

**APPROVED**

**TOWN OF PELHAM  
PLANNING BOARD MEETING  
September 19, 2016**

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

The Secretary Paul Dadak called roll:

**PRESENT:** Peter McNamara, Paul Dadak, Tim Doherty, Alternate Paddy Culbert, Alternate Richard Olsen, Selectmen Representative William McDevitt, Planning Director Jeff Gowan

**ABSENT:** Roger Montbleau, Jason Croteau, Joseph Passamonte, Alternate Robert Molloy, Alternate Mike Sherman

Mr. Culbert and Mr. Olsen were appointed to vote.

**ADMINISTRATIVE**

**Zoning Sub-Committee Interview – Charlene Takesian**

Ms. Takesian came forward and discussed her interest in being appointed to the Zoning Sub-Committee. Two topics of interest are elderly subdivisions, concern regarding water issues. Mr. McNamara explained to the public that the sub-committee would be discussing the 55+ ordinance, in-law apartments and would consider the Town's sign ordinance (based on a recent Supreme Court decision),

Mr. McNamara noted that the Board would be meeting with a hydrogeologist during their October 3<sup>rd</sup> meeting to help the Board understand how drilling in a development effects adjacent developments.

Mr. McDevitt noted that Ms. Takesian had served on the Board of Adjustment for a number of years and wasn't unfamiliar with the kinds of issues that came before the Board, which is the beginning of possible zoning changes.

Mr. Gowan added that he had worked with Ms. Takesian on a number of roles and different occasions and believed she would be open minded and work out issues during the meetings.

**MOTION:** (Culbert/McDevitt) To appoint Charlene Takesian to the Zoning Sub-Committee.

**VOTE:** (6-0-0) The motion carried.

Mr. Gowan reviewed the list of sub-committee members.

**MOTION:** (Culbert/Olsen) To appoint Jennifer Hovey, Jeff Gowan, Peter McNamara, Paddy Culbert, Mike Sherman, Joseph Passamonte, Tim Doherty as members of the Zoning Sub-Committee,

**VOTE:** (6-0-0) The motion carried.

**SILVER OAKS REALTY, LLC – Map 27 Lot 2-82 & 2-83 - Gumpas Hill Road - Request for bond reduction**

Mr. Gowan stated there were two bonds:

- 1) Off-site improvement to Gumpas Hill Road. Original bond \$176,866.30. A substantial amount of the work was done and the road is to wear coat. Recommendation from Keach Nordstrom (Board's engineering review firm) was to retain \$45,902.25

**MOTION:** (McDevitt/Culbert) To reduce the bond from the original \$176,866.30 by releasing \$130,964.05 retaining a balance of \$45,902.25.

**VOTE:** (6-0-0) The motion carried.

- 2) Restoration bond that would typically be released in its entirety once the new bond (letter of credit or cash bond) is in place. The figure would be a lower figure than the full bond to complete the road. The original amount was \$41,618.50.

**MOTION:** (Culbert/Olsen) To release the full Restoration Road Bond in the amount of \$41,618.50.

**VOTE:** (6-0-0) The motion carried.

**OLD BUSINESS**

**PB Case #PL2016-00017**

**Map 22 Lot 8-21**

**NEW ENGLAND POWER COMPANY d/b/a National Grid - 196 Main Street - Site Plan to upgrade existing Pelham #14 Substation**

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.

Attorney Tom Hildreth with McLane Middleton came forward to discuss the site plan. He explained National Grid owned (in fee) a parcel containing 2.15 acres; approximately half of which is encumbered by the existing high tension line easement. He provided a brief history of the site. He explained National Grid delivered power to the sight, where it was then transformed (stepped down) for distribution by Liberty Utilities over its line for local area customers. Attorney Hildreth reviewed the plan set showing the existing conditions and then read through the proposal as it was submitted to the Board for consideration. He noted that they met (and conducted a site walk) with the Conservation Commission. The Zoning Board of Adjustment granted a variance (Case #ZO2016-00021) for the (limited) impact in the Wetland Conservation District overlay and non-conforming use.

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

**VOTE:** (6-0-0) The motion carried.

Mr. McNamara read aloud the recommendation letter (for variance) dated August 16, 2016 submitted by the Conservation Commission.

Mr. Doherty had concern with down-sizing the footprint as the Conservation Commission recommended. He asked if the Highway Safety Committee could review the site to ensure the Town's safety apparatus could

access the site. He wanted to make sure the applicant wasn't being restricted to a point of being a safety issue with public service. Attorney Hildreth replied the National Grid design team was satisfied that the plan met their needs to access the site for the mobile substation and have room to spare. He noted there was an existing gravel trail (on the western side of the site) currently used for access across the site and into the right-of-way. As part of the project the gravel trail will be widened to 18ft. and used as a secondary means for access.

Mr. Gowan felt it was worth noting that the proposal was a modification to an existing compound. It was his opinion that the project seemed like the type of non-residential project the regulations anticipate.

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

**MOTION:** (Doherty/Dadak) To approve the Site Plan.

**VOTE:** (6-0-0) The motion carried.

### NEW BUSINESS

#### PB Case #PL2016-00018

**Map 39 Lots 1-54-2, 1-54-3, 1-54-4, 1-54-5 & 1-55**

**RJ McCARTHY DEVELOPMENT LLC - Sherburne Road - Special Permit Application to approve the Yield Plan for a proposed Conservation Subdivision of the above referenced lots. Full Application for Conservation Subdivision will follow once Special Permit and density is established.**

Mr. Dadak read the list of abutters aloud. Mr. Bernard Milock came forward and told the Board that he and his wife Kristy had not received notification of the hearing. He said he was present because his neighbors told him of the hearing. Mr. Dadak stated they were on the abutter list. The file was reviewed by Mr. Dadak and Mr. Gowan, they found no receipt that notification had been sent to Mr. Milock.

Mr. Shayne Gendron of Herbert Associates, representing the applicant, reviewed his paperwork for abutter information. He had a copy of the abutter labels presented to the Town and noted Mr. Milock was included on that list.

Mr. McNamara stated abutters had a right to receive notice. Given that Mr. Milock had not received notice, Mr. McNamara told him he had a right to object to the case proceeding until notification had been received, or since he was present, he could agree to hearing the case. The troubling part for Mr. Milock was the hearing being the second meeting he had not been notified and was informed by his neighbor that it would occur. He was disheartened by the way business was being conducted. Mr. Gowan stated that this type of situation had only occurred twice in five years. Mr. Milock was upset that his notification was the two instances that it occurred. The other meeting he didn't receive notification for was the conceptual review of the project held on July 18, 2016. He didn't object to proceeding with the hearing.

Mr. Gendron told the Board they were coming forward with a proposed conservation subdivision. The Board was provided with plan sets showing the yield plan (establishing an 18-lot baseline) and a plan for the open space layout. He explained they were taking five lots (totaling an area of 38.48 acres) and would like to subdivide them into an open space configuration with 21 lots. The yield plan was submitted and reviewed by Keach Nordstrom (Board's engineering review firm). Mr. Gendron told the Board he had gone through Mr. Keach's review letter and tried to address as many of the comments as possible. The Board was given an updated plan reflecting changes based on those comments.

Mr. Doherty recalled during the conceptual plan review the Board was told about two wells on a property toward Mammoth Road that produce an abundance of water. In looking at the open space plan the lot is marked 'lot of record'. He asked for clarification regarding the number of lots. Mr. Gendron believed Mr. Doherty was looking at the yield plan that proved the land met the requirements, which was not what they

were seeking to build. He clarified that the conservation layout showed 21 lots and the yield layout showed 18 lots. In the conservation plan, Mr. Doherty wanted to know if lots 1-55 and 1-54-2 (both on sheet 2 of 3) were buildable lots or open space because on one sheet they were marked open space and on another sheet they showed proposed houses and wells. Mr. Gendron apologized and said there was an error; houses and wells should not be shown; the area would become open space. He discussed the history of the area. There had been a subdivision approved in 2008 that had frontage lots. The plan showed the four frontage plans being merged into Lot 1-55 (and eliminated) to create a parcel with approximately 38 acres. The 38 acres would then be subdivided into 21 acres. For the layout of the yield plan, two of the four frontage lots (1-54-2 & 1-54-3) had been preserved (as they were previously approved). He discussed the wetland areas and with lots 17 & 18 being preserved in open space would eliminate wetland crossings and impacts. The cover sheet of the yield plan listed out the waivers that would be needed under that type of plan.

Mr. McNamara explained the review process for a conservation subdivision, which begins with creating a yield plan to prove out the number of lots that could be designed to comply with the Town's conventional subdivision rules. Once that is done, an applicant must then establish a baseline density for a conservation subdivision. In this case, if the applicant can establish the ability to have 18 conventional lots they could then have 18 lots in the conservation subdivision; the statute would also allow for bonus density lots. He noted this was the first step in what may be several meetings.

Mr. Keach came forward and told the Board that he had not had the opportunity to review the revised plans, but had spoken to Mr. Gendron. He referenced his report dated September 16<sup>th</sup> that was sent to Mr. Gowan, which was the first correspondence submitted regarding the project. He told the Board he received a plan June 16<sup>th</sup> and looked at it in terms of determining the validity of each of the 18 lots. He discussed his review letter and the items that would need to be reviewed/discussed by the Board. Beyond the yield plan he was provided with a schematic version of the conservation subdivision. He believed when the work was done and the baseline density was determined, the Board would conclude there were 18 yield plan lots on the parcel.

Mr. Doherty spoke about an old well field in the open space and wanted the engineers to review a possible future water main that would run up the existing road to the existing well field. He said there was a severe water problem in the Sherburne Road area that it might address in the future. He also said it could be used as a future electrical line. Mr. Keach was aware of the existence of the well field from the conceptual discussion. He didn't know where it came from, but recalled hearing that the wells were fairly decent producing wells in terms of volume. He said he was puzzled as to why the proposal didn't take advantage of the wells and instead proposed advancing 21 individual wells within the future conservation subdivision. If the two wells produced water volumes as previously discussed, he was puzzled why the applicant wouldn't run a water main now to serve future homes. Mr. Gendron replied his client wasn't present to comment. He said the problem with having a community water system was the expensive front end cost. He noted the wells were located on private property and he would address the question at the next hearing. Mr. Doherty told the Board with Town land being located across the street he would be disappointed if the open space wasn't deeded to the Town and it instead was included in a homeowner's association. He said it was too valuable to not have it as Town land. Mr. Gendron didn't have information regarding potential ownership, but felt developers were usually more than happy to deal with the Town. He will discuss with his client and bring an answer at the next hearing.

Mr. Dadak believed the original subdivision was a 55+ development. Mr. Gendron recalled working on the parcel approximately 10 years ago as an elderly development with high density. He believed they anticipated a water company (i.e. Pennichuck) taking over the water system. Mr. Dadak didn't know how a water system could be run within a conservation development. He noted community wells were regulated by the State/Government. Mr. Doherty noted there was a development on Webster Avenue that had community water. Mr. McDevitt spoke about the conversations the Town had with Pennichuck water about bringing water in from Hudson to the Sherburne Road area. He was most shocked by the cost being approximately six million dollars. He said the situation is convoluted by the fact that the Town would have to put the wells and pipes in, but Pennichuck would have owned them. Mr. Dadak understood during the Pennichuck discussion there was a process also to create a water district. Mr. McDevitt said forming a water district was one

solution; however Pelham has a Town Meeting form of government and dividing the cost between the residents in the area would be a huge hit.

#### PUBLIC INPUT

Mr. Chris Nietubyc, Sherburne Road is interested in information regarding the transportation plan impact and the water and wells. He questioned if there would be an impact study done for the additional water use. Mr. McNamara replied the Board would hear a presentation on October 3, 2016 by a respected hydrogeologist who would discuss the impact of wells on existing water supplies and whether there is a definitive link either legal or scientifically whereby anyone could show that building 'x' number of wells would affect surrounding water. He said the public was invited to come and ask questions. Based on what the Board hears, they may make a decision regarding such. Mr. McNamara said the Board was aware of problems in the area and was as sensitive as they were legally able.

Mr. Bob Lamoureux, 28 Blueberry Circle said he didn't see the connectivity of trails between Pelham Veteran's Memorial Park and Sherburne Road. He wanted to make sure his concern was on the record. Mr. McNamara said the Board was in a preliminary stage, but would consider the question as they moved forward.

With regard to the transportation plan, Mr. McDevitt noted when the plan came in for the project across the street he complained long and loud about the impact. He said it was and would continue to be a problem. He stated when the transportation impact assessment was done it needed to be done on more than one occasion. Mr. Gendron told the Board that Mr. Pernaw had been sent some information and would be the one preparing the traffic plan. He noted he would be noting the 4K area for the two existing lots of record would be added to the plan. He said he would also review the wells and discuss with the owner what they wanted to do. Mr. McDevitt spoke about the transportation plan. He wanted to know how safe it is to pull out from the proposed development. He was not as concerned with the number of trips generated (per day) by the development.

Mr. Doherty confirmed that the Board would continue to discuss the yield plan and the waivers that may need to be submitted.

The plan was date specified to the October 3, 2016 meeting.

#### **PB Case #2016-00019**

#### **Map 14 Lot 3-90**

#### **MERRIMACK CONSTRUCTION GROUP, INC - 7 Mayflower Drive - Public Discussion of proposed 6 Lot Subdivision**

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. Shayne Gendron of Herbert Associates, representing the applicant, came forward to discuss the proposed subdivision. He told the Board he had come in front of them for a preliminary public discussion to learn how to proceed. He explained there was an existing ten acre parcel located at the end of Mayflower Lane. There was currently an existing single-family home on the property (and shown on the plan). They took the application to the Zoning Board (Case #ZO2016-00017) seeking a variance (and were denied) to permit a conservation subdivision layout with a shorter cul-de-sac to not cross the Tennessee Gas easement. He stated they met with Tennessee Gas to discuss different options, who indicated they would like to have a lower impact across the gas line if possible. When meeting with the Zoning Board, Mr. Gendron thought they had a special case because of the gas line and the proposed design lessening the impact by only having a couple driveways cross the easement versus having a road crossing. They faced a lot of opposition from abutters and have therefore designed a conventional layout. Mr. Gendron reviewed the proposed plan and layout of the lots. There will be a couple waivers requested for building envelope and wells to be within the building setbacks. He said it was a straight forward subdivision. He noted Mayflower Lane would be extended through

the property and end in a cul-de-sac; unfortunately, the Megan Circle cul-de-sac was in close proximity, but could not be connected because there was private property between the two. He highlighted a 20-acre wetland complex in the area noting that a conservation development would have less of an impact, but they didn't receive the support for that type of development.

Mr. McNamara told the Board and public (who didn't attend the Zoning meeting) that a majority of the Zoning Board felt a conservation subdivision would have been a more appropriate use of the land; however a majority of the Zoning Board thought the criteria for variance was not met, specifically the hardship criteria.

Mr. Doherty questioned the area that drainage was anticipated. Mr. Gendron said they would anticipate flowing the drainage to the lowest part of the property, treat it and release it. Mr. Doherty asked if there was enough land to include a holding facility. Mr. Gendron replied they would need to do some hold back and some treatment. They may pick up the road in segments and treat some of the drainage in front. At this point they haven't done the drainage design, but he envisioned bio-retention areas along the road and retention areas would treat and release. Mr. Doherty asked how the soil conditions were. Mr. Gendron found the soils to be better than what he expected.

Mr. McDevitt commented he didn't like the shape of lot 6 which came close to being a 'pie' shape lot with the narrow point being 50ft. wide. He believed there may be possibilities for connectivity. He said the Board was concerned with connectivity in emergency events where the road became blocked. Mr. Culbert questioned what prevented the connectivity. Mr. McDevitt replied they couldn't simply take land. Mr. Culbert suggested having Mr. Gendron get together with the abutting land owners. Mr. McNamara felt it would be a slim possibility for connectivity.

Mr. Doherty also addressed lot 6, which had a 'pie' shaped building envelope. He noted that the lot itself was divided by the transmission line. He said it would be a tough lot to give waivers to.

Mr. McNamara reminded the Board and the public that the discussion was preliminary and nothing would be decided at present.

#### PUBLIC INPUT

Mr. John Bilsky, Megan Circle challenged Mr. Gendron's statement that he hit the 35,000SF contiguous area. He references Article III – General Provisions, Section A,6 which indicates land areas located within a high tension, electrical or high pressure gas utility line assessment area located on opposite sides of any high tension electrical shall not be considered contiguous for the purpose of this section. Given this, Mr. Bilsky questioned the area marked as lot 3. He also challenged the same Article (bullet 2) which speaks to land areas having a pre-existing naturally occurring slope in excess of 20%. He noted according to the applicant's topographical map, the top of lot 3 was at 240 and his lot (on Megan Circle) that had a low point (past his swimming pool) at approximately 180 – 190; a 50ft. difference. This showed the proposal not complying with general requirements. Mr. Bilsky spoke to the grade difference of the land. He said prior to installing his swimming pool, he sunk mid-knee/thigh and lost a Bobcat up to the cab working in his back yard. He noted there was approximately 6ft. of fill in his pool area to compensate for the water runoff. He was tremendously concerned where the water would run if a structure was put up in the area. He understood he applicant mentioned provisions for drainage along the road, but there would still be disturbance in the areas currently absorbing water. Mr. Bilsky referenced Subdivision Regulation Section 11.02 – lot shape and noted the lots in the development didn't meet the size requirement (of 3 acres) for having an irregular shape. Knowing what the neighbors went through to develop their properties due to granite, Mr. Bilsky was concerned with the potential for blasting in the area especially due to the proximity of the gas line, the impacts to surrounding properties, structural damage and wells.

Ms. Beth Tshudy, Priscilla Way wanted to go on record in agreement with Mr. Bilsky's comments/concerns. She said as a taxpayer it was key for the Planning and Zoning requirements to be upheld. She noticed that the

'pie' shaped lot was in close proximity to wetlands and questioned if the setback requirements were met. Her main concerns are drainage since their neighborhood was down-grade from the proposed development/pipeline and blasting affecting water. Ms. Tshudy told the Board they weren't interested in any connecting cul-de-sacs. She stated they purchased their property specifically because it was on a cul-de-sac and had minimal traffic.

Mr. McNamara stated when the matter was formally presented to the Board for consideration the applicant would need to have a full engineering plan including the roadway, drainage etc. that would be vetted by the Board's engineering review firm. In addition all lots and measurements would be reviewed. Blasting would have preliminary engineering; however, Mr. McNamara stated the Town had a fairly tight blasting ordinance administered by the Fire Department.

Mr. Robert Marion, Megan Circle shared the comments already heard from abutters. He wanted to know what impact the development would have to the gas line access from Priscilla Way. Mr. Gendron replied they weren't proposing to do anything in that area. He stated the houses would be close to the road, they wouldn't be doing anything in the back corner. There was no work proposed near Priscilla Way, they would be working approximately 300ft. away.

Mr. David Wing, Megan Circle told the Board he would be the landowner that came between the two cul-de-sacs. He stated he wasn't interested in selling or giving a right-of-way to the proposed development. In terms of drainage, his property was at one of the lowest points on Megan Circle. He said he was close to the proposed property and there were a fair amount of trees screening him. He wanted to know what would happen to those trees. Mr. McNamara said the Board made efforts to make sure there is a minimum amount of impact to abutters.

Mr. Chuck Kokinos, Mayflower Lane shared the concerns of the neighbors. He told the Board he had been a resident of the Town for 46 years. He said he wanted to present a conservation development and bring the property back away from the wet area as much as possible and scatter the homes to shield them from view. He noted that Beavers had been in the area for 40+ years, which was unusual. He said people were infringing upon their area. Some people have docks and canoe, which he felt shouldn't be allowed. Mr. Kokinos spoke about the existing (Megan Circle) neighborhood saying that the developer invested over \$300,000 to construct a bridge to access the land. He said he Town was growing and he would never do anything to hurt the Town. He would like reconsideration for a conservation development to pull it away from the pond. He pointed out the Mayflower Lane and Megan Circle cul-de-sacs would be very close. When the Megan Circle development was constructed the houses at the end were done last, but Mr. Kokinos said he wasn't at a point in his life to connect through. He stated he wants to maintain the trees and conservation. He said the Beaver own the pond. Mr. Kokinos reiterated he would like to do a conservation development. Mr. McNamara replied once the Zoning Board acted, the applicant couldn't go back by law unless there were significantly changed factual circumstances or the law regarding variances changes. Mr. Kokinos noted there was a septic pipe within the 20ft. area between the end of cul-de-sac and the property line on Megan Circle. Mr. McNamara replied the Board's engineer would review the proposal.

Mr. McDevitt spoke about blasting and noted that the Blasting Ordinance had been put in place since the Megan Circle development was constructed. He said it was much more strict/conservative and demanding than the previous rules. He urged the abutters to attend future meetings to hear what the Board's engineer reported. He noted drainage requirements indicate once a development is complete, there can be no additional water runoff than there was pre-development. Mr. McNamara added that the plan was not yet fully engineered.

Mr. Doherty said he didn't have the opportunity to review the plan that went in front of the Zoning Board. He noted he usually didn't agree to common driveways, but in this case it might be a good scenario. He said they might be able to eliminate a lot and reconfigure the proposal and remain economically feasible. Mr. Gendron told the Board he had a copy of the plan reviewed by the Zoning Board. He said they problem would run into problems with meeting frontage, which he didn't think they could achieve without extending the road.

Mr. McNamara told the public once the applicant submitted a formal plan abutters would receive certified notice of the date and time of hearing. Mr. Gendron didn't expect it to take long. He said he would work on the configuration of lot 3. He made note of the abutter's comments. He understood pre- and post-development drainage couldn't be more than the current flow off the lot.

Mr. Doherty briefly reviewed the plan that went in front of the Zoning Board and noted he was suggesting reducing the development from six lots down to five lots, not increasing the development to seven lots as shown on the Zoning Board's plan.

**DATE SPECIFIED PLAN(S) – October 3, 2016**

PB Case #PL2016-00018 - Map 39 Lots 1-54-2, 1-54-3, 1-54-4, 1-54-5 & 1-55 - RJ McCARTHY DEVELOPMENT LLC - Sherburne Road

**MINUTES REVIEW**

**September 8, 2016** – Deferred.

**ADJOURNMENT**

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

**VOTE:** (6-0-0) The motion carried.

The meeting was adjourned at approximately 9:10pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary