

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING
January 23, 2017

The Vice Chairman Roger Montbleau called the meeting to order at approximately 7:00pm.

The Secretary Paul Dadak called roll:

PRESENT: Roger Montbleau, Paul Dadak, Joseph Passamonte, Tim Doherty, Selectmen
Representative William McDevitt, Alternate Paddy Culbert, Alternate Mike
Sherman, Alternate Richard Olsen, Planning Director Jeff Gowan

ABSENT: Peter McNamara, Jason Croteau, Alternate Robert Molloy

OLD BUSINESS

PB Case #PL2016-00026

Map 36 Lot 11-91

MAJOR REALTY TRUST - 101 Dutton Road - Proposed 2-Lot Subdivision

Mr. Montbleau appointed Mr. Culbert and Mr. Sherman to vote.

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.

Representing the applicant was Mr. Peter Zohdi of Herbert Associates who came forward to discuss the proposed subdivision. Mr. Zohdi explained the proposal was for a two-lot subdivision. The applicant had gone in front of the Zoning Board of Adjustment for a frontage variance for the second lot, Lot 11-91-1 (larger lot), which was granted (Case #ZO2016-00024). Subsequently the variance was appealed; the Zoning Board reheard the case and stood by their decision (to grant a variance). Mr. Zohdi told the Board that the applicant had moved the (access) driveway five feet toward the existing house to provide more privacy to the abutting Lot 11-92. He stated both lots complied with Zoning, except for frontage with was granted a variance. The soil evaluation was done by Gove Environmental Services. Mr. Zohdi reviewed the sheets within the plan set, noting an alternate location was shown on the plan for the existing home's septic in the event it was needed.

Mr. Gowan stated the plan was completed and recommended the Board accept it for consideration.

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

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

Mr. Sherman understood the variance was approved on January 9, 2017, which allowed for a thirty day appeal time period. He questioned if the Board could make a determination at this time. Mr. Gowan replied the variance couldn't be appealed again, as it had already been appealed once. He stated if the Board was to make a decision during the present meeting, it would be a separate timeframe for appeal. He pointed out that the Zoning Board didn't have the authority to dictate specific conditions to a variance; they had however, made a recommendation that the Planning Board consider relocating the driveway 5ft. From what he understood, Mr. Zohdi had already done such. Mr. Sherman watched the video of the Zoning Board meeting and thought the Chairman stated (after the rehearing, January 9th) that there was still a 30-day right of appeal from their decision.

Mr. Montbleau invited the abutter's attorney forward to speak. Attorney James Lombardi of Lombardi Law Offices, representative of Robert and Mary Orlep, came forward and told the Board they were present during the Zoning Board hearing. He told the Board there was an additional 30-day period from the time of the rehearing during which the variance was granted. Mr. Montbleau asked Mr. Gowan if Town Counsel (Attorney John Ratigan) advised that the Board could hear the case. Mr. Gowan replied he hadn't asked Town Counsel that question. He was unsure if an appeal would affect the Board's decision.

Mr. Culbert believed the Board could approve the subdivision on a conditional status subject to the Zoning Board's appeal, if submitted. Mr. Passamonte questioned if the Board should 'table' the case until after the 30-days. Mr. McDevitt felt the Board could hear the case, gather the facts and could possibly postpone voting. Having made his statement, he also felt it might be a good idea to wait. Mr. Gowan noted thirty days from January 9th would bring the case back at the February 23rd meeting.

Mr. Doherty said before the Board puts the case off to a later meeting, there were some things the Board may want to discuss. If the Board waited to start the hearing it may put it off until March. He suggested learning more about the request before date specifying. Mr. Culbert agreed. Mr. McDevitt felt it would be fair to hear the case if there were concerns. Mr. Doherty noted he would also like to hear from the public.

Mr. Montbleau believed the request met all the regulations and didn't feel it would be difficult for the Board to make a decision. He stated the only thing 'hanging' it up was a possible appeal from Zoning. He asked the members to ask questions and discuss their concerns.

Mr. Doherty saw that the public utilities were located in front of the lot line and asked if the driveway would come in from the abutter. Mr. Zohdi referred to the plan, which showed a driveway easement on the existing house lot. He pointed out that the driveway had been moved to accommodate the abutter and provide for a no cut zone of at least 5ft. Mr. Doherty wanted to know what would become of the stone walls that ran up the driveway and through the center of the proposed lot. He asked if they would be reused. Mr. Zohdi replied the walls would be used within the property; a portion would be removed to construct the proposed home but the portion of the wall closest to the abutter would remain. Mr. Doherty questioned if utilities would be above or below ground. Mr. Zohdi replied they would like to go above ground; however, the utility company would make the determination after the plan is approved and signed by the Chairman. The distance to the house is approximately 400ft. Mr. Doherty wanted to know if the soils would allow it to go underground. Mr. Zohdi referred to the plan set and saw no problem with the soil condition. The test pit inspected by the Town went down 5ft. with no problems. Mr. Doherty asked if there was a house on the abutter's lot. Mr. Zohdi answered yes; however he didn't have the location of such. Mr. Culbert said he had the same questions regarding the stone walls. The comment was passed to Mr. Zohdi to keep as much of the stone walls as possible.

PUBLIC INPUT

Attorney James Lombardi of Lombardi Law Offices, PLLC, representing Robert and Mary Orlep of 97 Dutton Road (Map 36 Lot 11-92) came forward with Mr. Orlep. Mr. Orlep read aloud a prepared letter dated January 23, 2017 (attached hereto) that summarized the reasons they felt the application should not be granted. Also attached is a letter dated January 9, 2017 from Susan Tisbert of ReMax Properties that provided her opinion of the impact from the proposal. Both letters were provided to Mr. Zohdi and the Board for the record.

Mr. Sherman questioned the distance of the Orlep's home to the property line. Attorney Lombardi had photographs of the area that he felt would address the question.

Mr. Montbleau stated the Board had made a prudent decision to wait until after the Zoning appeal time frame. He believed number of the points raised would be answered when the plan came back in front of them.

Attorney Lombardi displayed three photographs of the location and Mr. Orlep provided a description for each: 1) front view (from Dutton Road looking into lot) of land between Orlep and applicant property showing buffer area; 2) side view of a portion of Orlep house and proximity to Dutton Road; and 3) rear view (inside Orlep property looking toward Dutton Road) from behind Orlep house showing brush area between Orlep and applicant property. The photographs were submitted for the record.

Attorney Lombardi noted subsequent to the Zoning meeting the applicant has moved the proposed driveway 5ft. from the property line (abutting the Orlep's lot). He said it also appears that the driveway wouldn't come down the full length of the Orlep property line; there is a common driveway that curves off as it gets closer to the road that currently exists. After viewing the photographs, the Board agreed they were a bit confusing. For clarification, Attorney Lombardi asked Mr. Orlep the distance between his house to where the wooded area starts. Mr. Orlep thought it was approximately 10ft. from the wooded area.

Mr. Zohdi stated the Zoning Board made a decision. That decision was appealed and the Zoning Board decided they would stand by their decision. He said there hadn't been any appeal. He stated it was the Planning Board's job to make a decision and if an abutter didn't like the decision it could be appealed to Superior Court. He had no objection to 'tabling' the case. In reading the letter from Ms. Tisbert (of ReMax) which states the abutters should get together for resolution, Mr. Zohdi stated the applicant and abutter wasn't getting together to resolve it. He pointed out the plan included a 5ft. no-cut zone. The applicant was seeking to construct a home for their son, he believed everyone knew the story behind the proposal and didn't expand upon it. Mr. Zohdi said the applicant understood the abutter's concern about trees being cut, which was the reason for the 5ft. no-cut zone. He was willing to make a deal with the abutter in front of the Board to increase the no-cut buffer to 8ft. and have the driveway over an easement.

Mr. Montbleau indicated that the Board was trying to stay on the safe side and wait for the Zoning Board. In terms of what comes in front of the Board, he said the proposal was a simple plan that met the regulations. The Board could decide to wait for the Zoning Board (appeal timeframe), although the Board could make a decision at the present meeting. He noted Mr. Zohdi had offered an 8ft. buffer and told Attorney Lombardi if his clients were willing to work that, they should let the Board know. Mr. Orlep replied he didn't want to make any decision at this time.

Mr. Doherty spoke about the stone wall and questioned if the stones along the driveway could be pushed up against the property line and if the stones removed to put in the septic and proposed house could be added to those along the property line. Doing so would provide a stone buffer along with a vegetative buffer. He felt it would look nice and make it so the driveway couldn't be crossed. Mr. Montbleau felt it would be less expensive to install a fence. Mr. Zohdi had no objection to moving the stones from the existing wall and placing them along the proposed driveway. Mr. Montbleau asked Mr. Orlep if he understood what the applicant was willing to do. Mr. Orlep stated he understood, but didn't feel it addressed their concerns. He said a stone wall didn't provide any additional privacy. Mr. Montbleau recalled there would be some kind of a tree-lined/vegetative buffer. Mr. Zohdi replied they were leaving the vegetation as is. Mr. Montbleau stated the applicant was willing to leave the vegetation and move the stones from the existing wall to create an extra buffer. He asked Mr. Orlep if he wanted to have discussion at the present meeting or hold off to a later meeting. Mr. Orlep didn't want to decide at the present meeting and wanted to have a discussion with his wife.

Attorney Lombardi reiterated they felt there were a number of issues (laid out in Mr. & Mrs. Orlep's letter attached hereto) they felt weren't addressed in the application, and therefore the application should either be denied or the Board should decide whether or not waivers should be granted for those items. Mr. Culbert noted items would be decided with the Zoning Board (appeal if submitted).

Mr. Montbleau asked if any other member of the public would like to come forward either in favor or against the proposal. No one came forward. He brought the discussion back to the Board, noting he would allow the public an additional opportunity to speak.

Mr. Gowan indicated that the applicant (and abutter) had taken the time to put together a letter, that in their belief described sections of the subdivision regulations, not zoning, that weren't properly addressed in the application. He stated the Board had a long standing policy, for more than twenty years, to not approve subdivisions of land in one night. He felt the Board's accepting the plan consideration was the right thing to do. He suggested taking time to review the abutter's points and offered to taking a first pass and drafting a memo to Board in response. When the plan comes back to the Board they can discuss each point. Mr. Gowan told the Board that the Zoning Board had made a decision in the case; the question was whether or not someone with standing would file an appeal. If that happens, the Board will have to wait until the appeal ran its course.

Mr. Montbleau invited Attorney Lombardi and Mr. Orlep to come forward. He said it was unknown whether an appeal would be coming forward and there was a consensus of the Board to wait. He indicated Mr. Gowan would go through their list of concerns and draft a memo response. Mr. Gowan stated he would share his memo with Mr. Zohdi and the abutter. Attorney Lombardi replied it sounded fine. Given the possibility of an appeal on the Zoning Board matter, he wanted to know when the case would be heard again by the Planning Board.

There was a brief discussion regarding when to date specify the plan. Mr. Zohdi requested date specification to the first meeting in March.

Mr. Sherman understood when the plan was in front of the Zoning Board the abutter Paul Gagnon wrote a letter in favor of the subdivision. He asked if there was any way the driveway could be rerouted to go along his property line instead. Mr. Zohdi replied the reason he requested date specification to March was to allow time to further review the plan, speak to Mr. Gagnon and consult with his client.

Mr. Gowan asked the Board if they would like an opinion from the Highway Safety Committee regarding the driveways. No one on the Board made that request. Mr. Gowan questioned if the Board felt a site walk would be appropriate. No one made that request. Mr. Doherty suggested if the abutter were to bring additional photographs for review that they be taken from across the street to better understand the locations to the property line. He pointed out that the applicant's property pitched away from the abutter's property and didn't see anything drainage-wise that would enter the abutter's property. He didn't feel Keach Nordstrom's (Board's engineering review firm) involvement would be necessary. Mr. Gowan asked Mr. Zohdi to layer the proposed plan on top of an aerial image. Mr. Zohdi had no objection. He offered to locate the abutter's house, if the abutter allowed. Mr. Orlep stated he would allow Mr. Zohdi to survey and exactly locate his house. Mr. Zohdi replied he would send a surveying crew to locate the corner of the abutter's house. Attorney Lombardi noted they would supply better photographs.

The plan was date specified to March 6, 2017.

PB Case#PL2016-00028

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

R.J. MCCARTHY DEVELOPMENT, LLC. – Sherburne Road – Applicant Proposes to Combine Lots 1-54-2 thru 1-54-5 & 1-55 and Re-subdivide as a 21 Lot Conservation Subdivision with 2 Open Space Lots (Special Permit for Yield Plan Approved on October 17, 2016)

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

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. Gowan stated the plan had already been reviewed by Keach Nordstrom (Board's engineering review firm) and recommended the Board accept the plan for consideration.

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

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

Representing the applicant was Mr. Peter Zohdi of Herbert Associates, who came forward to discuss the proposal. Also present (seated in the audience was Attorney John Bisson of Cronin Bisson & Zalinsky) Mr. Zohdi began by providing the Board with a summary brief on the history of the parcels. His client purchased the four parcels of land and was seeking to re-subdivide in a 21-lot subdivision including open space. He had previously come in front of the Board and resolved a number of issues and was now seeking final approval. All the lots comply with the Zoning and Subdivision Regulations. Mr. Zohdi noted at some time ago they decided that proposed lot 1-55 (16.98 acres) would be deeded to the Town. This lot contains two existing wells, which he believed would produce a lot of water. There was an additional open space lot on the northwesterly side (lot 1-55-22) where they would like to locate the homeowner's association. Mr. Zohdi told the Board his senior engineer met with the Conservation Commission and conducted a site walk. He pointed out a trail easement was shown on the plan. Earlier in the day he met with the Conservation Chairman, who informed the easement area would be flagged. Mr. Zohdi met with the Highway Safety Committee ('HSC') and told them the proposed road would be 22ft wide; he didn't believe there was any objection. The drainage study has been presented to the Town's engineer (Keach Nordstrom), who reviewed and returned comments. He was working to address the comments (and amend the plans) and hoped to come back in front of the Board for the first meeting in February. He asked that the Board take action on the submitted waivers. Documents, for the Homeowner's Association and Open Space are being prepared for the Town to review.

Mr. Gowan asked for confirmation that the open space lot (1-55-22) on the far western edge of the parcel would remain with the project. Mr. Zohdi stated that was correct. Mr. Gowan asked if the road access to Pelham Veteran's Memorial Park was shown on the plan. Mr. Zohdi stated they left a 50ft right-of-way to the park and would build a gravel way to the existing roadway in the park. He would discuss further with Mr. Gowan as he understood the access may be used during the summer. Mr. Gowan predicted the HSC would want the road to be paved as he believed that was their recommendation.

Mr. Gowan pointed out that the Board received the following: 1) a copy of the letter from the Conservation Commission (dated January 23, 2017), 2) copy of letter from HSC (dated January 18, 2017), and 3) copy of Keach Nordstrom memorandum (dated January 18, 2017).

The Board addressed the waiver request. Mr. Gowan believed the written request was in the member packages. He said if it wasn't in the file, it could be subsequently submitted in writing. Mr. Montbleau read aloud the Keach Nordstrom understanding that the applicant would be seeking a waiver from the requirements of Appendix I – Paragraph BB.2 regarding pavement width being 22ft, where 26ft. is required. Keach Nordstrom was not opposed to the Board granting the waiver provided the HSC supports the same. Mr. Zohdi told the Board he would send a copy of the written request for the file.

MOTION: (Culbert/Dadak) To accept the waiver request for consideration.

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

Mr. Gowan spoke to the Keach Nordstrom memorandum and believed if Mr. Zohdi could get plans ready for final engineering review, the case could be date specified to the Board's next meeting. Mr. Zohdi asked that the case be date specified to February 6th and if the plans weren't ready or reviewed by engineering in time he said the Board could then date specify to a later date. The Board had no objection.

Mr. Montbleau opened discussion to public input. No one came forward.

Mr. McDevitt heard Mr. Zohdi speak about lot 1-55 (open space) proposed to be donated to the Town. He said one of the factors in favor of such were high yield wells. Mr. Zohdi noted it was to the best of his knowledge. In the event the wells were considered useful to the Town, Mr. McDevitt would like to know from the applicant and Keach Nordstrom there would be a way to get the water out of the parcel without having to acquire rights-of-way. Mr. Zohdi replied they had left a 20ft. area.

Mr. Gowan asked Mr. Zohdi to submit alternate road names. Mr. Zohdi replied he would submit names for consideration. Mr. Gowan stated he would bring the names to the HSC for consideration. He felt it would be important for the Board to view an aerial image of the park to understand how the road connected. Mr. Zohdi stated he would submit copies of an aerial view.

Mr. Sherman attended the site walk with the Conservation Commission and thanked the applicant for going out of his way to work with both the Conservation Commission and the Border Riders to let them cite their own trail. It was also noted that the Board received very favorable letter regarding the project from the Conservation Commission.

The plan was date specified to the February 6, 2017 meeting.

PB Case#PL2016-00030

Map 16 Lots 3-87, 3-88-4 & 3-89

SZMYT, Mark and Kelly & J&S INVESTMENTS, LLC - St. Margaret's Drive - Proposed Lot Line Adjustment to add 12,016SF from Lot 3-88-4 to Lot 3-87 and add 12,024SF from Lot 3-88-4 to Lot 3-89

Mr. Culbert and Mr. Sherman were appointed to vote *(for this case and the remainder of the meeting)*

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. Gowan provided the Board with a brief history of the two back lots. He explained at one time there was a right-of-way off St. Margaret's Drive that never got built as a road and was owned by the Town. An abutter hired an attorney to help determine how to divide the (right-of-way) area so the two back lots could be serviced with frontage. There was a proposal submitted to the Board of Selectmen that went onto the Town Meeting ballot to convey the (right-of-way) parcel. Mr. Gowan recalled the Planning Board recommending that the strip of land be conveyed equally to both parcels of land so both would have access. He noted a variance had been requested and approved for frontage. The lot is now to the Board for a lot line adjustment so the back parcels will have access.

Representing the applicants was Peter Zohdi of Herbert Associates, who came forward to discuss the proposal. He stated the original subdivision was done in 1974 and the road wasn't built. He summarized the information as Mr. Gowan explained. The road area will be divided in two and deeded to each back lot respectively.

Mr. Gowan recommended that the Board accept the lot line adjustment for consideration.

MOTION: (Culbert/Passamonte) To accept the lot line adjustment for consideration.

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

Mr. Montbleau recalled when the lots originally were reviewed and confirmed that the road would service all the lots. Mr. Zohdi replied there wouldn't be a road. He displayed a plan and explained the back lots would each have a strip of land added to the lot that extended out to St. Margaret's Drive. The strips of land would each contain an individual driveway from St. Margaret's Drive into the respective back lots.

Mr. Doherty questioned if the proposed plan was originally brought forward by J&S Investments and the Selectmen wouldn't let them use Town land. Mr. Gowan replied when it came to the Board the land was not yet shown as divided. He believed it had come in front of the Board year and a half ago. Mr. Zohdi noted he had advised his client to work with the Selectmen to request that they release ownership, with the understanding they would need to go to Town Meeting. He said they followed the procedure and were approved at Town Meeting. The old right-of-way was divided; half going to lot 87 and the other half going to lot 89. Both halves contain frontage on St. Margaret's Drive.

Mr. Gowan clarified if the proposal was for a shared driveway or two separate driveways. Mr. Zohdi replied the plan was for separate, individual driveways. If the owners decide they want to have one (shared) driveway, they understood the need to work with the Highway Safety Committee. Mr. Gowan understood there was some substantial grade in the rear area and wanted to be sure the Town's Driveway Regulations could be met. Mr. Zohdi understood they had to comply with the driveway regulations. Mr. Gowan stated if the Board approved the lot line adjustment and someone came in for a building permit, he would need to see how the driveway would be built. Mr. Zohdi replied they would need to show a septic design, and septic design would show the driveway profile.

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

MOTION: (Culbert/Dadak) To approve the lot line adjustment.

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

ADMINISTRATIVE

Request for Bond Reduction – Maps 16 & 23 Lot 12-105 – Lemieux Farm Estates

Mr. Gowan informed that the project had been substantially completed.

Mr. Montbleau read aloud the letter of recommendation for bond reduction submitted by Keach Nordstrom dated November 30, 2016. Current bond being held \$151,236.00. Recommended reduction \$120,417.00. Bond to be retained \$30,819.00. Mr. Gowan noted the remaining amount would be used for loam/seed, bounds, guard rail, as built plan, street trees, etc. He reiterated that the recommendation was for a bond reduction, not a release.

MOTION: (McDevitt/Culbert) To release \$120,417.

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

DATE SPECIFIED PLAN(S)

February 6, 2017

PB Case#PL2016-00028 - Map 39 Lots 1-54-2, 1-54-3, 1-54-4, 1-54-5 & 1-55 - R.J. MCCARTHY DEVELOPMENT, LLC. – Sherburne Road

March 6, 2017

PB Case #PL2016-00026 - Map 36 Lot 11-91 - MAJOR REALTY TRUST - 101 Dutton Road

MINUTES REVIEW

Mr. Culbert questioned if the Board had always had a second reading of the Zoning for typos, etc. Mr. Gowan replied he wasn't present for the meeting, but had watched it. He said by law they were required one public

hearing; the Board made a habit of having two. In fact they planned on having two, with the current meeting being the second, but the Board approved/took action on the three pieces of Zoning at their last meeting, so there was no need to have a second. He noted the only thing the Board could change at a second public hearing is grammar, etc. Because the Board voted, they don't have a second public hearing because they voted to approve the three pieces. Mr. Culbert said the Board always votes. Mr. Gowan said once they vote to approve it its done. Mr. Culbert said every time they voted, the second time was for grammar.

Mr. Doherty stated he had many lines of the minutes that he didn't agree with; all of them pertain to the motions that were made. He said none of the motions were made in the way they were listed in the minutes. He prepared a document for the Recording Secretary that indicated the exact time on public television when the motions were made; none of which were motions to recommend such on the Town Warrant. He believed all of them knew there was going to be a second public hearing in following Chapter 675, which says after public hearing the Planning Board shall by vote determine the final form or ordinance. It also says an additional public hearing shall be held if the proposal is substantially altered by the Planning Board after public hearing. Mr. Doherty said after the public hearing was closed and they voted as a Planning Board to substantively change it, it automatically triggers the additional public hearing under RSA 675:3,IV. He provided copies of the RSA for the members. Mr. Doherty said members of the subcommittee received the schedule of the agenda and calendar which called for tonight being the second public hearing. To reiterate, Mr. Doherty disagreed with the fact that they didn't need a second public hearing. Mr. Gowan said he had sent the language/votes to Attorney Ratigan and the Selectmen had already voted on it. Mr. Doherty replied they hadn't seen the final language because they just made textual modifications at the meeting. He said the Board didn't get a chance to see it put into the ordinance and look at it to up and down put it on the ballot. He said they voted on specific motions that were not what was reflected in the minutes.

Mr. McDevitt suggested not acting on the minutes and refer Mr. Doherty's concerns to counsel. He said the whole thing seemed to turn on the word 'substantial' and was unsure what case law was relative to changes in the article. He reviewed the RSA. Mr. Doherty reiterated his concern. Mr. McDevitt believed the matter should be referred to counsel for an opinion: 1) whether the Board should have held a second hearing, 2) if not, why, and 3) impact of not holding second public hearing. Mr. Gowan replied he would contact counsel and have them look at the actual meeting. Mr. Doherty questioned if the Nashua Regional Planning Commission had the ability to do it. Mr. Gowan replied they didn't have a lawyer on staff and also, it was not their expertise. Mr. McDevitt informed that the Selectmen entered into an agreement with Mr. Ratigan (Town Counsel) for a blanket cost.

Mr. Passamonte wanted to know if the answer from the attorney could be forwarded to the Board. Mr. McDevitt answered yes; in his opinion, the Board was requesting counsel's opinion, therefore they should receive it. Mr. Doherty wanted a copy of the questions sent to the attorney as well as the answer.

January 5, 2017 – Deferred. Mr. Sherman and Mr. McDevitt offered typographical corrections.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:05pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary

97 Dutton Road
Pelham, NH 03076

January 23, 2017

Planning Board
Town of Pelham
Planning Department
6 Village Green
Pelham, NH 03076

Submitted
REC'D 01/23/17
Pave Dadek

RE: Case #PL2016-00026

Dear Honorable Members of the Board:

We are the owners of 97 Dutton Road and are writing to state our questions and concerns with the proposed subdivision in Case #PL2016-00026. In the end, we do not believe that this application should be granted for the reasons we state below.

We purchased our house two years ago when we were expecting our first child. Mary grew up in northern New Hampshire and we knew that we wanted a rural and rustic environment to raise our family. The house and is situated near the property line we share with 101 Dutton Road. When we purchased our home 95 Dutton Road was undeveloped and for sale. We hesitated purchasing because we initially believed the property behind ours was part of that lot and we knew that development on that land would change the feel of our property. In researching the property we discovered that the land behind our property is part of 101 Dutton Road and beyond that is conservation land. Since 101 Dutton Road was already developed and did not have the frontage to support another dwelling we reasonably expected that the zoning ordinances and subdivision regulations would prevent new dwellings from being built behind our property.

We are concerned that the proposed subdivision is not in keeping with the purposes stated in the Subdivision Regulations (hereinafter "Regulations"). Specifically, we have the following questions and concerns.

1. We believe the proposed subdivision is not in keeping with Regulation 11.02 (A). The proposal will create a situation where the frontage for three lots are in very close proximity. Currently, the dwellings on lots 11-90 and 11-91 are already fairly close to the shared lot line.
2. We also believe this subdivision will create nuisances which will negatively impact our property value (see Regulation 11.02 (I)), including a risk of injury to our child, Christopher, that could result from the proximity of the proposed driveway to our lot line.

3. We feel there are other safety concerns given the narrow width of proposed lot 11-91-1 where the driveway will be built, specifically related to whether the property owners will be able to keep the driveway sufficiently clear for emergency vehicles during the winter. We would therefore like to know whether the Planning Board has referred this matter to the Town's Safety Committee or the Fire Department (see Regulation 9.04 and 11.10 (B)).

4. We would also like to know whether utilities will be installed and whether they will be installed underground, as required by Regulation 11.12(A).

5. We would also like to know how the proposed driveway will be drained without damaging abutting properties, as required by Regulation 11.02(H).

6. In addition, because the applicant has failed to meet a number of standards that apply here, this application should be denied. For instance, we understand that the new lot would be a "backlot" as that term is used in Regulation 11.04 (B) 7. However, it does not satisfy the Backlot Standards contained in Regulation 11.04 (B) 7. a. (requiring 50-feet of frontage on a Class V road or better) and 11.04 (B) 7. d. (requiring a minimum lot area of 2 acres, less the "neck area").

7. The lot shape restrictions in Regulation 11.04 also forbid certain types of development like this one. Regulation 11.04(A) states: "The intent of these regulations is to enhance and insure consistency with the Pelham Zoning Ordinance and the following purposes: ***

2. To prevent close proximity of narrow portions of lots that will create a situation that reduces privacy and increases congestion and overcrowding of the land.
3. To prevent the close proximity of house sites which tend to create conflicts among the use of the land, including maintenance disputes, use disputes, and property ownership disputes between landowners, [which] is not permitted."

These provisions seem to apply directly in this case, and forbid our neighbor's development under the plans presented because of the problems they create, as described in this letter.

8. We also believe the proposed subdivision will have an "unreasonable negative impact" on us, in violation of the requirement in Regulation 11.05 (A) 3. b., given the safety risk to our child noted above. That provision states: "Driveways shall be located in such a manner as to promote all season safe access and to prevent unreasonable negative impacts to the owners and occupants of neighboring parcels." This issue is compounded by the fact that plowing of the proposed driveway in winter, and other maintenance tasks associated with it, would likely encroach upon our property.

9. Also, the applicant has failed to satisfy Regulation 11.02 (I) of the General Principles and Standards of the Subdivision Regulations, which states: "Residential abutters shall be protected against undue noise, glare, unsightliness or other nuisances, which are detrimental to property values." The driveway that will stretch the entire length of our property line will create additional noise from traffic to and from the proposed residence. It will also create an unsightly new feature right next to our property and within feet of our home that will negatively impact its value – especially if there are no buffers placed between the proposed driveway and our property line. The value of our property will also suffer with the addition of the proposed residence in the back as a result of the cutting of trees and the construction of a building just beyond our backyard. Finally, the existence of a driveway along the entire length of our property line, and the traffic that will accompany it, will present a safety risk to our child and any other children who play in that part of our yard, and will therefore create a nuisance that the regulations appear to forbid and further diminishes the value of our property.

10. In support of the negative impact on the value of our property from the proposed subdivision, we enclose a letter from Susan Tisbert of RE/MAX Properties.

11. We also have the following additional concerns. Lot 11-91 currently has two driveways with less than 300 feet of frontage as required by Regulation 11.05 (A) 1. a. If approved, this subdivision would result in Lot 11-91 having two driveways with even less frontage than it has now, contrary to the intent of the subdivision regulations.

12. It appears that Regulation 11.05 (A) 1. e. 2. applies ("Where a common driveway serves two or more houses, the roadway shall be built to town specifications.") but the application has not addressed whether the driveway will meet those specifications.

13. We also believe granting the subdivision application is contrary to the objectives of the Comprehensive Plan as laid out in Regulation 14.02, in part because it will not "preserve ... the rural environment [and] open spaces," but will do just the opposite. Regulation 14.02 (A). It also will not contribute to the "development of the town in a reasonable, orderly, attractive manner," but will do so in a "haphazard and unattractive manner." Regulation 14.02 (B).

14. Pursuant to Regulation 11.02 (E), should the subdivision application be approved we request the board require fencing along the driveway, a no cut buffer between the proposed dwelling and our property, and that the proposed dwelling remain a single story dwelling (in keeping with the spirit of Regulation 11.02 (O)).

15. Should the Planning Board find the applicant failed to seek any necessary waivers, we request that the application be denied. Under Regulation 11.01(B), "Where any of these regulations have not been met or are not applicable, the Board may deny the application or grant a waiver in accordance with the procedures in Section 13.01 (General Waiver Provision)." Only two waivers were requested from the applicable provisions of the Subdivision Regulations. Many other provisions apply for which waivers have not

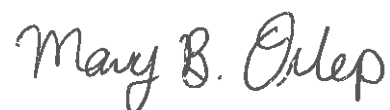
been requested. But even if the Board were to consider giving those waivers, we do not believe they are justified for the reasons we have stated in this letter.

We thank the Board for taking the time to answer our questions regarding the proposed subdivision and for taking our concerns into account.

Sincerely,



Robert C. Orlep



Mary B. Orlep, Esq.



January 9, 2016

RE: the subdivision of 101 Dutton Rd, Pelham, NH and the impact of value on
97 Dutton Rd, Pelham, NH

To Whom It May Concern;

I have reviewed the subdivision plan of the above referenced property and it is my opinion, as a Realtor of 30 years, that this subdivision may impact 97 Dutton Rd negatively, especially because of the privacy factor, and cause diminished value to the home as a result.

Perhaps, there could be other options, agreed upon between the parties such as, a good buffer of trees, fencing, bushes, etc.

If you have any questions, please feel free to call.

Very truly,


Susan J. Tisbert

RE/MAX Properties 603-882-0213

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01/23/17
Paul L. Dahn



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