

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING
March 6, 2017

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

The Secretary Paul Dadak called roll:

PRESENT: Peter McNamara, Roger Montbleau, Paul Dadak, Jason Croteau, Alternate Paddy Culbert, Alternate Mike Sherman, Alternate Richard Olsen, Planning Director Jeff Gowan

ABSENT: Joseph Passamonte, Tim Doherty, Selectmen Representative William McDevitt, Alternate Robert Molloy

OLD BUSINESS

PB Case#PL2016-00028

Map 39 Lots 1-54-2, 1-54-3, 1-54-4, 1-5; 4-5 & 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*) and seeking Special Permit for WCD Crossing for Proposed Drainage.

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

Representing the applicant was Mr. Peter Zohdi of Herbert Associates, who came forward with Attorney John Bisson. Mr. Zohdi explained they would be combining six lots and creating 21 buildable lots and 2 open space lots. One of the open space lots has 16.98 acres that will be deeded to the Town. That open space lot contains two wells, and to the best of Mr. Zohdi's knowledge they produce water and may possibly be used by the Town for water in the Sherburne Road area. The other open space lot has 3.821 acres, and the developer would like to retain it as part of the Homeowner's Association. The open space documents have been drafted and submitted to the Town for review. He noted that the soils were reviewed by Gove Environmental Services. He also informed that the Conservation Commission conducted a site walk and marked the location they'd like a trail easement. The surveying crew located the markings, which have been included on the plan. Mr. Zohdi told the Board that Keach Nordstrom (Board's engineering review firm) reviewed the plan. He believed there was one remaining item, which they will comply with prior to the plan being signed.

Mr. Steve Keach of Keach Nordstrom came forward. His most recent memorandum was issued to Mr. Gowan's office on March 2nd, which represents his review of the drawings submitted with revision date of February 28th. Under General comments he noted there were three required State permits (NHDES Subdivision, NHDES Alteration of Terrain and NHDOT Driveway). He spoke about traffic and the impact to the Sherburne/Mammoth intersection. He believed the Planning Director may have a suggestion for a condition of approval (to contribute an apportioned fair-share of the Town's anticipated cost of any future mitigation improvements to the intersection). Mr. Keach would like to see comment from the Fire Department regarding the application. He recommended a condition for the applicant provide a performance and maintenance guarantee. He also recommended that the applicant submit draft copies of deeds for the future conveyance of public street right-of-way, public open space and any planned public easement.

Under Zoning matters, Mr. Keach understood there were two pieces of open space being platted, one was a 16.98 acre parcel with frontage onto Mammoth Road that the applicant has committed offer for dedication and other was a 3.821 acre parcel with the intention of being covenanted open space that would be owned and undivided between the future occupants of the subdivision. Documents for its governance will be submitted to the Planning Department for review. The Board received a Special Permit application for Wetland Conservation District ('WCD') impact. Mr. Keach believed the impact was fairly minor. There are two storm water areas proposed; one being in the area of the westerly cul-de-sac that needs to impact WCD in order to get gravity flow to the wetland complex that joins Long Pond, the other was on the easterly side of the cul-de-sac that needs a WCD impact for it to work properly. Under Planning/Design matters, Mr. Keach told the Board there wasn't much left to address. When he wrote the review letter he couldn't recall if the Board had acted on the waiver request to decrease the pavement width of the street from 26ft to 22ft. Mr. McNamara believed the Board had already acted on that waiver.

Mr. McNamara read aloud a letter submitted by Fire Inspector John Hodge dated February 28, 2017 that was directed to Mr. Gowan. The letter indicated that the development would require two 10,000 gallon cisterns were required. Mr. Zohdi replied there was a note on the plan indicating they would comply with NFPA1. He added that he would work with the Fire Department. He noted in a previous meeting with Mr. Keach, Mr. Gowan and the Fire Department they discussed the width of the road, cisterns and possibly having sprinklers in the houses. He wanted the opportunity to work with the Fire Department and would be glad to comply. Mr. Gowan asked Mr. Zohdi to have the plan reflect whatever was decided with the Fire Department in enough detail to build. Mr. Zohdi stated they would do so.

Mr. McNamara also read aloud a memorandum dated February 18, 2017 submitted by the Highway Safety Committee ('HSC') regarding access to Pelham Veteran's Memorial Park ('PVMP'). They recommend:

- 1) Support engineer's waiver request for a 24ft. road width with 22ft paved travel way;
- 2) 50ft. right-of-way into PVMP at a location advised by Mr. Gowan and Parks and Recreation Director Brian Johnson;
- 3) Knox-box gate on PVMP side of property with Town controlling use of the gate and access to PVMP as needed;
- 4) Access road to be paved at a width adequate for fire engine access (no less than 20ft. per NFPA);
- 5) 'No Parking' signs to be placed on project side of the PVMP access to prevent residents from blocking gated access road;
- 6) HSC reserves the right to review the final plan once engineering has progressed in advance of Planning Board approval.

Mr. McNamara then read aloud an email submitted by Parks and Recreation Director Brian Johnson dated March 6, 2017 expressing the department's concern regarding the portion of the project that abuts the Town Beach. Mr. Johnson understood there were no plan for a boat dock at this point and noted there was nothing to stop a dock/docks from being added in the future. There were major safety concerns with adding a boat dock next to the Town Beach and having boat traffic come in next to the swim area. The Town Beach serves Town residents and the summer camp. Mr. Johnson strongly recommended that the Town insist on some language that would prevent any building, or future building, of a boat dock on the property.

The last letter read aloud by Mr. McNamara was submitted by the Conservation Commission dated January 23, 2017. During the commission hearing, they discussed the design of both detention ponds and the reasons for the minor WCD impacts. When discussing the proposed trail easement it was noted the width was 10ft. wide and constrained by the northwest boundary of the subject parcel and the northwest boundary of lot 1-55-21 leaving little room to route the trail around obstacles. The commission asked that lot 1-55-21 be made a bit smaller to leave more room for the trail. There was a similar situation with lot 1-55-15, where the commission asked that the southwest corner be moved to the east. During the site walk, the commission viewed the areas where two detention ponds are to be constructed and walked the center line of the proposed trail easement. The developer (Mr. McCarthy) and Herbert Associates representative Shayne Gendron agreed that the commission

could suggest changes to the proposed trail easement, given the constraints imposed by the adjacent lots. The commission voted unanimously to recommend the plan with the understanding that the changes to the trail easement would be flagged and approved by both the Town and developer before being defined on the final plan and the developer will attempt to move the lot lines for lots 1-55-15 and 1-55-21 to make more room for the trail. Conservation Chairman Paul Gagnon and Border Riders member Mike and Doug Taylor walked the proposed trail easement and flagged the preferred route. Herbert Associates has agreed to move the proposed trail easement to the area they flagged. Mr. Zohdi said Mr. Gagnon had come to his office and gave them the flagging. The surveying team was sent out and located the trail easement flagging. The plan has been revised and forwarded to Mr. Gowan, Mr. Keach and the Conservation Commission.

Mr. Zohdi heard the concerns of the Parks and Recreation Director and told the Board he wasn't proposing a boat dock. He was seeking approval for a 21-lot subdivision. He said in the future if someone wanted to have a boat dock they would have to hire an expert, seek a Dredge and Fill permit, Shore Land permit, work with the NH Wetland Bureau and the NH Department of Environmental Services. They would also have to come back in front of the Planning Board. He stated he wasn't prepared to speak about those permits since they didn't do them. Mr. McNamara replied the Board received a letter containing a strong recommendation from a department director with a strong recommendation to insist on some language that would prevent building (or future building) of a boat dock.

Mr. Montbleau asked for clarification of the cistern location near Sherburne Road. Mr. Zohdi described the location of cisterns.

Mr. Sherman saw that the area of concern in reference to a boat dock was in the 100-year flood plain and was either wet or in the WCD. Mr. Zohdi agreed with his point. Mr. Gowan noted in order to get to a dock from the parcel of land would need a WCD encroachment and require zoning relief. He stated if the Board wanted future control over docks or any use of the land for that purpose, it should be ensconced in the Homeowner's Association ('HOA') documents and also a note on the plan. For clarification, Mr. McNamara questioned if the Board had the authority to prevent or limit a dock if the State had jurisdiction. Mr. Gowan said how land is used is part of the project. He believed it was up to the Board and thought it would be interesting to hear the developer's plans for that part of the land, since it was open space and would need to be addressed in the HOA documents. Mr. Keach agreed with Mr. Zohdi and Mr. Gowan's advice with the hurdles presenting itself. He understood that the area was currently designated open space with twenty-two owners who share rights of ownership. He said if the homeowner's pursued dock construction, he didn't think their chances of getting the necessary permits through the state were very good. He noted they would need State approvals and a WCD impact. The area beyond the storm water area was wetland for a distance of approximately 100ft. from edge of the shore land. Mr. Keach believed the HOA document could have a prohibition that would foreclose the rights of the homeowners to pursue (docks) in the future.

Attorney Bisson stated he provided a copy of the HOA documentation to Town Counsel, Attorney John Ratigan. He told the Board that the document was consistent with everything Mr. Zohdi had stated, and prohibits any use of the open space lot. The lot had to remain, open, undeveloped and remain in its open state. No dwelling, accessory structure, service roads (other than the roads shown on the plan), parking, other structures or improvements can be constructed on the open space, with the exception of things approved by the Town. He reiterated nothing could be in the open space area, unless it was shown on the plan. He stated there were a couple places where the Town had 'veto' power. There was a provision to allow for the amendment of the document with 3/4 of the unit owner's agreement. They cannot amend the open space covenant with something inconsistent with the Board's approval. Attorney Bisson was concerned with statements made about the rights exclusively delegated to the State with respect to docks, permits, etc. He noted there was no way to get to the water without going through the planned area and there was no way to amend the document without coming to the Board first.

Mr. Gowan felt it was worth noting that the plan proposed the gated access road to PVMP, which came out very close to the club house that was near the Town beach. He said there was a point where someone could take their kayak or canoe (without a boat launch) to get onto Long Pond. The homeowners will have a unique access to the pond through PVMP without the need to develop infrastructure.

Mr. Culbert believed it would be a major stretch to put a dock in, and didn't see the need to do what the Parks and Recreation Director requires.

Mr. Sherman understood that the gate would remain open during most of the summertime and questioned if the owner agreed to such. Mr. Zohdi answered yes; they agreed the Town could open the gate during the summer because of camp and creating a traffic flow pattern to eliminate traffic on Sherburne and Mammoth Roads. Mr. McNamara understood the access would be located on the side of PVMP.

PUBLIC INPUT

Attorney Jeffrey Zall came forward, representing Richard Lannan of 11 McGrath Road, Pelham, NH and representing the Long Pond Clean Water Committee, Inc. (Massachusetts non-profit corporation), members of which live along Long Pond whose duty is to maintain clean water as much as possible. His clients have three major concerns with the project:

- 1) This was a project that should be treated as one with regional impact. Attorney Zall stated he had reviewed the meeting minutes and saw no decision had been made whether or not the project had regional impact. He believed it definitely had regional impact. There are 21 new homes proposed, all of which would have access to Long Pond through the open space lot as part of the HOA. He recognized getting docks might be a stretch and State permits had to be acquired. He also understood there were a lot of docks in Pelham that people never got permits for. Attorney Zall stated 21 new homes coming onto Long Pond would create a situation where each home could have multiple motorized watercraft. Long Pond is already very overcrowded.

With regard to drainage, Attorney Zall pointed out the twenty one new homes may use fertilizer, and road salts or treatment products that could drain into the pond. He recognized the applicant had presented a plan that purportedly would take care of the drainage so it wouldn't go into the pond and he recognized that Mr. Keach had reviewed the plan; however the people in Dracut and Tyngsboro who make up 80% of the pond had the right to have notice of hearing, be present, give their concerns and bring in their own consultants to review all the information. According to Town Ordinance, Subdivision Regulations and RSA 36:55 & 56, Attorney Zall felt the Board should treat the project as regional impact and start over providing notice to the effected municipalities of Dracut and Tyngsboro so their residents on Long Pond could have the opportunity to be heard.

- 2) Potential and possibility of increased motorized watercraft on the pond. Attorney Zall pointed out if the proposal was a conventional subdivision there would be only one or two lots that could be built with frontage on the pond. In that case the increase in watercraft would be insubstantial. However, because the proposal is an open space development with all 21 lot owners having undivided interest in the open space lot, each one of the homeowners would have the right, absent a covenant that prevents it, to gain access to the pond through the open space lot. He agreed because of the soils and wetland it might be extremely difficult, but not impossible to get a permit from the State to put in docks, and achieve approval from the Conservation Commission. He noted regulations might be changed in the future. Attorney Zall stated they were asking the Board to restrict and prevent the use of the open space lot from building/constructing dock space attached to the lot, and the use of motorized watercraft from the open space lot. His clients don't have a problem with using the access to the pond for non-motorized watercraft (i.e. canoes, kayaks) because those won't present a problem on the pond.

- 3) Drainage. Attorney Zall's clients would like the opportunity to have the drainage designs reviewed by their own independent consultant to determine that they don't have to worry about the infiltration into the pond. He noted that the Long Pond Clean Water Committee spent a lot of money each year to do what they could to keep the water clean.

Attorney Zall reiterated the three points for the Board: 1) Consider the project regional impact and provide notice as in accordance with RSA 36:55, 2) Require a statement in the covenants and on the plan that the open space lot will not be used for the construction of dock space or the use of motorized craft on the pond. If this is included on the plan the covenants couldn't be amended, and 3) Give his clients the opportunity to bring in their own consultants to satisfy them that there is no drainage issue.

Mr. Culbert heard that the pond was currently overcrowded with watercraft. Attorney Zall understood that the pond was very overcrowded with motorized watercraft. Mr. Culbert questioned how the twenty one lots could be penalized and told they couldn't have watercraft. Attorney Zall replied if the project was a conventional subdivision there would be one or maybe two lots that would have access, which wouldn't cause a significant increase of motorized watercraft. He said because the project would allow twenty additional lots, it had the possibility to bring in considerably more watercraft than would normally be in there. Mr. Culbert asked how many lots were currently in Dracut and Tyngsboro. Attorney Zall didn't have the number. Mr. Culbert said it was already overcrowded and questioned how they could penalize the proposed homeowners. Attorney Zall said there could be an additional 19 or 20, when it should really only be 1 or 2.

Mr. Dadak heard mention of fertilizer and runoff and wanted to know if the Pond Association had a restriction on what people with waterfront could do with lawn, fertilizers and pesticides. Attorney Zall replied the President of the Association was present and planned to address the Board.

Mr. Montbleau noted he grew up in the neighborhood and spends a lot of time on the water. He commented that motorized watercraft were a big problem, and to have them come across the Town beach at high speeds and disturb the Town's people, fish and wildlife to access the open area was a big concern. He stated five jet skis would create a considerable amount of turbulence. He was in favor of restricting and not allowing motorized watercraft for the subdivision. He felt kayaks and canoes would be fine. He was not in favor of docks, which he felt would be an encroachment of the Town beach. He agreed with Attorney Zall on those points and believed it would be a smart use of the property to keep it tranquil and usable. Mr. Montbleau would also be in favor of a 'no salt zone' for the subdivision roads. He said the Board may want to consider having a 'no fertilizer' buffer to the pond for lots closest to the wetland and pond. Mr. Dadak spoke of his experience living on Little Island Pond. He also recalled complaints about people going into the inlet near the Town beach and witnessing for himself boats coming into the area quickly. He noted the area was shallow and damage could be irreversible. Mr. Montbleau stated there had to be some sort of protection for the pond as it was a nice resource for Pelham, Tyngsboro and Dracut. He reiterated his opposition to motorized watercraft.

Mr. Culbert suggesting having no motorized craft, by any town (or city) on the pond. Mr. Montbleau replied there was a grandfathered situation.

Mr. Emil Demers, 126 Lakeshore Drive, Dracut MA, President of Long Pond Clean Water Committee came forward. He told the Board they were a non-profit committee that worked hard and spent a lot of money. They were concerned about the project and the possibility of adding of 21 boats. With regard to fertilizer, they have a company monitor the water and found they have a high saline solution. With every newsletter sent out to members, they ask people to use organic if they could. Massachusetts doesn't allow any phosphate fertilizers. Mr. Demers stated with a 21 lot development, they didn't know where the drainage would go, even a lot not on the waterfront could drain into the pond. Mr. Demers stated their biggest impact was fertilizers and sewage impact.

Mr. Culbert inquired how many lots were in Tyngsboro and Dracut and how many had motorized vehicles. Mr. Demers replied there were 142 lots (including Pelham) and of those there were possibly 110 vehicles. Mr. Dadak pointed out there were multiple lots uphill that might have drainage effect the pond. He asked if they were included in the association. Mr. Demers said there were a few; they were trying to expand the association.

Ms. Patricia Parece, 21 Jones Road, Pelham, told the Board she worked with the Conservation Commission on a grant approximately 12 years ago to educate residents around the water and surrounding areas about fertilizer. She continues annually with the State to conduct tests in all the outlets for fertilizer coming into the pond. She stated she worked for the Pelham Summer Camp for nine years and understands the impacts affecting the pond. She agreed that motorized vehicles would not be good for the Town.

Mr. Demers wanted the Board to understand there wasn't only a concern about docks, but also about moorings.

Mr. McNamara referred to RSA 36:55 and read a portion aloud that pertained to developments of regional impact. He noted the Board needed to make a determination regarding such. Mr. Gowan believed it required the applicant to notice the abutting communities, not every resident. He asked if Dracut had been noticed. Mr. Zohdi answered no.

Attorney Bisson was struck by the debate, and it looked to him that the neighbors to the south wanted to cure problems that already exist on the lake that were created by other development. He said the association sounded voluntary with no 'teeth', unlike what they were asking of the proposed development. He noted the proposal would be a covenanted neighborhood enforced by the Town's authority. He stated the HOA documents couldn't be amended without the Board's approval. Attorney Bisson understood Attorney Zall's concern, and stated they could restrict the open space lot that borders on Long Pond to the use of the lots that would otherwise have frontage on the pond; instead of the full 21 lot subdivision, there would be two units that would have frontage. He struggled with people saying they had a boat without restriction on the pond who were looking to impose a different burden on the residents in Pelham. He stated the applicant was willing to limit the use so it would be consistent with the neighbors to the south. It was Attorney Bisson's opinion that the development was not of regional impact because it wasn't an aquifer or water supply. They were not proposing to put motor craft vehicles on the pond. The people arguing regional impact was jumping to the conclusion that everyone would try and put a jet ski on the pond, which couldn't be done through the proposed subdivision. He stated based on the plan being reviewed, there was no regional impact.

Mr. Sherman asked if the 21 lots had deeded beach rights. Mr. Zohdi answered no; the 21 lots had a right to the open space. He stated they would take the open space lot 1-55-22, and give access rights to lots 1-55-15 & 16. Attorney Bisson added those lots would still have no rights to go through the wetlands without the Board's approval.

Mr. McNamara asked that the Board discuss whether the project was of regional impact. Mr. Montbleau didn't feel the project had regional impact and the Board could take care of any of the concerns. Mr. Culbert, Mr. Dadak and Mr. Croteau agreed. Mr. Dadak said the only impact he could see would be from pesticides, fertilizer or salt. He asked how the storm water system was designed. Mr. Zohdi replied it was designed according to Alteration of Terrain. Mr. Dadak suggested adding a note on the plan to limit fertilizer and salt. Mr. Zohdi replied he would work on that type of language with Mr. Gowan and Mr. Keach.

Mr. Montbleau made a motion that the plan is not considered a regional impact. Mr. Sherman seconded for discussion. He wanted to be clear that Mr. Zohdi would amend the plan to show that only the two lots in the corner had rights to the open space. Mr. Zohdi didn't object to doing so. Mr. Montbleau questioned what kind of rights the two lots would have. Mr. Sherman said they would have rights to use the open space to what the covenants already have in place. Mr. Gowan said it was basically for passive recreation.

MOTION: (Montbleau/Sherman) The plan is not considered a regional pursuant to chapter 36:55 & 56 (and with the understanding that two lots would have rights to the open space lot as discussed).

VOTE: (5-1-0) The motion carried. Mr. McNamara voted in opposition.

Mr. McNamara asked Mr. Keach to address some of the concerns raised regarding drainage. He referenced sheet 8 of the project plans and explained that the street coming into the development (proposed Waterford Way) arrives at a 4-way intersection. The location where the intersection occurs is at a crest in the elevation and at that point street drainage flows to the north (Sherburne Road) into a detention basin far away from Long Pond. The longer of the two cul-de-sacs (easterly) does the same thing. The drainage from the shorter (westerly) cul-de-sac flows toward Long Pond via drainage structures that ultimately become tributary to detention pond 1 and the sediment bay. Mr. Keach said the total portion of the site compared to the total area of the site that becomes tributary in Long Pond in any way is quite small and essentially limited to curb-to-curb in the short cul-de-sac. In an average rain fall event, detention pond 1 functions with no outlet as an infiltration basin. In extreme event, it functions more quantitatively with the flows and releasing those flows to pre-development conditions or less through a westerly weir, and further becoming tributary to the vegetative wetland approximately 300ft from the pond. Mr. Keach said the question of salt was raised by one of the speakers. He explained when salt goes into solution it never comes out until it's dried. The only party who would be applying any salt in any quantity may be the Highway Department and a matter of local policy. He said there was a matter of other contaminants in storm water. The subdivision, because of its size, is subject to the Alteration of Terrain Permit Program though the DES. In order to be granted that permit, the drainage report addressed both quantitative and qualitative aspects of storm water management. Mr. Keach didn't want anyone to think that as a result of the construction of the roadway system and the accompanied drainage that there would be a point discharge to Long Pond. He stated that would not happen. He noted during heavy rainfall events or extreme storms where water will discharge to the down gradient vegetative wetland situated between the detention pond and Long Pond (horizontal distance of approximately 300ft.).

Mr. Keach stated Pelham, through its WCD Ordinance did a good job protecting wetlands, thereby preserving their purpose. In this instance, it's been acknowledged that essentially all the land to the west of the basin through the 3.8 acre open space is vegetated wetland is preserved so its value should create a good set of kidneys for the pond in that area. He believed the Conservation Commission was pleased that area wouldn't be touched. He said if the facilities are constructed and managed properly in the future such that they can over the long term retain their intended function, he didn't believe there should be any undue risk to Long Pond created by the project. He didn't believe there would be enough new storm water created to have a plume directly tributary to the Pond.

Mr. Sherman questioned what number of houses would have drainage flowing to the ponds. Mr. Keach replied portions of basically everything to the west of Waterford Drive and to the west flowed toward PVMP.

Mr. Joe Farris, 15 Jones Road told the Board that the Pond turned green a few year back and caused massive fish kill. He's never seen anything like that and didn't know it had anything to do with regional impact. With regard to docks, he said nothing was definitive in the proposed documents and the neighbors wanted something definitive. He described a pathway that lead to a sand area (300ft. in length) on the applicant's property that docks could be constructed. He stated the deepest area was located directly next to the Town camp. Mr. J. Farris told the Board that he personally spoke with the Parks and Recreation Director earlier in the day who didn't know about the proposal. Their last knowledge was the land was being deeded to the Town. At a minimum, he felt the Director should be in attendance of the meeting and also felt the people in Town should know what's going on. Mr. J. Farris spoke about the summer camp program, which had approximately 300-400 children attending and believed if the residents of the development were going to have access, the parents of the children should be able to speak on the development. He questioned why the area couldn't be signed over to the Town if it was wetlands and couldn't be accessed. Mr. J. Farris has been on the Pond for forty years and stated

people put docks in no matter what the Town or State says. He reiterated that the Town didn't know what was going on with the proposal and felt they should. Mr. McNamara felt the Parks and Recreation Director expressed his concerns pretty well. Mr. J. Farris stressed that the Director's concern is safety. Mr. McNamara read aloud a portion of the Director's letter that spoke about the safety concern with the close proximity of boats and docks.

Mr. J. Farris asked if the access road was for the Fire Department. Mr. Gowan stated there had been a lot of discussion (including Parks and Recreation) about the access. He noted Attorney Zall was the attorney for the Hawkridge development on the other side of PVMP where the Board required gated emergency access. That access gave thought to how traffic could flow, which gave way to the discussion about summer camp traffic flow when the current proposal was submitted. Mr. Gowan indicated that the Town wanted to reserve the access road to help with traffic during summer camp. He said HSC and the Parks and Recreation Director were all very excited about the access road. Mr. J. Farris felt the Town should know what was going on because it impacted the Town beach.

Mr. Michael Foley, 833 Nashua Road, Dracut, MA noted both Dracut and Tyngsboro had sewage, which cut down on a lot of their impact. He stated they tried as hard as they could to keep the lake clean. Mr. Gowan recognized that the work of the association was a tremendous benefit to Pelham. He noted the beach at PVMP was the only public beach and agreed water quality was very important. He informed that there were going to be new MS4 rules to comply with, which would have a huge impact on all drainage structures, outlets, wetlands and water bodies.

Mr. Steven Rancourt, 7 McGrath Road, Pelham, told the Board he wasn't located directly on the pond, but voiced concerns about the traffic on Sherburne Road. Mr. McNamara stated they were well aware of the situation through prior discussions. In terms of the backup they knew it was a failing intersection; however, it was not listed on the State's plan. He noted for several years they had a fund in place where anyone who builds in that area that contributes to the traffic will also contribute to the Intersection Improvement Fund, which is an exaction that can be used for engineering to study a solution. Mr. Gowan noted this year (possibly May) an alternatives analysis presentation will be given to the Board of Selectmen. He stated the Selectmen were extremely focused on the situation and wouldn't be surprised if there was an initiative on the 2018 ballot. Mr. Rancourt asked if the Town had an idea of the costs for alternatives. Mr. Gowan replied they couldn't determine costs until they determined which alternative they would proceed with. The presentation of the analysis is anticipated to be in early May. Mr. Rancourt agreed with the park having an additional access, but felt doing so would generate more traffic along Sherburne Road. Mr. Gowan noted the traffic (from the summer camp) was not commensurate with the afternoon commute. Mr. Rancourt hoped the Board considered the issues with the impact to the Town beach, and the issues with the safety of the children using the park.

Mr. Michael Farris, 13 Jones Road echoed the comments made by his brother. His feeling that the proposed lots within the development had direct access to the waterfront through the access to the camp (PVMP). He noted the residents won't need to walk through woods to get to the waterfront, they'll be able to access the Town beach and walk to their waterfront. He stated the safety of the waterfront property was essential to the people who use the Town beach. Mr. M. Farris heard that the applicant would be willing to restrict the open space to just the two waterfront lots and questioned if the area would no longer be considered 'open space'. Mr. McNamara replied the open space would continue to be what it was. Mr. Zohdi explained 'open space' could be designated and limited to specific lots (within a development). He noted in this proposal, the open space would be limited (for use) to two lots in an effort to make the abutters feel better. Mr. M. Farris stated that the abutters would only feel happy if there was absolute restriction of the waterfront property to: 1) no use of motorized equipment whatsoever and no docks whatsoever. He noted there were a million scenarios where they would never have to go through their own property to get boats onto the water. It was an incredible safety concern and guarantee of an accident to have any scenario where motorized boats are allowed to be used on the property.

For the record, Mr. McNamara told the public that the property came before the Board approximately 6-8 years ago as LRL Development with 64 lots. Mr. M. Farris replied it was an odd to live on a lake and be more than

200ft from a property and not get notification. Mr. McNamara stated legally abutters are considered as those being 200ft away or less. Mr. M. Farris replied by definition he didn't have to be informed, but felt by logic he should have been. He said it's a little disconcerting that he didn't have an opportunity to look at the regional impact and the Board dismissed it so quickly. He felt it should have been taken under advisement. Mr. McNamara believed the abutters concerns had been voiced and everyone understood what they were. Mr. M. Farris summarized his concerns and stated he would be adamantly opposed to any use of motorized at all, even touching the property, whether it came from other sources on the lake. He said it should not be stored there or allowed to go in and out. He was also opposed to docks.

Attorney Zall responded to what the applicant proposed. He stated reducing the access to the pond for possible/potential dock construction and use of motorized watercraft, down from 21 possible lots to two would certainly reduce the impact to the pond. However, he believed if the Board was possibly giving the applicant the right on the two (waterfront) lots to construct dock spaces, through the normal permitting process, or moorings, which may not require such permitting, and allowing motorized watercraft close to the Town beach, it would open the door to a dangerous situation. He urged the Board to heed the recommendation of the Parks and Recreation Department Director, and not allow any access to the pond for motorized watercraft or dock construction. If that's the case, Attorney Zall felt strongly that the covenants needed to be 'beefed' up to specifically say 'no construction of docks' and 'no use of motorized watercraft on the open space lots'. He asked the Board to make those things a condition of approval and include the language on the plan and in the covenants. Further, he believed the Board made a mistake on 'regional impact', which should be measured at the beginning, when a plan is submitted, not when the Board has decided the regional impact could be minimized through engineering. Attorney Zall felt the Board had violated the Statute by reviewing the case in the manner that it was done.

Mr. McNamara closed the public hearing aspect of the case and asked for the Board's input. He commented that they had heard from abutters and received a letter from the Parks and Recreation Director and others. The plan has been engineered and they heard from Mr. Keach regarding drainage. Mr. McNamara noted the Board had a lot of confidence in him through the years and had no reason to doubt him in this particular issue.

Mr. Montbleau reiterated his feeling that the plan was not of regional impact. He believed the Board should restrict motorized watercraft. He felt passive recreation through the use of kayaks and canoes and the like (without motorization) was fine. He confirmed that the Board and the applicant were in agreement that the use of the open space was limited to the two (waterfront) lots. Mr. Zohdi answered yes. Mr. Montbleau also understood there would be no construction of docks.

MOTION: (Culbert/Montbleau) To accept the Special Permit for consideration.

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

Mr. McNamara believed the Statutory requirement had been met, given that the Board received a favorable letter from the Conservation Commission.

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

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

The following waiver for road width had been accepted, therefore the Board took the following motion to approve said waiver.

MOTION: (Culbert/Dadak) To approve the waiver request to Subdivision Regulations Appendix 1:BB, 2 – road pavement width 26ft required; the applicant seeks 22ft.

pavement width, as supported by Keach Nordstrom and the Highway Safety Committee.

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

Mr. Montbleau asked that the Board include a stipulation for the development to be a 'low salt' or 'no salt' zone. Mr. Gowan was unsure if the Board could obligate the Town, but believed they could make a recommendation. The Board had a unanimous concurrence to recommend that the entire road system within the development be 'no salt'.

Mr. McNamara reviewed the proposed conditions of approval:

- 1) State Subdivision approval, NH DES, AOT and NHDOT Driveway Permit approvals to be noted on the recordable plans;
- 2) Bond and plan compliance escrow, as estimated by Keach Nordstrom to be provided to the Planning Department prior to plan signature and recording;
- 3) Homeowner's Association documents to be reviewed and found satisfactory by Town Counsel, at applicant's expense, including any prohibition on docks and boat ramps along the Long Pond shoreline of the property and prohibition on the use of motorized watercraft from that property;
- 4) Submission of draft deeds for conveyance of public street right-of-way to be reviewed by Town Counsel, at applicant's expense;
- 5) All applicable impact fees to be paid at the time of Building Permit issuance;
- 6) The road from the project into Pelham Veteran's Memorial Park to be constructed and paved to the same standard as project roads. The road shall connect to the parking lot near the PVMP property line as depicted on the plan with a Knox-box gate to be erected at, or near the property boundary with PVMP at the direction of the Parks and Recreation Director. The road into PVMP and gate to be at the applicant's expense;
- 7) Prohibition on docks, boat ramps along the Long Pond shore line of the property, including use of mooring or motorized watercraft;
- 8) Subject to the Board of Selectmen accepting the gift of the 16.98 acre open space parcel. Should the BOS fail to accept the open space lot, it will remain with the project as open space without need for further Planning Board action;
- 9) Applicant's fair share contribution to the Mammoth / Sherburne Intersection Improvements, which will amount to \$2,250 per unit;
- 10) Letter from Keach Nordstrom indicating their satisfaction with the final plan submission to be received by the Planning Director prior to plan signature;
- 11) Highway Safety Committee approval of road names and inclusion of such on recordable plan.

Mr. Sherman questioned if the Board needed to make a condition to tie the open space to the two lots. Mr. Zohdi had no objection. Mr. Gowan noted condition #3 is where the restriction should be included. Condition #3 was amended to restrict the open space to two lots.

Mr. Culbert questioned if the two lots (with the open space) were allowed to have moorings. Mr. Gowan replied the draft conditions didn't allow moorings along the Long Pond waterfront of the project. Mr. Culbert disagreed with the restriction as there were only two lots (on the waterfront). In general, Mr. McNamara agreed with the argument that the pond was already overcrowded and it would appear to be an imposition on property owners to have the limitation; however, the problem was the proximity to PVMP, the summer camp and beach frontage. These points were brought up by the Parks and Recreation Director as being dangerous. In that regard, Mr. McNamara believed there was ample testimony that it would be a danger. Mr. Culbert noted two boats could be moored far away from the beach. Mr. McNamara replied the conditions were as stated, unless the Board wished to change the condition. No one offered to amend the conditions further.

Mr. Dadak inquired who would be responsible for marking the edge of the WCD. Mr. Gowan replied the WCD boundary would be marked with WCD signs. Any encroachment into that area would be enforced.

MOTION: (Sherman/Montbleau) To approve the plan with the conditions as stated.

VOTE: (5-0-1) The motion carried. Mr. Croteau abstained.

Mr. Keach spoke to the point raised by Attorney Zall of the Board's practice relative to the determination of regional impact. He stated he'd worked for the Board since 2009 and thought it was implicit when a board accepts an application for consideration that, that determination is built into that acceptance. He noted it was very rare that an application is eligible for that consideration, but there have been times, prior to an application coming in front of the Board, he and Mr. Gowan had the conversation with applicants if a project should, or shouldn't be considered. Had it been believed that the present application should have been considered, the Board would have heard from Mr. Gowan regarding such when it was first on the table. As the Board's consultant, Mr. Keach believed the Board had made a determination relative to the case.

PB Case#PL2016-00027

Map 14 Lot 3-90

MERRIMACK CONSTRUCTION GROUP, INC. - Mayflower Lane - Proposed 6-Lot subdivision

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

Representing the applicant was Mr. Peter Zohdi of Herbert Associates who came forward to discuss the proposed subdivision. He stated the Board had reviewed the plan several times and during the last meeting had approved all the waiver requests and were waiting for Keach Nordstrom's (Board's engineering review firm) final review. Upon receipt of the final review, everything had been addressed, except one drafting error.

Mr. Steve Keach of Keach Nordstrom spoke to his correspondence of March 2, 2017. He believed the general comments would look familiar to the Board. He provided a brief summary of such.

Mr. McNamara read aloud the letter submitted by the Conservation Commission dated February 1, 2017. The commission voted 5-0-0 based on adjustments that would be made to the plan. Mr. McNamara asked if the alterations/suggestions had been made. Mr. Zohdi answered yes. With the approval/agreement from the Conservation Commission, Mr. McNamara asked the Board to address the Special Permit.

MOTION: (Culbert/Montbleau) To approve the Special Permit

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

Mr. McNamara recalled during the previous meeting an abutter requested a no-cut zone and 15ft. vegetated buffer. Mr. Zohdi answered yes; the 15ft no-cut vegetated buffer request was for the back and side of Map 14 Lot 3-90-2, which had been noted on the plan. They wouldn't touch anything within that setback. Mr. Dadak noted it appeared based on the plan that the only cutting would occur in the areas of construction for the driveway, septic etc.

PUBLIC INPUT

Ms. Cindy Bilsky, 9 Megan Circle, recalled previous discussion about no blasting and wanted to know if it was still true. Mr. Zohdi replied at the last meeting he went through the road profile and told the Board they didn't require any blasting for the road construction because they had raised the road a certain number of feet above the gas line per regulation. Mr. Keach had the Board review the topographical / proposed conditions plan. He

called attention to the fact that there were a density of test pits excavated on-site, including a couple under the cul-de-sac area. He noted there was a lot of consistency in the soils; depth to ledge area and seasonal water table. He said Mr. Zohdi was correct in his comments about the road profile. There was nothing on the site that would invite blasting for the construction of the road. Mr. Keach found it difficult to believe that a builder would seek to situate a house low enough, given the soil conditions, to warrant blasting. He felt it was totally avoidable. He said the logistics of doing a blast at the site would be very difficult because of the residential density that surrounds it and the high pressure gas main on the property. He believed the statement by the applicant that blasting would not be needed to build the development.

Ms. Bilsky spoke about drainage and the fact that during spring thaws they had situations on their lot with very wet soil and mud going as deep as her husband's thighs. She wanted to know if there would be more drainage/water runoff toward their property given that trees would be removed from the site. Mr. Keach discussed the contours of the property and flow. The extension of Mayflower will essentially act as a curtain for water running over the ground. With the road will pick up the water and send it to the water management area closer to the wetland area. The basin will basically function as an infiltration basin during ordinary storm events and have accumulated water that will be detained, prior to slow release in higher intensity storms. He noted it was a textbook design. Ms. Bilsky inquired if the driveway for the proposed last lot could be moved to the other side of that lot. Mr. Zohdi answered yes; he asked his client and they agreed to 'flip-flop' the driveway.

Mr. McNamara reviewed the proposed conditions of approval, given that the Special Permit and waivers were already approved:

- 1) State Subdivision approval number to be noted on the recordable plans;
- 2) Joint user agreement to be reached between Tennessee Gas and the applicant, and referenced on the recordable plan;
- 3) Surety and plan compliance escrow, as estimated by Keach Nordstrom, to be provided to the Planning Department prior to plan signature and recording;
- 4) Submission of draft deeds for the conveyance of the public street right-of-way to be reviewed by Town Counsel at the applicant's expense;
- 5) All applicable Impact Fees to be paid at the time of Building Permit issuance;
- 6) Letter from Keach Nordstrom indicating their satisfaction with the final plan submission to be received by the Planning Director prior to plan signature;
- 7) No blasting for road or any other infrastructure;
- 8) 15ft. no-cut buffer along the western side of the development to be posted as such.

Mr. Sherman questioned if they should add that the plan needed Fire Department review and comment. Mr. Gowan replied that the Fire Inspector letter was read aloud with the previous case. There was to be one 10,000 gallon cistern at the beginning of the extension, which was shown on the plans. Mr. Zohdi had no objection

MOTION: (Culbert/Montbleau) To approve the plan with the conditions as stated.

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

PB Case #PL2016-00026
Map 36 Lot 11-91

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

Mr. McNamara informed that the applicant requested a continuance to the April 3, 2017 meeting.

The Case was date specified to April 3, 2017.

NEW BUSINESS

PB Case #PL2017-00005

Map 41 Lot 10-280

DEMELO, David - 30 Bridge Street (upper level) - Site Plan Review for a Change of Use to Operate a Retail Music Store which will also provide lessons

Mr. Culbert and Mr. Olsen to vote in the case.

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. Demelo came forward to discuss the proposed Site Plan. He explained the plan was to open a retail music store that would include music lessons with various instruments. The size of the area is estimated at 1500SF.

Mr. McNamara questioned if the time would be equally divided between lessons and a music store. Mr. Demelo replied it would be mainly retail. He was looking to have approximately forty students monthly, with lessons/operation conducted seven days per week. The proposed hours would be Monday – Thursday 10am to 8pm, Friday 10am to 6pm, Saturday 10am to 5pm and Sunday 11am to 4pm. The Sunday hours may be eliminated.

Mr. Culbert questioned the distance to the nearest resident. Mr. Demelo replied the closest was a garage and house behind that belonged to the owner of the property, which he believed was over 200ft. Mr. Culbert wanted to know if anyone would be playing drums on Sunday. Mr. Demelo replied lessons would be conducted Monday through Saturday. Mr. McNamara said one of the concerns with a change of use is noise that could be heard by abutters. Mr. Demelo stated the rooms would have minor soundproofing and amplifiers during lessons would be low so students could hear the instrument. Mr. McNamara asked how many parking spaces would be utilized. Mr. Demelo believed the maximum would be eight. Mr. McNamara questioned if it was an existing business. Mr. Demelo answered no; he was just starting the business.

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

Mr. Sherman understood there would a Rock Star Program and questioned if it could be limited so as to not have jam sessions on Sunday mornings. Mr. Demelo answered yes; he was trying to avoid Sundays. The program was basically an outreach to form small bands that would perform during community events.

MOTION: (Culbert/Montbleau) To approve the Change-of-Use.

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

PB Case #PL2017-00003

Map 41 Lots 6-125, 126, 127 & 128

P.J. KEATING COMPANY - 1 & 7 Bridge Street - Proposed Asphalt Plant

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. Jeffrey Brem of Meisner Brem Corporation. It was noted that Mr. Kevin Younkin, P.J. Keating Operations Manager had a conflict and was unable to attend the meeting. Mr. Brem noted the company representatives would be present for the next meeting. He displayed an aerial view of the site and explained that the previously approved concrete batch plant never occurred, so they were seeking to have an asphalt plant. He stated P.J. Keating was a good steward of the land and would be improving the site. Mr. Brem showed the Board an artistic rendering of what the plant would look like when it's done; it would be a hidden

from view drum plant, and a different operation from its current state. The equipment in Dracut, including the conveyor belt spanning across Route 38, will all be removed. From an aesthetic and environmental point of view the proposal will be much better than the current operation.

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

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

Mr. Gowan asked that the Board discuss if the project was of regional impact given it abuts Dracut.

Mr. Steve Keach of Keach Nordstrom (Board's engineering review firm) told the Board he had the opportunity walk the site with Mr. Gowan and representatives of Keating in the late summer/early fall. At that time they unveiled the proposal in a very conceptual form. He said Mr. Brem's characterization that the operation would be isolated from the perimeter was correct. He referred to his memorandum dated February 28, 2017. In that memo he referred to Section 302-3.E.3(a)(23) of the Site Plan Regulations pertaining to site specific soil survey mapping and told the Board he would gladly support a waiver request because the area to be mapped was broken ground and a complete waste of time to map. The proposed project builds off the existing grade and contour of the land and there would not be a lot of prep earth work necessary. Mr. Keach told the Board he reviewed the previous storm water management improvement plan from a couple years ago and stated there was no cross-impact between the two projects. They could be implemented mutually exclusively. He briefly discussed the drainage.

Mr. Montbleau questioned if the Board was aware of the fight that was currently going on, on Route 3 with regard to a plant in Chelmsford/Westford and wanted to know how that plant compared to the proposal. Mr. Brem replied he couldn't comment about the other plant as he didn't have specifics, other than to say the Chelmsford/Westford plant was proposed on virgin land and the Pelham operation had been in existence for approximately 50 years. Mr. McNamara said he had kept up with the news and believed a lot of the concern was in relation to traffic. He also believed it was a larger site with more intensity than proposed in Pelham. Mr. Brem commented that the proposal in front of the Board was to move and upgrade an existing facility. He said the Board would have the opportunity to ask detailed questions when they came back in front of the Board and the operations manager was present.

Mr. Gowan questioned if the Town of Dracut was noticed. Mr. Brem was unsure, but would send a formal notification and contact them in person. Mr. McNamara felt that would be a good idea, whether or not the Board deemed it was a project of regional impact. Mr. Brem noted during the meeting in November all the abutters were invited to the site and had the opportunity to have their questions answered.

Mr. Dadak inquired if there was any State permits required. Mr. Brem answered yes; including air quality and street opening. Keating was aware of the necessary permitting. In relation to the landscaping, Mr. Brem stated he would be requesting a waiver to the requirement of having a landscape design done by a licensed landscape architect. Mr. McNamara asked him to submit the waiver in writing.

Mr. Gowan asked that the Board address the sign after the Town vote, since there was a question on the ballot for the voters to approve.

The Board discussed having a site walk and scheduled such for March 18, 2017 beginning at 9am.

The plan was date specified to the March 20, 2017 meeting.

MORRISSETTE, Roland & COVER, Raymond - 4 & 6 Lisa Terrace - Proposed Lot Line Adjustment between lots 28/7-184 & 7-185

Mr. McNamara informed that the applicant had requested a continuance to the April 17, 2017 meeting to allow time to seek Variance relief.

The case was date specified to April 17, 2017.

SITE WALK – March 18, 2017 – 9am

PB Case #PL2017-00003 - Map 41 Lots 6-125, 126, 127 &128 - P.J. KEATING COMPANY - 1 & 7 Bridge Street

DATE SPECIFIED CASES

March 20, 2017

PB Case #PL2017-00003 - Map 41 Lots 6-125, 126, 127 &128 - P.J. KEATING COMPANY - 1 & 7 Bridge Street

April 3, 2017:

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

April 17, 2017:

PB Case #PL2017-00004 - Map 28 Lots 7-184 & 7-185 - MORRISSETTE, Roland & COVER, Raymond - 4 & 6 Lisa Terrace

MINUTES REVIEW

February 23, 2017 - Deferred

ADJOURNMENT

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

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

The meeting was adjourned at approximately 10:10pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary