APPROVED

TOWN OF PELHAM
PLANNING BOARD MEETING MINUTES
May 21, 2018

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

The Secretary Paul Dadak called the roll:

PRESENT: Peter McNamara, Roger Montbleau, Paul Dadak, Tim Doherty, Jim Bergeron, Blake Clark, Selectmen Representative Hal Lynde, Alternate Richard Olsen, Alternate Samuel Thomas, Alternate Bruce Bilapka, Alternate Derek Steele, Planning Director Jeff Gowan

ABSENT: Alternate Paddy Culbert

PLEDGE OF ALLEGIANCE

MINUTES REVIEW

May 7, 2018

MOTION: (Bergeron/Montbleau) To approve the May 7, 2018 meeting minutes as amended.

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

ADMINISTRATIVE

Mr. Gowan told the Board that the Selectmen would be conducting their second public hearings to accept the open space gifts from the Wildwood Project and the RJ McCarthy Project. He said the Town Administrator asked that a letter be submitted to the Selectmen expressing the Planning Board's recommendations for the acceptance of those gifts. There was no objection voiced by the Planning Board members. Mr. Gowan stated he would compose letters of recommendation for both projects.

OLD BUSINESS

PB Case #PL2018-00001
Map 1 Lot 5-124
HERBERT, Christopher - Mammoth Road - Site Plan review of proposed 29-unit Elderly Housing Community and Seeking a Special Permit for Wetland Conservation District crossing for grading and drainage

Mr. McNamara informed that the applicant had requested a continuance to respond to the Board's engineer's comments and to work with the condominium association for access.

The case was date specified to June 18, 2018.

PB Case #PL2018-00011
Map 6 Lot 4-137-28

DREME BUILDERS – 30 Longview Circle – Proposed 2-lot subdivision

Mr. McNamara informed that the applicant had requested a continuance to respond to some of the concerns raised by the Board's engineer.

The case was date specified to July 16, 2018.

NEW BUSINESS

PB Case #PL2018-00016
Map 41 Lot 6-120
JE POWER EQUIPMENT LLC - 47 Bridge Street - Minor Site Plan Review to allow outside display

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. Brandon Jusczak came forward to discuss the proposal of using outside space for equipment display. He explained they were a power equipment store and would like to have an outside display of lawnmowers, zero-turn tractors, ride-on tractors, etc. They had cleaned up the property and installed fencing, so they could have a nice display on the side of the property.

Mr. McNamara asked where the business was located and if there would be any equipment larger than ride-on mowers. Mr. Jusczak said they wouldn't have larger equipment. He described the location as being on Route 38 next to Pips and across the street from Metropolis Auto. Mr. McNamara inquired if it was an existing business and how much space was being proposed for use. Mr. Jusczak answered yes; they were looking to use the first two parking spaces (off the State right-of-way) along the fence line so equipment could be seen by southbound traffic along Route 38. Mr. McNamara saw there was information submitted regarding specific dates/times that customer vehicles were in the parking area and wanted information to support the elimination of two parking spots. Mr. Jusczak replied there was a question of available parking for the other tenants and therefore conducted a small analysis. There were no negative effects to other tenants and the proposal had not created a safety issue. Mr. McNamara wanted to know if the equipment being displayed outside was taken in at night. Mr. Jusczak answered yes.

Mr. Dadak inquired if any maintenance was being done on the equipment. Mr. Jusczak answered yes; in the service shop. Mr. McNamara asked if the equipment being displayed was new. Mr. Jusczak answered yes.

Mr. Gowan told the Board he counted forty parking spots in the plaza. Based on the parking analysis, he didn't feel there would be a problem with the proposal (in terms of available parking). He had never seen the plaza parking full given the way the parking staggers amongst the tenants.

Mr. Clark recommended that the plaza (or business) not permanently lose the three parking spaces. He didn't want new curbs, or a permanent display area set up. Mr. Jusczak replied they would not be altering the property. Mr. Clark suggested any approval include the condition to leave the (existing) parking intact and allow the applicant to use the space as a static display.

Mr. Dadak asked for the current hours of operation. Mr. Jusczak replied normal hours were 8am-5pm, on Thursday they were open until 7pm and Saturday they were open until 2pm (pending the season).

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

Mr. Gowan said he was going to suggest that no piece of equipment exceed the fence height, but he saw in the photographs submitted that the roll bar on all the vehicles exceeded the fence height. He didn't think that was

objectionable but wanted to ensure that there was nothing inordinately higher. Mr. Jusczak commented that they weren't going to block any traffic from residents behind them. The equipment in the photographs demonstrated the tallest equipment they would have.

Mr. McNamara questioned how many mowers would be on display at any one time. Mr. Jusczak said it would alternate but remain approximately five. Mr. Montbleau asked if there would be different types of equipment for winter. Mr. Jusczak replied in the winter they would have snowblower equipment; small two-wheeled portable machines. There would be no heavy-duty equipment on the property.

Mr. Gowan told the Board he scaled the parking space size in the specified area as 8ft.x20ft. (the spaces being end-to-end and not side-by-side). He suggested the threshold of the approval be limited to using the two parking spaces (defined area) rather than using a specified number of equipment. Mr. McNamara wanted the applicant to understand if the Board granted an approval, the equipment would need to stay in the defined area and not be moved to another area on the property. Mr. Jusczak understood.

Mr. Doherty believed the equipment had been on display for several months and didn't feel they were a nuisance. Mr. Gowan explained that the equipment had been displayed and the applicant was made aware of the need for an application to the Planning Board. Mr. Clark inquired if the Board needed to legally define which parking spaces were being approved. Mr. McNamara answered no; the parking spaces had been marked in the diagram sent to the Board.

MOTION: (Montbleau/Clark) To accept for consideration the request for the minor site plan proposal for a display area.

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

MOTION: (Montbleau/Dadak) To approve the request for the minor site plan proposal for a display area.

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

PB Case #PL2018-00017
Map 32 Lots 1-146, 1-146-2 thru 1-146-68 & 1-149
SKYVIEW ESTATES, LLC - Skyview Estates Phases 1 & 2 - The purpose of this plan is to seek revision of plan note #10 regarding restrictions on irrigation from the Community Well System for both Phase I and II plans. A proposed modification to the existing slopes within the Phase II open space may also be discussed.

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. Montbleau stepped down. Mr. Olsen was appointed to vote.

Representing the applicant (John Gargasz – Manager and Member of Skyview Estates, LLC) was Attorney Andrew Prolman. He told the Board they had come forward to discuss their proposed amendment to Note 10 on the Phase I & II plans. He stated they were proposing a change although they didn't believe it was necessary because they believed they were in compliance with Note 10 as it was written and as it was intended. After conducting thorough research, reviewing meeting minutes and having discussions with 'key players' they believe that Note 10 meant no 'underground' irrigation from the community well system. While they respectfully disagree with Mr. Gowan's letter (of April 12, 2018), they are nevertheless proposing a modification to Note 10 to match what Pennichuck Water required in the deeds. Prior to the meeting Attorney Prolman

submitted a packet of material (dated May 15, 2018) to the Board. Aside from that information, he provided a brief explanation and time line of the project history and water system.

Attorney Prolman then reviewed the information contained in the packet (dated May 15, 2018) submitted to the Board:

> ***Note 10 currently states:***
> *10. No irrigation from the community well system is allowed and this limitation to be memorialized in each property deed.*
>
> ***Proposed modification of Note 10 to match the requirements of Pennichuck East Utility, Inc.:***
> *In accordance with the Skyview Estates Protective Covenants and the March 7, 2011 Pennichuck East Utility, Inc. Standard Water Agreement, the installation of in-ground irrigation systems and the installation of water wells on house lots are prohibited, and this prohibition shall be memorialized by deed restrictions.*
>
> Exhibit A: May 14, 2008 Letter from John J. Boisvert, Chief Engineer of Pennichuck;
> Exhibit B: Pertinent provision of the Pennichuck East Utility, Inc Standard Water Agreement (first three pages of agreement);
> Exhibit C: Pertinent provision of the Skyview Estates Protective Covenants;
> Exhibit D: Sample Warranty Deed;
> Exhibit E: Letter from Edward N. Herbert Associates, Inc. (undated but emailed May 14, 2018);
> Exhibit F: November 2013 emails between counsel approving the proposed project documents.

Attorney Prolman told the Board they respectfully disagreed that they were out of compliance, they were proposing a modification to Note 10 so there would be no question going forward that they were tied to the Pennichuck Agreement and Covenants that were approved and put on record.

Mr. Gowan felt the information was clearly presented. He said the current language was always how he understood the restriction to be until an abutter to the project spoke differently. He said the note was added to the plan early-on and believed it was there before Pennichuck accepted the system. He didn't have any argument with what Attorney Prolman was saying, except that the note as it reads today doesn't make the differentiation being suggested. He felt the proposal was a reasonable resolution.

Mr. Dadak understood there was a lot of land that still belonged to Skyview Estates, and the system was built to supply water to all the homes expected to be built. He said the system was currently adequate and wanted to know if it would remain to be once all the homes were built. Mr. Gargasz came forward and said Pennichuck does extensive modeling before they approve any system. There are two wells that serve the system (192-bedroom buildout). He discussed the testing process done to monitor data that modeled capacity at full buildout with full utilization. Conservatism is then applied to that model because when Pennichuck takes ownership they own both the quality of water supply and the quantity in perpetuity. Mr. Dadak wanted someone to refresh him memory as to why a note was added to the plan for no underground sprinkler systems.
Mr. Gowan replied the note was not a condition of approval, it was a plan reference note stating there shall be no irrigation from the community well system. He commented that Pennichuck wouldn't have bought a system without being very confident that they could provide water. Mr. Clark questioned if Pennichuck had any concerns with backflow, contamination into the system or loss of pressure because of other underground systems. Mr. Gargasz stated there was a well radius around the system and no mention of concerns.

Mr. Doherty recalled other developments installing private wells, even though they have community wells (such as at Garland Farms). Mr. Gowan said Garland Farm wrote homeowner association documents in such a manner that if a well was installed the whole association had access to it. He understood from Town Counsel that the Town could not regulate 'irrigation' wells; however, homeowner association documents could regulate such.

Mr. Clark inquired who and by what mechanism the plan would be enforced. Mr. Gowan replied (per advice of Town Counsel) the Town would enforce it by requiring that all future deeds reflect the absolute prohibition and somehow have the (applicant's) attorney go back and change all the deeds that are already done. Knowing that the Board didn't get into the subject of deeds, Mr. Clark questioned how the plan in front of them differed from other plans. Mr. Gowan replied there was a note on the plan in front of them that specifically called out there was to be a recording in the deeds. Mr. Clark understood that they didn't go back into the past (to review deeds). Mr. Gowan answered no; the Town (including the Assessor) didn't review the deeds. He said this was a learning opportunity for the Board to stay out of 'deeds' with future plan approvals. He commented that the clarification being sought would address the issue. In terms of what the Board did in the future, he learned that the language can be 'tricky'. He said the note was contained on the plans for Phase I & II, but it wasn't interpreted so literally in the past.

Attorney Prolman stated if the Board was to consider approval, they had no objection to having the proposed language approved by Town Counsel.

PUBLIC INPUT

Mr. James Fischer, Scenic View Drive asked the Board if the applicant was trying to modify the note on the plan. Mr. McNamara answered yes; the applicant proposed alternative language that was stronger than the existing language. Mr. Fischer wanted to know if the applicant had to commit to the note if the modification was not made. Mr. McNamara replied the applicant was asking to amend the note so there will be no issue. Mr. Fischer questioned if the request to modify the language was an appeal of an approved plan and if the developer was trying to reverse one of the approval conditions and not modify actual construction. Mr. McNamara answered no; the applicant was not trying to reverse a condition. He believed it was a further explanation of the condition. Mr. Fischer asked that the letter he submitted to the Town (dated March 29, 2018- Regarding- Non-compliance and proper deed restrictions at Skyview Estates) be read into the record. Mr. McNamara read Mr. Fischer's letter aloud.

Mr. Fischer shared a copy of a letter from Bruce Lewis (water engineer for developer) dated November 22, 2010 that indicates 'No Irrigation', within the table – Design Flow and Permitted Production Volume. In another letter dated April 28, 2011 from the Department of Environmental Services ('DES') it indicated that the owner requested, and DES approved, that the number of residential units originally approved for the system be allowed to increase under the provision that irrigation would no longer be allowed at the subdivision. It also stated that DES specifically noted as a reminder and for the developer's reference that prohibition of irrigation at the system became a condition of the system's approval with DES on November 22, 2010. Mr. Fischer said the reason it was put there was because originally the subdivision was only twenty-three houses. He said they wanted to increase the home count to sixty-four, but the only way to do it was to place the restriction or there wouldn't be enough water. The letter also stated that Mr. Lewis indicated irrigation could double the water use. In 2006 Mr. Lewis felt 40-gallons of water per minute from the two wells for the proposed twenty-three lot subdivision was more than enough; he estimated 25,000 gallons of average water use per day as the design flow criteria. Mr. Fischer said a question was asked of the Board if consideration had been given to a restriction on in-ground irrigation systems; the Chairperson said the Board would add it as a condition for the plan approval on October 18, 2010. Later, it was further amended saying that any irrigation with water drawn from the community well system was prohibited. He pointed out that Mr. Zohdi (project engineer) went on the record (October 18, 2010) and said there would be no irrigation systems.

Mr. Fischer stated Donald Weare, President of Pennichuck provided direct testimony to the New Hampshire Public Utilities Commission on June 11th concerning irrigation and stated that the Pennichuck Water Agreement requires deed restrictions to be included in any lots developed or sold preventing irrigation systems from being installed. This is consistent with the restrictions agreed to by the developer in the well approval process. He then stated on September 4, 2014, Attorney Prolman personally told the Planning Board that he wrote the

Homeowner's Protective Covenants, which included strict rules about 'no irrigation'. He said Attorney Prolman further commented there were neighbors in adjacent neighborhoods that asked to tap into the water supply; the neighbors were told 'no' because there was no capacity. That statement was echoed by Mr. Gargasz November 3, 2014 when he stated there was no excess water capacity. Mr. Fischer pointed out that the subject of 'no irrigation' came up many times before the Board after the development began and the Board was troubled by the submitted photograph showing all the hoses because it indicated that the 'no irrigation' condition was somehow bypassed. The photograph previously submitted to the Board was displayed. On November 11, 2014 a member of the Board expressed their opinion that the setup of multiple hoses attached to one external faucet flew in the face of the 'no irrigation' restriction. On September 4, 2014 a Board member recalled asking if there was adequate water in the area for the number of homes being proposed and assumed the State Regulations reduced the requirements based on the fact that people would not have sprinkler systems. On July 1, 2013 the Board said the only use for non-potable water consumption was one tap at the community garden; there would be no other irrigation anywhere within the subdivision; the Board agreed hand-held watering was okay, including irrigation for a food garden and to sustain animal life. At that time the engineer Mr. Zohdi told the Board that they could have gotten seventy lots out of the subdivision, but only had enough water for sixty-two homes.

Mr. Fischer stated at the time the irrigation condition was put into place the developer was made aware of the requirements and agreed to it. Water analysis performed by the developer's own water engineer would not have supported the additional forty-one homes without the restriction. He believed it didn't matter if the developer was in compliance with Pennichuck's Agreement or if irrigation was above or below ground. He told the Board that the issue was that the developer was not in compliance with the Town's conditions of approval for the subdivision. He said if irrigation was allowed to continue, the water engineer's original water flow calculation used to approve the system was meaningless.

Mr. McNamara believed he understood Mr. Fischer's point and believed most of the materials submitted had occurred in the early part of the development, prior to Pennichuck taking over. He read aloud a letter submitted by the applicant from Pennichuck Water Chief Engineer John Boisvert, dated May 14, 2018. The letter clarified 'outside water use' and indicated that the system was permitted by DES and outlined the provisions contained in the agreement between the Skyview developer and Pennichuck East Utility, Inc. ('PEU'). Those provisions were as follows:

- In ground lawn and land irrigation systems (manual or automatic) are prohibited in Skyview via deed restriction.
- Private wells are not allowed within the Skyview development for either domestic or irrigation use.
- Outside water use is permitted subject to the PEU tariff and the PEU agreement with Skyview. The tariff allows PEU to restrict outside water use based on several factors including well capacity, environmental conditions (drought), and other factors.

The letter states that these conditions and the PEU/Skyview agreement allow for outside water use by means of overland hoses and above ground sprinklers as conditions permit. PEU and Skyview discussed lawns extensively during design and approval process. The PEU understands watering lawns is part of the above referenced water conservation provisions. In addition, the PEU monitors water use from the Skyview pumping station and PEU has the ability to impose water use restrictions to endure adequate before domestic capacity is impacted.

Mr. Fischer said in the Pennichuck Agreement it states if something was missing (and they aren't notified) Pennichuck could ask the developer to fix it within 120 days. He noted Pennichuck could get out of the agreement. He said he didn't want to see new owner's buy a house in the area and not have water in the future. Mr. McNamara responded that the Board was are of the situation in the area.

In response, Attorney Prolman said when Mr. Zohdi (project engineer) stated (in 2010) they wouldn't have irrigations systems, it was true because they didn't have any irrigation systems. He said there were no underground irrigation systems per the Pennichuck agreement, Protective Covenants, deeds, etc. They believe

they are in compliance with the 'no irrigation' provision because it was their understanding that above-ground irrigation (such as a sprinkler) was fine since it didn't use nearly as much water as an 'irrigation system'. However, so there's no issue going forward, they are proposing to amend the plan note to match what they've been doing, and what they are required to do (per Pennichuck). Attorney Prolman reiterated they believe they're in compliance and pointed out they have the support of Pennichuck and the project engineer Mike Gospodarek of Herbert Associates.

Mr. Fischer commented that the Board required the applicant to comply with the note on the plan. Regarding above ground irrigation, he said it was not necessarily the most efficient system and actually used more water than in-ground systems.

Mr. Joe Ducey, 11 Aspen Drive told the Board he lived in the neighborhood for less than a year wanted to know if there was an actual problem with the water because he was hearing dire predictions about the water supply. Mr. McNamara replied one of the reasons a community water system was required in the development was because of the problems that exist in that area of Town. He said that had been the situation for years and years and years; the Planning Board and Selectmen were aware of it, as were the residents in the area. Mr. Ducey stated in writing contract and deeds, it was unrealistic to tell someone they could never water their lawn and didn't believe it would be enforceable where they live. He said there was an obvious difference between watering a lawn and having a buried irrigation system. Mr. McNamara replied an absolute restriction would be difficult. Mr. Ducey told the Board when people are buying the houses it's presented that they could have above-ground, not in-ground irrigation. He said that was the agreement and if he was told he could never water the land it would change what he would have done. Mr. McNamara replied currently the water system was owned and administered by Pennichuck but overseen by two different State boards. From what he understood if something happened to either of the wells, Pennichuck would be 'on the hook' to contractually remedy the situation. He explained prior to the system being installed there was extensive testing done to accommodate the entire number of homes that were proposed to be built. Given the number of additional houses yet to be built, Mr. Ducey felt it was 'on the Board' to make sure there would not be a problem going forward. He noted the public was hearing two different sides of the same story and he was in the middle as a homeowner. He said it was important for the Board to decide if another well was needed; if they don't, it should be published so everyone knows. He said accusations shouldn't be thrown and then have people walk away.

Mr. Rick Galuppo, 15 Aspen Drive said he attended the meeting with his wife and a couple dozen people residing in the Skyview development. He said they were concerned about their neighborhood as well as the adjoining neighborhood. They would like to water their lawns and also be good neighbors with everyone. It was a big concern to remain friendly and felt the (water) issue should be left to Pennichuck, the Planning Board, and the attorneys. He stated they would abide by the decision to keep the friendly relationships.

Mr. Lynde asked Mr. Galuppo how long he had lived in Pelham. Mr. Galuppo replied three and a half years. Mr. Lynde explained the Town had people seeking a solution to water issues approximately five years ago. In his view the whole area was stressed. He said the Town had been trying to find a solution to those people that don't have sufficient water, which is why the issue of irrigation was being discussed. Two years ago, the Town had a water ban. Mr. Lynde stated there was an issue in the area because of ledge. Mr. Galuppo commented he wasn't in tune with the issues when he moved in; they had a copy of the deed that indicated no underground irrigation, which they were fine with. He moved from an area that had common sewers, natural gas and community water. He told the Board they complied with 'no irrigation' and with the rules of Pennichuck. He said they were doing their part and hoped that the issue was adjudicated properly and fairly.

Mr. Michael Soby, 9 Marie Avenue told the Board he'd known the land for a long time and as an abutter had no problem with his neighbors. The frustration was the stress being placed on the water. He felt there was no indication that the Pennichuck report or analysis considered the impact on other veins going to the abutters. He understood there wasn't much that could be done if he lost water but pointed out many Townspeople had come forward with their frustration looking for solutions. He said their rights needed to be considered. Mr. Soby

stated he had lived in Town over twenty years and didn't want his impact of water to get cut in half or went to zero. He added a lot of people had serious problems; they were frustrated that the new site didn't. He spoke about how the level of homes had magnified and questioned what it would do for the quality of life in the area, since it was already overly stressed.

Mr. Fischer came forward again and told the Board he felt the decision should be determined by the water engineer's data and whatever number of bedrooms it states. He said if there were too many bedrooms approved, the bedroom count should be altered. Concerning Pennichuck, he discussed how they handle situations by bringing water in until it recovers, or by digging another well. He pointed out that Pennichuck didn't pay for it completely. Given that property has already been conveyed, Mr. Fischer didn't see how the Board could change a condition. Mr. McNamara clarified that the discussion involved a note on the plan, not a specific condition for approval. Mr. Fischer disagreed and said it was definitely a condition. It was stated and contained in the minutes. Mr. Gowan stated it may well have been a condition on an earlier version of the plan, but the actual 'Notice of Decision' didn't specifically refer to that note. Mr. Fischer asked the Board to review Note 14 for consideration: *'This subdivision/community water system is designed for a maximum of 3 bedrooms per dwelling.'* He ended by questioning if there were houses with four-bedrooms.

Attorney Prolman came forward and told the Board they rely upon people who are experts in the field, such as Bruce Lewis (water design engineer), John Boisvert and Don Weare of Pennichuck, Steve Keach of Keach Nordstrom (Board's engineering review firm), etc. to get the system approved, up and running. While there are comments and criticisms, he asked the Board to rely on the experts as well. He noted Mr. Fischer was correct that the system was based upon a count of 192 bedrooms. The count is on track for sixty-four units. Attorney Prolman stated there was a period of time where it was owned by Skyview Estates and operated by Bruce Lewis; however, it was now owned by Pennichuck and regulated by the State of New Hampshire, DES and Public Utilities Corporation. He reiterated they believed they were in compliance with the note as written but to address the concerns and make the issue go away, they are suggesting a modification of the note to match what they area required to do.

Mr. Bergeron stated he was new to the Board (by one year) but was aware of the overall problem potentially occurring in the area. He asked Mr. Fischer if he was part of the association and had restrictions on his property or if he was an outside abutter. Mr. Fischer replied he was an abutter. Mr. Bergeron questioned if he was included with the people who had deed restrictions for water use or part of the community well system. Mr. Fischer answered no. Mr. Bergeron asked if he had a copy of the proposed language. Mr. Fischer answered no and said it wasn't his place to make the decisions. Attorney Prolman provided Mr. Fischer with a copy of the proposed amendment to Note 10 (of the plan). Mr. Bergeron said when he read the language it seemed the change was in accordance with the agreements already recorded as covenants and deed restrictions. He felt it was a clarification of the language and not a 'lifting' of a restriction or allow underground sprinklers or abuse of over-ground sprinklers which would be enforced by the covenants. He said the Board didn't enforce covenants or deed restrictions. Mr. Bergeron asked Mr. Fischer what he felt was not right with the proposed language as opposed to the language in the approved plan. Mr. Fischer replied he would need time to review the language before providing comment. Mr. Bergeron wanted to get as much information as possible and said it may be necessary to have a moratorium if they couldn't put water into the houses. He said for now they have to deal with 'what is' and voiced concern about everyone having an adequate amount of water. He noted no one could guarantee there would be water. He's heard that community wells aren't the best idea because they aren't a guaranteed source of water and at the same time noted that private wells also failed sometimes. Mr. Bergeron asked Mr. Fischer what difference he would make to the proposed change in wording of Note 10. Mr. Fischer commented that the first sentence referenced the Skyview Estates Protective Covenants, which he believed were written incorrectly. Mr. Bergeron commented that original language only indicated that the limitations would be memorialized in each deed. He found the new language added a protective layer. Mr. Fischer believed the language was trying to say they were in compliance with Pennichuck and the covenants and in response he felt Pennichuck and the covenants were not in compliance with the Board's conditions for approval.

Mr. Doherty saw that the new statement didn't mention 'community well' which became an odd situation in the language indicating the residents couldn't have any irrigation from a private source. As example, he said they wouldn't be able to put gutter water into a holding tank and use it for irrigation. It seemed to him that Pennichuck didn't want people to have any private water source stored on the property. Mr. Bergeron didn't think they had enough information to make a good decision. Mr. Doherty pointed out that the original (current) note referenced 'no irrigation from the community well', so the residents could presently irrigate from their own private source, such as take water from the sky and store it on their property. Because the proposed language didn't include the words 'community well system' he believed it basically prohibited all water. Mr. Doherty recalled when the plan came in front of the Board he had asked that the most northerly lot (on the left .590 acre lot) have a pipe from the well field into the Town's right-of-way. The thought was if there was ever a possibility of Pennichuck expanding the water supply toward Scenic View an additional well might be able to be located on Town land. He remembered having discussions but didn't know if the developer followed through.

Mr. Dadak discussed his understanding of the water permitting process.

Mr. Steve Keach of Keach Nordstrom (Board's engineering review firm) stated in connection with the Skyview project, he believed the developer went forward with a three-bedroom per unit restriction and 450 gallons per day (per home); for a project of 64 units. He said the number being divided would have originally come from the source of the water after conducting pump and draw-down tests through the DES protocol to determine well yield. He said as a plan goes through the review process there are refinements that happen. He said it was suspected and anticipated that Pennichuck would be the receiving operator of the system, but it wasn't a given. From his remembrances the development team sought to accommodate what they anticipated Pennichuck would require. He pointed out that the Pennichuck Agreement was their 'standard' agreement and he had seen in many instances where Pennichuck is the system owner/operator. Having said this, it seemed that the plan matured without anyone paying much attention to Note 10 until the present meeting. He questioned if Note 10 would have been worded the same if it was the last note added to the plan after the materials were reconciled (with State approvals, Pennichuck and the balance of the plan); he suspected it would not. Mr. Keach believed the question came down to how the word 'irrigation' was defined.

Mr. Clark wanted to know in Mr. Keach's experience how the term 'irrigation' is used Mr. Keach said he never had a reason to contemplate it before. He felt it was the essence of the question. He recalled making a remark at a previous meeting (in another case) about there being other sources for irrigation, such as rain barrels, but didn't think anyone would suggest it wasn't an acceptable practice. His point was through the process virtually every aspect of the project was refined from the plan that the applicant's consultant submitted to the Planning Department on day one. He suspected Note 10, as currently written, was inserted in anticipation of a limitation. Mr. Keach believed the rated flow volume was the number that mattered. He said if Pennichuck started getting system consumption readings that exceed the figures, they'll be forced (as the operator) to do something about it. Those readings are part of Pennichuck's data base; however, it's reportable to the DES. Mr. Clark said he would be interested in seeing what the numbers were since it was public information.

Mr. Lynde heard that tests were run and there was an assumption that yield was sufficient, which was based on a standard or average. Mr. Keach replied that was the rated capacity of the system. Mr. Lynde questioned if any system would have the same rating or was is weighted based on the location. Mr. Keach said it was a weighted average of flow. He said there had to be a rating of 150 gallons per day, per bedroom for residential occupancy. Mr. Lynde wanted to know if the 28,000 gallons (specified) was appropriate for the site or was it an average. Mr. Keach replied the DES Water Engineering Bureau believes it is appropriate. Mr. Lynde viewed the language in the current Note 10 as the community well cannot be used for irrigation (regardless if someone was using a hose, etc.) and didn't restrict someone putting in a well. He felt the proposed Note 10 put no limit on the community well water if someone wanted to use a hose. Mr. McNamara believed Mr. Keach addressed that in terms of the landowner determining the allocation of water usage, subject to the restrictions of Pennichuck and the State. Mr. Keach said it was a question of allocating a prorated percentage of the overall resource. By

virtue of all the approvals given, that meant up to 450 gallons per day, per home. Mr. Lynde thought it would be interesting to have Pennichuck speak to the Board.

In reading a portion of the Pennichuck Agreement, Mr. Bergeron wanted people to understand that the Town didn't enforce the agreement. He saw that Pennichuck seemed to release itself from all liability of water supply. He believed the Board needed more information and input from Town Counsel to be able to make an informed decision.

Mr. Doherty asked Mr. Keach if he saw the need to change the language contained in Note 10. Mr. Keach replied it came down to how the Board defined 'irrigation'. He said they would have to decide if someone using a water hose to water their lawn involved in the act of irrigation. He reiterated there were refinements made to the plan that culminated in the agreement with Pennichuck that was put in the protective covenants (verbatim). He said it was a refinement of knowing the site was going to have a community water supply system and seeking out an operator. He stated it was all one package, yet there was an inconsistency between how one is forced to reconcile the agreement with Pennichuck, the covenants and Note 10. He saw the language in Note 10 as being general in comparison to the text of the covenants.

Mr. Doherty said the word 'irrigation' seemed to be the sticking point for some people, but for him the sticking point were the words 'community well'. He discussed definitions and initially commented that it was the Zoning Board's job to interpret language/definitions; but corrected himself in this case given the plan was a conservation subdivision. He stated the Planning Board had the right to interpret any matter within a conservation subdivision (as an Innovative Land Ordinance) without involving the Zoning Board.

Mr. Bergeron didn't want to render any decision that would step into a potential issue and suggested they hold their vote until they could have Town Counsel's input and they could conduct additional research. Mr. Gowan told the Board that Town Counsel (John Ratigan) was involved when Mr. Fischer submitted his concerns. Since that time Attorney Ratigan has communicated with Attorney Prolman.

Having spoken with Bruce Lewis and John Boisvert (Pennichuck), and read through the meeting minutes, Attorney Prolman told the Board they were in compliance with the current Note 10 on the plan. They 100% believe that 'irrigation' had to do with underground irrigation. Mr. McNamara referenced the correspondence from Mike Gospodarek of Herbert Associates that underlined the fact that irrigation was necessary to maintain trees, shrubs, etc. which was built into their calculations. The letter suggests if irrigation were prohibited, there might be erosion, death of the lawns, trees etc. which would lead to further complications with the water issue. Attorney Prolman spoke the approval process and referenced the August 2013 meeting minutes which spoke to a 'grass panel' (rather than a sidewalk) and 'homeowner's lawn', which he believed indicated the Board intended the homeowners would have grass up to the road. He stated it didn't make sense not to allow watering. He said they would happily supply the Board with the full Pennichuck Standard Agreement, which in summary indicates if Skyview builds the system to their specifications they will own and operate the system going forward. He reiterated to the Board that Pennichuck was fine with the proposal and included in their letter that hoses were fine.

Mr. McNamara understood that several Board members wanted additional information and the bulk of it would be a letter from Town Counsel regarding the change from the current Note 10 language and the proposed language for Note 10. Specifically, if the proposal language was acceptable to move forward, or if the Board rejected the proposed language, where would it leave them in terms of enforcement. Mr. Gowan felt the answer to the Board's questions were reflected in his letter to the Board; the Note 10 will be interpreted literally until such time as its changed. Mr. McNamara said the Board would like a further answer. Mr. Gowan said he would write the question and confer with Mr. McNamara before sending it to counsel.

The case was date specified to June 4, 2018.

NON-PUBLIC SESSION
Not requested.

DATE SPECIFIED PLAN(S)

June 4, 2018
PB Case #PL2018-00017 - Map 32 Lots 1-146, 1-146-2 thru 1-146-68 & 1-149 - SKYVIEW ESTATES, LLC - Skyview Estates Phases 1 & 2

June 18, 2018
PB Case #PL2018-00001 - Map 1 Lot 5-124 - HERBERT, Christopher - Mammoth Road

July 16, 2018
PB Case #PL2018-00011 - Map 6 Lot 4-137-28 - DREME BUILDERS – 30 Longview Circle

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:20pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary