subdivision (*Note: Full application for conservation subdivision will follow once Special Permit and density is established*)

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. Peter Zohdi of Herbert Associates, representing the applicant, came forward to discuss the proposal. He told the Board his presentation would show two different subdivisions, conventional (9 lots) and conservation (10 lots). He told the Board he was in receipt of a report from Steve Keach of Keach Nordstrom (Board's engineering review firm) indicating the need for more information with regard to the conventional plan (i.e. 4K areas, well radii and other possible waivers). The applicant was seeking to do a conservation subdivision, which they believed fit the surrounding area given the amount of Town land abutting the property. Mr. Zohdi said he had a prior discussion with Mr. Gowan regarding the subdivision and access to the property. He understood the challenges of the area and felt accessing off Sherburne Road would be better than coming off Mammoth Road. Because Sherburne Road is a State road, he's sent correspondence to New Hampshire Department of Transportation ('NHDOT'), but had not yet conducted a meeting with them. Mr. Zohdi told the Board Mr. Keach asked for a traffic count/study for the proposed development and area. He was prepared to hire a traffic engineer to do so. He also understood that developments in the area paid their fair share to the (improvement of the Sherburne Road) intersection; his applicant will also pay their fair share.

Mr. Zohdi stated there was a pre-existing non-conforming house on the property that the applicant would like to retain if feasible. The existing house setback to Mammoth Road is closer than the required 30ft. Wetland areas were delineated by Jim Gove of Gove Environmental. Lot sizing computations did not include a small area of the 100-year flood zone or wetlands shown on the plan.

Mr. Zohdi wanted the opportunity to work with the Board, Mr. Gowan and NHDOT regarding the access to Sherburne Road. Mr. McNamara felt it was fair to say that the Board wouldn't take further action on the plan, other than to possibly accept it for consideration. He explained to the public the process the Board would take to determine a baseline number of conventional units that would help determine the baseline number of conservation units that could be put on the property. After that review the applicant would submit a conservation plan.

Mr. McNamara invited Steve Keach forward to discuss his review letter. Mr. Keach told the Board he received the same set of plans that was submitted to the Planning Department that contained a yield plan and preliminary design plan for a ten lot conservation subdivision.

In reference to his letter of October 30th, Mr. Keach noted the first two pages were comments pertaining to the yield plan. He summarized those comments and suggested waiver requests for the Board. He asked that the applicant draft a conceptual drainage analysis so show that construction of a reasonable stormwater management facility wouldn't compromise the ability to get nine lots. Mr. Keach spoke about traffic in the area and the proposed access to the development. He'd seen some of the traffic analysis done by Nashua Regional Planning Commission and believed the traffic queue may extend past the propose access point. He was glad to hear that Mr. Zohdi had made contact with traffic consultant Steve Pernaw because he implicitly trusted his work. Mr. Keach reviewed his remaining comments. His thought was once all the items had been addressed the applicant would have a yield plan for nine lots, but at this time he couldn't make that determination.

MOTION: (Dadak/Passamonte) To accept the Special Permit for consideration.

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

Mr. Doherty saw that the first five lots (on the conventional plan) were exactly one acre and wanted to know if the road had a standard width. Mr. Zohdi replied they were proposing a standard 50ft. right-of-way, the Board could decide otherwise.

With regard to Sherburne Road traffic, Mr. Dadak said he's counted as many as 50 cars in the queue for the intersection (at Mammoth Road). He noted the Town had chosen to have a Police Officer during high volume

periods because of the vehicle backup. He felt during certain times of day it would be almost impossible for vehicles to exit the subdivision. Mr. Keach wasn't concerned about the small density of vehicles exiting the development. He was concerned with the interference of operation because of queuing. He didn't feel it would be reasonable for the applicant to be expected to solve the intersection problems, but he also didn't want them to be exacerbated and cause a safety issue.

Mr. McDevitt believed the submission to be a text book case of premature development. He said the Sherburne Road/Mammoth Road intersection was the single biggest headache intersection in the Town. Prior to having a Police Officer direct traffic (during specific hours) which was not budgeted for, complaints were flooding in to the Selectmen. He noted the Town couldn't do anything because it's a State intersection and the Town had been begging the State to do something for the past five years. Mr. McDevitt stated a vehicle could not safely take a left turn out of the proposed road during the commuting hours. He noted the officer directing traffic was not a budgeted, they were a patrol officer taken off the road during specific times. Mr. McDevitt pointed out that the Subdivision Regulations speak to premature development. He read a portion aloud particularly that the Board, at its discretion, will not approve premature development as would impose danger or injury to the general public health, safety, welfare due to the lack of water supply, drainage, sewage disposal, transportation or other public services. Nor will the Board approve such development which will necessitate an excessive expenditure of public funds for the supply of such services. He asked how much money was held on deposit (for the intersection). Mr. Gowan replied they had approximately \$60,000. He said if all the houses, subject to the exaction, were built they would have approximately \$180,000 in total. Mr. McDevitt noted that the DOT 'off the cuff' estimate for a solution to the intersection was approximately \$1 million. He said the exaction wouldn't solve the problem. In his opinion, this was one of the few cases the Board had seen that contained an immovable object. He said the intersection was currently dangerous. He was worried about having an officer there in the winter. Mr. McDevitt said the property might be developable, but not with the proposal. He reiterated his opinion that it was a premature development.

Mr. McNamara felt it was premature to determine if the proposal was 'premature'. He felt the Board needed more information and that would depend on what Mr. Zohdi could get from DOT. Mr. McDevitt didn't want the applicant to spend a lot of time, trouble and money without hearing that opinion. Mr. McNamara noted there was a lot of case law regarding premature development if that's what the discussion came down to.

Given the large amount of Town property abutting the parcel, Mr. Doherty suggested the Town might consider speaking with the applicant to purchase their property, rather than developing it. He noted the Town ballot was coming up. Mr. McNamara believed it would take a considerable amount of money.

Mr. McDevitt felt his comments about prematurity were appropriate for considering the number of lots that would be allowed under a conventional subdivision. Mr. McNamara agreed it was appropriate to raise the issue now, but believed the Board would have to wait and see what further information they received before making that type of determination. Mr. Keach felt Mr. McDevitt's comments were relevant for either a conservation or conventional plan.

Mr. McNamara opened the hearing to public input. No one came forward. Mr. McNamara believed there would be a fairly involved review process and the public would have the opportunity to speak.

Mr. Sherman understood Mr. Zohdi would gather additional information get together with Mr. Keach. He noted the Board didn't receive Mr. Keach's letter until late morning, which possibly didn't allow for them to properly prepare. He wanted to know if the Board could date specify a hearing if a similar situation occurred in the future. Mr. McNamara replied the Board had done so in the past. Mr. Zohdi noted he submitted plans to the Planning Department in the proper timeframe; he apologized for his mistake for not delivering plans in time to Mr. Keach.

Mr. Culbert recalled the Board pulling 'premature development' with regard to the Pellex case that had occurred approximately twenty years ago. Mr. McNamara recalled a project off Route 38 and another off Lawrence Corner Road. Mr. Gowan recalled there were instances over the years and felt it would be good to resolve in this case.

Mr. Zohdi asked the Board to date specify the case to the December 21, 2015 meeting.

The plan was date specified to December 21, 2015. Mr. McNamara informed that the abutters would not receive additional notification for that hearing. Mr. Gowan noted he would hold off bringing the plan to the Highway Safety Committee until more information was received. Mr. McNamara agreed.

PB Case #PL2015-00019

Map 32 Lot 1-146-24

SKYVIEW ESTATES, LLC - Majestic Avenue - Renewal of approved Conservation Subdivision (19 residential lots and 2 open space lots) - Original approval date November 3, 2014

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. Peter Zohdi of Herbert Associates, representing the applicant, requested a one-year renewal of the approved conservation subdivision. He provided a status update. They are in the process of working in phase one and have obtained all necessary State permits and provided copies of such to the Planning Department and the office of Keach Nordstrom (Board's engineering review firm).

Mr. McNamara inquired if the applicant had any expectation as to when construction would begin on phase two. Mr. Zohdi couldn't answer since his client was not present. He felt if they were granted a one-year extension they may be able to within six to seven months.

Mr. Gowan noted the subdivision was approved approximately one year ago. He said the applicant was properly in front of the Board for an extension and not a re-approval. He said the only caveat would be to possibly request a fresh bond estimate from Keach Nordstrom. Mr. Zohdi understood and agreed.

Mr. Sherman asked for an update regarding phase one. He wanted to know if the developer was doing a good job and should be allowed to continue. Mr. Gowan replied phase one had constant scrutiny from the inspector at Keach Nordstrom. He felt the process had gone longer than the applicant intended, but there were a number of house permits. He had no significant problems to report, just small items that would be corrected.

PUBLIC INPUT

Mr. Jim Bundock, 20 Scenic View Drive came forward, not as a direct abutter, but as a person who had been materially impacted by the project to the extent that the blasting had left many cracks in his basement and garage floor. He was concerned with the use of irrigation systems by the developer and new residents in spite of the fact that there are restrictive covenants regarding such. He wanted to know what remedy the Town had regarding such, since it was at the expense of his neighbor's wells. Mr. Gowan stated Pennichuck Water would ultimately own the water system. He said he learned from the Department of Environmental Services ('DES') that the prohibition was on subterranean irrigation. Mr. Bundock replied there was no specification for 'subterranean' (contained in the deed). He said if tens of thousands of gallons of water were drawn up each month, it wouldn't work with the calculation provided regarding the well capacity, notwithstanding the fact that it impacted surrounding neighborhoods. Mr. Bundock was concerned about the Town's inspection of the site and suggested the Board conduct a site walk. Prior to a site walk he hoped the developer would remedy the large mountain of boulders that appeared unstable. He believed with the children in the neighborhood the boulders were an attractive nuisance that jeopardizes the residence. Mr. McNamara replied

the Planning Board was not an enforcement board, it would go to either the Board's engineering firm or to the Town's Code Enforcement Officer. Mr. Bundock felt the discussion went toward the Board's consideration of the applicant's credibility to follow through with commitments made within the normal development process. He believed the hazard (boulders) that jeopardized life and limb should be remedied prior to any building permit was approved. Mr. McNamara stated the Board was solely considering an extension of the approval.

Mr. Gowan appreciated Mr. Bundock bringing the concerns to his attention. He will consult with the Building Inspector and site inspector and if it's their opinion to spread out the rocks, the applicant will be required to do so. Mr. Bundock felt that was reasonable.

Mr. Jim Fisher of 19 Scenic View Drive came forward and asked Mr. Gowan if he would finish his comment about the water. Mr. Gowan replied at a previous meeting a photograph was submitted to the Board showing multiple hoses attached to an outside water spigot connected to one of the newly constructed houses. He brought that photograph to DES so he could get a better handle on what their well permit allowed. In connection with the project, it was his understanding that the subterranean plumbing of sprinkler systems that is forbidden. He noted the project included a community garden containing a single spigot that was approved by the State. Mr. Fisher learned from DES that Pennichuck Water was required to keep track of the water pumped out of the area. If a certain level is exceeded, they have to either mitigate it by telling people they cannot water or have them use water in even/odd days, or they have to find another source of water. Mr. Gowan noted at present there were only few houses. He was thankful that Pennichuck would own and operate the system.

Mr. Fisher noticed on the recorded plan that the water system was designed for a maximum of three bedrooms per dwelling. He recalled a discussion during which it was stated there would be a total of 192 bedrooms in the development; some houses would contain two bedrooms, and some would contain three bedrooms. Also in the recorded declaration of covenants it states that each lot was not to have more than a maximum of one house with three bedrooms. He questioned which was enforced, the recorded covenants or the number of bedrooms. Mr. Gowan said part of the recording was the total number of bedrooms allowed within the project. He said he could clarify with DES. Mr. Fisher said the homeowner's declaration indicates 192 bedrooms.

Steve Keach of Keach Nordstrom (Board's engineering review firm) came forward. He recalled that the cover sheet of the recorded plan was consistent with the wording in the covenants for the units to contain no more than three bedrooms. Mr. Fisher was unsure if it mattered, he was simply trying to protect the people in the area from running out of water. Mr. Doherty said he had been on projects in the past with bedroom limits and at the end of the project the developer would eliminate additional units and adds to open space.

Mr. Dadak believed when the State issues the well permit they use the number of bedrooms to determine if there is adequate water for a development. Mr. Keach stated the recorded covenant was enforceable.

Mr. Sherman wanted to know what the Board approved either a total number of bedrooms, or houses with a specific number of bedrooms. Mr. McNamara didn't recall the Board mandating a specific number of bedrooms per dwelling. Mr. Gowan will revisit the covenant language. Mr. Keach believed he would find that the language was consistent; the proposal was brought to the Board, not mandated by the Board. He recalled there was a density arrived at by decision and choice when there was an allocation of a set amount of gallons per day that could be withdrawn. He also recalled the State approvals following suit. Mr. Gowan said he could pull the Notice of Decision and meeting minutes. In particular he wanted to review the covenants.

Mr. Zohdi told the Board that the State approved the subdivision for 192 bedrooms. He had not reviewed the covenant and would like the opportunity to do so. He noted if they had to change the covenant they would come back in front of the Board. Mr. Gowan noted anytime there is a covenant, Town Counsel reviews it alongside the plan set.

Mr. McDevitt noted that the Board of Selectmen had a number of conversations with Pennichuck about extending water mains from Hudson to several impacted areas within the neighborhood. He said the process was complicated and expensive. The Selectmen will be sending a letter to people in the general area asking if there is any interest about such.

Mr. Fisher spoke about people in the neighborhood sharing the same issue of running out of water. He didn't want new people to buy a house not knowing the potential of running out. He was concerned with the numbers being thrown off by the development using above ground irrigation. Mr. McNamara believed Pennichuck was responsible for water usage. Mr. Fisher said no one was enforcing the reporting component. Mr. Gowan said he would follow up to find out what was happening at present. Mr. Fisher questioned if this was an opportunity for the Board to address the question and possibly reduce the number of bedrooms. Mr. McNamara replied the project had already been approved. If irregularities are found, then the applicant may have to come back in front of the Board. Mr. Sherman questioned if each house would eventually have a water usage limitation, if they should be held that usage now, even though the development wasn't completed. Mr. Keach said that would be impossible to determine. The DES report is generated from what is pumped out of the pump house. Mr. Gowan said he would review the point.

MOTION: (Culbert/Dadak) To renew the approval for one year.

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

DATE SPECIFIED PLAN(S) –
December 7, 2015

PB Case #2015-00016 - Map 22 Lot 8-130 - 52 WINDHAM ROAD, LLC - 52 Windham Road

December 21, 2015

PB Case #PL2015-00021 - Map 39 Lot 1-51-1 - SESTON, Carolyn - Sherburne Road & Mammoth Road

MINUTES REVIEW

October 19, 2015

MOTION: (Culbert/Dadak) To approve the meeting minutes for October 19, 2015 as written.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:15pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary