

**APPROVED**

**TOWN OF PELHAM  
PLANNING BOARD MEETING MINUTES  
March 18, 2019**

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

Secretary Paul Dadak called the roll:

**PRESENT:** Roger Montbleau, Paul Dadak, Tim Doherty, Jim Bergeron, Blake Clark, Cindy Kirkpatrick, Selectmen Representative Hal Lynde, Alternate Derek Steele, Alternate Paddy Culbert, Alternate Richard Olsen, Alternate Samuel Thomas, Planning Director Jeff Gowan

**ABSENT:** Alternate Bruce Bilapka

Mr. Montbleau congratulated Cindy Kirkpatrick for being elected to the Board. He also congratulated everyone that ran for election and put in the hard work to donate their time to the Town.

**ELECTION OFFICERS**

Mr. Dadak nominated Roger Montbleau for Chair, Jim Bergeron for Vice Chair and Derek Steele for Secretary. Mr. Gowan stated Mr. Steele was not a full-member and could not be nominated. Mr. Dadak corrected the nomination to have Blake Clark for Secretary. Mr. Lynde stated he would second for discussion. Mr. Bergeron commented if the Board was going to follow Robert's Rules of Order, nominations should happen singularly. He questioned if the Board would be adopting a formal procedure or have a 'sweep' for one nomination. Mr. Lynde noted the Selectmen voted the positions one at a time.

Mr. Dadak nominated Roger Montbleau for Chair. Mr. Lynde seconded. Mr. Bergeron didn't feel there needed to be a 'second'. Mr. Doherty felt it was fine to 'second' for the nomination of officers. The nomination was open for discussion. Mr. Lynde believed if no one had anything to say the Board would then vote. The Board proceeded to vote.

**MOTION:** (Dadak/Lynde) To elect Roger Montbleau as Planning Board Chairman.

**VOTE:** (5-2-0) The motion carried. Mr. Doherty and Mr. Bergeron voted in opposition.

Mr. Dadak made a motion to elect Jim Bergeron for Vice Chair. Mr. Bergeron declined the nomination. Mr. Clark asked for a description of the officer's positions. Mr. Montbleau replied the Vice Chair would fill in during the absence of the Chair. Mr. Doherty stated (the description) would be in the ByLaws.

Mr. Bergeron nominated Tim Doherty for Vice Chair. Mr. Doherty declined the nomination. In the form of a motion, Mr. Lynde nominated Blake Clark for Vice Chair. Mr. Dadak seconded the motion.

**MOTION:** (Lynde/Dadak) To elect Blake Clark as Planning Board Vice Chairman.

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

Mr. Lynde asked if anyone was interested in the Secretary position. Mr. Bergeron nominated Paul Dadak for Secretary. Mr. Dadak declined the nomination. Mr. Montbleau nominated Cindy Kirkpatrick for Secretary. Mr. Doherty stated the Chair couldn't make the motion. Mr. Lynde made a motion to elect Cindy Kirkpatrick as Secretary. Mr. Clark seconded. Mr. Dadak discussed the Secretary's role.

**MOTION:** (Lynde/Clark) To elect Cindy Kirkpatrick as Planning Board Secretary.

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

### **MEETING MINUTES**

#### **March 4, 2019**

**MOTION:** (Lynde/Doherty) To approve the March 4, 2019 meeting minutes as amended.

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

Mr. Gowan asked the Board's position regarding alternates and questioned if they would appoint the positions at a later meeting. Mr. Montbleau understood there were two openings and wanted the Board to consider taking action. He stated the two alternates that had been with the Board for the past several years were present and seeking re-appointment. He had an application from Paddy Culbert. Mr. Olsen didn't submit anything but stated he was seeking re-appointment. He recommended that the Board take action to see if they would appoint the two alternates to continue.

Mr. Lynde made two motions: 1) To appoint Richard Olsen as an alternate member of the Planning Board with a term expiring 2022; 2) To appoint Paddy Culbert to a three-year term as an alternate member of the Planning Board with a term expiring 2022.

**MOTION:** (Lynde/Doherty) To elect Richard Olsen as an alternate member of the Planning Board with a term ending March 31, 2022.

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

-----

**MOTION:** (Lynde/Dadak) To elect Paddy Culbert as an alternate member of the Planning Board with a term ending (March 31) 2022.

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

Mr. Gowan commented we have a full Board tonight so neither of the reappointed alternates will be voting of course, but you will both need to be sworn in before the next meeting and I'm assuming Mr. Doherty you got sworn in and Ms. Kirkpatrick you were sworn in. For the record I just want to be sure. Both were yes. For the record Mr. Doherty wanted Mr. Lynde to answer the same question then. Mr. Gowan stated that's a good point. Mr. Lynde replied he would be sworn in tomorrow, that's when his term officially ended. Mr. Doherty replied Mr. Lynde had been making motions and voting so are you sworn in for today? Mr. Montbleau asked Mr. Gowan are we going to have to start the motions over? Mr. Gowan responded that question was above his pay grade and knowledge so he does not have a recommendation. Mr. Lynde stated he remained in his office until someone replaced him; next Selectmen meeting is tomorrow night (March 19, 2019). Mr. Gowan said the Board had always held election the first meeting in April, the difference this year was the former Chair was no longer on the Board. He noted that Mr. Lynde indicated he was still the sitting Chair of the Selectmen. Mr. Montbleau added he was still the Selectmen Representative to the Planning Board. Mr. Gowan had no further comment.

Mr. Bergeron felt it was an easy situation that could be cleared up with the Board's ByLaws, if the language didn't already exist. He said they could have a discussion and include a line in the ByLaws to indicate officers

would be appointed during the Board meeting following Town Meeting. He said they should also have a statement regarding the Selectmen Representative position. He believed it was a technicality.

Mr. Doherty stated he would like to seek Town Counsel's opinion to see if any of the motions and votes made by the Board were legally binding given that the Selectmen's Representative failed to be sworn in. He asked Mr. Gowan if he notified Mr. Lynde to be sworn in. He wasn't sure if anything the Board had just done was legally binding. He didn't think Mr. Lynde should make any motions or vote. He noted that no one could be appointed in Mr. Lynde's place because he was a Selectmen's Representative. Mr. Gowan stated they could forward the draft meeting minutes to Attorney Ratigan and ask if there were any issues. He said if Mr. Lynde believes he was still a Selectmen as of today, and the Selectmen haven't yet made a vote as to who their representatives to various boards would be, he wouldn't argue that position. However, he felt Mr. Doherty's point was valid and the Board should know the answer. If there is a consensus of the Board, he would send the draft minutes for review. Mr. Doherty pointed out it (Mr. Lynde's status) wouldn't affect the 'election of officers' vote (count), but Mr. Lynde may have made some of the motions. He said moving forward with the applications in front of the Board, he didn't want to end up in a lawsuit due to an un-sworn in Selectmen Representative voting.

Mr. Lynde stated he would stand down for the meeting, although he believed he would still be the Selectmen's Representative to the Planning Board after the March 19<sup>th</sup> Selectmen meeting. He felt he was still in office but said he didn't have an answer to the question raised.

Mr. Montbleau understood the Board would seek Town Counsel's opinion regarding the Board's action prior to the conversation. Mr. Gowan heard there was a consensus of the Board that they weren't concerned with the validity of the election of officers but would seek Town Counsel's opinion for future reference regarding how the Board should proceed if a similar situation occurs. Mr. Lynde will not vote during the Board's proceedings.

## **OLD BUSINESS**

### **Case #PL2019-00002**

#### **Map 22 Lot 7-36**

**CT EQUIPMENT TRADERS (applicant) / DEXTER, Karen (property owner) - 18 Atwood Road – Site Plan Review to allow the parking of construction equipment & trucks on the south side of property for storage only. No sales to be made at this site**

The applicants Mr. Tim Beauregard and Mr. Chad Beauregard came forward to discuss the site plan.

Mr. Montbleau told the Board that he visited the site and spoke with Mr. C. Beauregard and reviewed the site they were seeking approval for. It was his opinion that the proposed site looked more than adequate for what they were looking to do. He asked if any other Board members had been to the proposed site.

Mr. Doherty stated he was very familiar with the site and other businesses currently and previously there. He felt it was highly adequate for what they were doing. Mr. Montbleau shared that opinion. Mr. Bergeron stated he had been on the site many times and mentioned during the previous meeting it had been the staging area for equipment related to the power line work. Previous to that, the site was a place where a landscaper kept his tools and equipment. He felt the location was more than adequate for the proposal as long as it didn't turn into a salvage yard because that type of activity would fall under a different set of rules. He said he was fine with the proposal.

Mr. Montbleau recalled during the previous meeting the Board asked the applicant several questions to be answered. Mr. C. Beauregard submitted a document with responses to those questions. Mr. Montbleau read the document into the record that described the proposed use of the property (*See Attachment*)

Mr. Thomas suggested employees sign a document certifying that they have read and understood how to operate the spill kits (that will be on site). Mr. Montbleau said that document should be kept in the company's business office. Mr. Culbert questioned if there would be a spill kit at each site. Mr. C. Beauregard answered yes.

Mr. Culbert had a problem with the proposed hours of operation being 7am-10pm, seven days per week, with occasional drop-off during off hours. His specific problem was the 'occasional drop-off during off hours'. He heard the abutter testify there were drop-offs at 2am. Mr. C. Beauregard explained there may be times of unpredictable delays due to traffic, weather etc. During the last meeting he heard a complaint about a back-up signal from a vehicle and told the Board that their tow truck didn't have that back-up signal. He noted the proposed location was surrounded by other businesses. Mr. Culbert preferred the operating hours be reduced to 7am to 7pm, six days per week. Mr. C. Beauregard stated their activity on the proposed site was limited and noted there was a buffer around the property. He said it would be tough for them to operate during the suggested reduced hours.

Mr. Clark understood that limiting the hours of operation didn't preclude ordinary noise and nuisance regulation. Mr. Gowan pointed out that sound and noise ordinance was controlled by the Police Department. The Planning Department doesn't have noise enforcement authority. He said if the Board approved specific hours of operation, they enforce such. Mr. C. Beauregard quoted a document from the Pelham Police Department relating to 'noise' and understood the Town had quiet hours from 11pm to 7am. Mr. Doherty questioned the frequency of trips to the proposed site. Mr. C. Beauregard replied they would be accessing the site approximately five days per week. Mr. Montbleau commented that he looked at the site carefully and didn't feel it would have much activity. Mr. Clark noted the Town had a definition for what a motor vehicle junk yard would be and went on to read the language aloud. He wanted to be clear that the Board was not approving that type of location and the applicant would remain compliant. Mr. Gowan stated there were three salvage yards within Pelham. Those yards are required to be licensed by the State as well as have individual consent decrees with the Town. Mr. C. Beauregard told the Board they were limited on space and didn't intend to store 'junk'. When visiting the site, Mr. Montbleau told the Board the equipment was all 'movable' and wouldn't be there long.

Ms. Kirkpatrick inquired if there would be a limitation to twenty-five vehicles, as was mentioned during the previous meeting. Mr. Montbleau replied there hasn't been additional discussion or a motion regarding such. He asked the applicant how many vehicles they expected to be on the site. Mr. C. Beauregard replied they expected to utilize a portion of the area; the equipment was different sizes, lengths and widths. They hoped to grow to be able to utilize the full space, but at this time it would be challenging to put a number on it. Mr. Montbleau said the area was not readily seen from the road and in his opinion there would be no reason to put a restriction on the number because whatever the area would fit would be fine due to the secluded nature of the area and there will be monitoring of the area for discharges. Mr. Culbert heard the applicant testify during the previous meeting there would be no more than twenty-five vehicles; he questioned what had changed since then. Mr. C. Beauregard didn't see a reason to limit themselves.

Mr. Gowan felt it was important to remember the manner in which the site was utilized. He asked the applicant to display the satellite view of their site in relation to surrounding sites. One compelling point was the surface they're parking on was 'pavement'. He wanted the applicant to be aware that they not only needed the ability to get their own vehicles in and out of the site, but the Fire Department (emergency response) also needed to be able to have access. Mr. C. Beauregard pointed out there was a cellphone tower on site that had to remain open/clear for the Fire Department to access.

Mr. Doherty believed the limiting factor was based on the presently leased space; if they were to lease additional space, the applicant would need to come back in front of the Board. Mr. Montbleau told the Board he reviewed the meeting minutes from the approval of the original site, during which the point was made that

the (original) site would be self-limiting depending on what was there. Mr. Doherty reiterated if the applicant leased more of the land at the proposed site, they would need to come back in front of the Board.

#### PUBLIC INPUT

Mr. Michael Brawn, 15 Atwood Road asked that the space be defined and that no trees are cut down. He said he didn't have an overall problem with the site because he couldn't generally see from the road what was being stored. He spoke about the hours of operation and stated the existing garage was limited to 7am to 7pm, six days per week. He said the applicant had random deliveries between 1am and 4am. There were times when no deliveries occur and other times five deliveries in one night occur. He said he had security cameras going back three months to show examples of such. Mr. Brawn wanted to know if an overnight delivery could be dropped off at the existing site and moved during normal hours. Mr. C. Beauregard replied the existing site was also within the commercial zone. He felt there may be some confusion about what property is being spoken about because they don't have the ability to deliver 4-5 units at night. Mr. Brawn noted it was the same tow truck going back and forth every twenty minutes hauling bucket trucks. Mr. Montbleau understood the applicant set a limit on hours from 7am to 10pm and asked if that's what they would maintain. Mr. C. Beauregard said that was their proposal but noted there may be something out-of-normal when they wouldn't be able to meet those (specified) hours. He said it wasn't a regular habit or something they were looking to do. He said it may occur once per month or once every other month.

Mr. Gowan suggested if the Board approved the Site Plan and there were multiple deliveries in one night, it would be considered a code enforcement action for the Planning Department to undertake. He asked the applicant to pay attention and keep after hours deliveries to a minimum and a rarity. Mr. C. Beauregard agreed. Mr. Montbleau asked if that scenario would work for Mr. Brawn. Mr. Brawn answered in the affirmative. Mr. Montbleau summarized that the Board heard the neighbor's concerns about multiple deliveries after hours. He said the applicant indicated such activity would be a rare occasion due to an unforeseen situation and the neighbor was okay with that scenario. Both the neighbor and abutter were in agreement with the proposed hours (7am-10pm seven days per week).

Mr. Gowan told the Board that the sisters who own the property have taken a different approach regarding the property and cleaned the area. He said they understood the need to come in front of the Board for changes and expansions. They were running a clean property.

**MOTION:** (Doherty/Bergeron) To accept/approve the Site Plan as specified in the (information) sheet handed out to the Board. With the condition that employees sign an affidavit that they have read and understood the material regarding the spill containment procedure.

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

#### **NEW BUSINESS**

##### **Case #PL2019-00004**

##### **Map 40 Lots 6-183 & 6-184-1**

##### **CMK EQUIPMENT LLC (Applicant) / NIETUPSKI ET AL (Owner) - Cornstalk Lane (off Patriot Drive) – Proposed 12-Lot Conservation Subdivision**

Representing the applicant was Joseph Maynard of Benchmark Engineering.

Mr. Montbleau asked if the applicant was in front of the Board for a conceptual review. Mr. Maynard said he was there to discuss a conditional use permit for a conservation subdivision. Mr. Doherty called the Board's attention to Zoning Ordinance, Article XV, Section 307-95 – Application Procedure that indicates applicants

must submit a conceptual plan to the Board as part of their yield plan proposal. He explained for the new Board member that the Zoning changed in 2016 and nothing discussed during the meeting would be binding on the Board or the applicant because the presentation would be 'conceptual'. The consultation will be advisory to whether the Board could determine which way they would like to see the applicant proceed either with a conventional or conservation subdivision. Mr. Gowan said the idea was to have a conceptual idea of what open space would look like so the context of a yield plan could be understood. The assurance of a 'yield' would need to be reviewed by Keach Nordstrom (Board's engineering review firm).

Mr. Doherty questioned if abutters were notified. Mr. Maynard answered yes.

Ms. Kirkpatrick 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. Maynard explained there were two pieces of property; one being a small 20ft. wide strip that exists between the parent property (of Map 40 Lot 6-185-14) and the back of the homes along Patriot Drive. Combined, the two properties contain approximately 35.9 acres of land. The lot has frontage off Mammoth Road and off a street called Cornstalk Lane (off Patriot Drive) approved by the Board in 2016. The rear of the lot extends down to Beaver Brook and there is a gravel area also in the rear of the site that falls within the 100-year flood zone. Currently the lot is developed with a single-family home and there is also a pre-existing non-conforming business on the property previously known as F&F Paving. The business use is primarily on the Mammoth Road side of the property; however, there is still an old asphalt plant and rock crushing unit near the middle of the property. Also, throughout the property there are paved driveways and pavement being that a paving company had been run from the property. From speaking with his client, Mr. Maynard said the business was run sometime in the 1940s; the two brothers stopped paving approximately 4-5 years ago.

Mr. Maynard told the Board they would like to develop the property as a conservation subdivision. He said they had a basic yield plan and conservation subdivision layout for the property. A conventional yield plan could contain eleven lots, ranging in size from one to five acres. As part of any subdivision they were looking to take 7-8 acres and leave it with the pre-existing non-conforming business along the Mammoth Road side of the lot. As a conservation subdivision Mr. Maynard said he wanted to talk to the Board about possibly having a one lot density offset. Under the ordinance 40% open space is required and they were looking to leave approximately 65% as open space. The land itself is relatively flat. Any road designs/profiles ranged in grades from 1% to a maximum of 4%.

Mr. Clark wanted to know the area of upland versus the wetland. Mr. Maynard noted the conventional layout (plan sheet 3-5) spells out the lot number, total land area and area outside wetlands. The 100ftx150ft. building box is also shown along with well locations. Mr. Clark asked if it had been called out for the entire parcel. He wanted to know the percentage calculations.

Mr. Doherty recalled a similar 'hybrid' conservation development in the Simpson Road/Tallant Road area. He said they didn't have a provision to make a conventional lot and a conservation subdivision. Mr. Maynard said he wasn't doing that; he was removing eight acres off the roughly thirty-nine acre lot and leaving it as a conventional lot. Mr. Doherty stated the Board had the developer from the Simpson Road area subdivide the conventional lot and then submit a separate plan for the conservation subdivision. Mr. Maynard said he couldn't break the conventional lot off until he came in with the conservation development because the back land wouldn't have legal frontage. He said the proposal was to plat a new road and the subdivision would be on the block of thirty acres. Mr. Doherty asked if there was enough frontage off Cornstalk Lane. Mr. Maynard said currently there was approximately 50ft. of frontage. Mr. Doherty believed having 50ft. frontage on Cornstalk would be enough. Mr. Maynard noted that Cornstalk wasn't an accepted road; when it was approved there was a condition attached to it dealing with fire protection and installation of a fire cistern prior to a lot being adopted. Mr. Doherty recalled the Board requiring the existing house (across the street, Lot 1-51-1) to remain as part of the conservation subdivision and homeowner's association. He said they had to be

consistent. Mr. Maynard was unclear why the subdivision and proposed development couldn't be done all at once. Mr. Doherty replied if they proposed to use the frontage from the parcel containing the existing home to get the plan in front of the Board and then not count it toward the development it went against what the Board had other developments do. He said he wanted to be consistent with all applicants that came before the Board. Mr. Maynard wanted to understand why he couldn't come in front of the Board with one plan (plan A) to subdivide off the front, and then (plan B) to plat a new road for acceptance and permit.

Mr. Bergeron believed Mr. Doherty was indicating that the proposal flew in the face of the spirit and intent of a conservation subdivision. He pointed out that the applicant had the ability to come in with a road from Patriot Drive with a conventional subdivision. He said the Board may not want to grant a conservation subdivision. Mr. Doherty pointed out there were several items in the regulations, such as 307-100 Parcel Requirements. He said in this case buffers would be carved out and not be included with the development. Mr. Bergeron reiterated his belief that the proposal violated the intention of conservation subdivisions.

Mr. Clark asked if the remainder of the land wouldn't be eligible as a conservation subdivision if the front lot was subdivided off. Mr. Doherty replied if the front parcel wasn't going to be used in the conservation subdivision then it would have to be removed. He said the last applicant that wanted to do a similar thing had to remove the frontage parcels by bringing in two separate applications. Mr. Clark questioned if the primary concern was that the road had not been accepted. Mr. Doherty said prior to the meeting it wasn't a concern, but when the plan was presented, he thought about the zoning and the way it was intended.

Mr. Maynard noted Cornstalk Lane had not yet been accepted by the Town and was still owned by the original owner who had done the development. Even though there was a right-of-way approved by the Town, he wanted to know if the 75ft. of frontage on Patriot would be used as the frontage talked about under Parcel Requirements 307-100. Mr. Gowan believed frontage on a right-of-way was basically the ability to go in and build a road. He said if Mr. Maynard wanted to carve off conventional lots first, the conventional lots would each have to have 200ft. of frontage on a Town approved road. He commented when the plan gets into the conservation subdivision portion the Board controls all aspects of the innovative land use. He said the case Mr. Doherty referred to became confusing because the developer was trying to mix two things. Ultimately, the Board had the developer carve off the conventional lots and come back with a conservation subdivision because the ordinances weren't designed to 'mesh' together. Mr. Maynard understood he could come in and subdivide off the frontage lot first and have a separate application at the same meeting to do the conservation subdivision. He noted that the applicant still owned the land because it hadn't met the previous condition that had to be met. Mr. Doherty felt that would qualify as the 50ft. Mr. Maynard understood he would have to bring in two separate applications.

Mr. Clark asked if the applicant would be able to do two applications at the same time. Mr. Gowan answered yes; however, each one would require its own separate notice and clarity for the abutters being noticed as to what was being done. Regarding the proposal in front of the Board, he didn't believe the Board should make a decision on 'yield' until Keach Nordstrom (Board's engineering review firm) had reviewed and provided comments. Mr. Doherty pointed out that the Board wouldn't be approving a 'yield' plan during conceptual review because at this stage they were giving the applicant comment so the applicant could decide how they wanted to progress forward. He noted if the applicant carved out the existing lot, they could still have either a conventional or conservation development based on the remaining acreage. He felt the Board should concentrate on which development would be more viable after the existing parcel was carved out.

In looking at the proposals, Mr. Bergeron felt it was a conservation subdivision that didn't fit the spirit and intent of their conservation subdivision regulations. Although he understood they were meeting the percentages and acreage, he didn't see any viable/quality open space remaining. He said there was only non-contiguous open space that was connected by shallow corridors. He said the wetland couldn't be crossed over by anything and had no viable use. He saw the proposal moving forward as a conventional subdivision. He spoke about the well radii shown on the plan which overlapped with other well radii, driveways, building

envelopes and saw peculiar shaped 4K areas, all of which he didn't like based on the underlying soils in the area. He saw there was a Shoreline Protection area on the east side of the property. He felt if they wanted to protect the area, having a conventional subdivision would work if the yield could be proven out. In his opinion, Mr. Bergeron didn't see the proposal moving forward as a conservation subdivision. He noted that the Selectmen didn't accept the land upstream on the other side of the road so there wouldn't be any connectivity. He also noted that the wetland couldn't be crossed by an OHRV or snowmobile. Mr. Bergeron commented that the proposed lot sizes of the conservation lots were small and concentrated in one location, whereas if a conventional development was built, the lots would be spread out and have more safety built into the land to protect the water. He couldn't support a conservation development but may consider it if the applicant could get a Pennichuck Water line to the area.

Mr. Montbleau stated a conservation development would reserve 40% for open land. He said when thinking about open space, he thought about habitat, not just human use. Mr. Bergeron replied he also thought about that aspect. In looking at the difference between the cul-de-sac in the conventional versus the conservation was minimal. He believed the conventional plan would provide better protection to the wetland and the wells and described the elements with the land and proposal that supported that belief.

Mr. Thomas saw a note on the plan and asked for clarification if there was a 'rock crushing' or 'asphalt plant' on site. Mr. Maynard replied rock crushing was an aggregate used in asphalt. Historically, the property has been an asphalt company from the late 1940s. They would take and crush rock and mix it with asphalt material to make paving. Mr. Thomas asked if the mixing was done at the plat (on site). Mr. Maynard answered yes. Mr. Thomas pointed out that asphalt was an organic material and carcinogen. He was concerned about soil contamination based on the area's history and the placement of the proposed homes. He said it was a serious situation that could affect the water supply in the area. Mr. Maynard stated he had done several test pits on the property and didn't see contaminated soil in the areas he was in. He said his client (who is purchasing the property) was also in the same business. He didn't know if they had done an environmental study for their purchase and sales but could ask if they had done so. Mr. Thomas was concerned and wanted the record to reflect that he felt before anything went forward there should be a third-party evaluation of the property, for at least the area surrounding the plant, in terms of soil contamination that could affect the water supply. He said asphalt was an organic material that could diffuse through the water. Mr. Maynard stated typically that wasn't something he was involved with unless something came up during permitting. He would ask his client if they had done any testing during their initial evaluation to purchase. Mr. Montbleau questioned if the banks funding the project had that type of requirement. Mr. Maynard wasn't privy to that information. Mr. Dadak commented the bank mortgaging the project may have requirements and suggested the applicant ask the question.

Mr. Culbert understood Mr. Thomas was referring to core testing. Mr. Thomas wanted to assure that the land had purity in terms of no contamination. Mr. Culbert suggested the Board tell the applicant that core testing should be done. Mr. Maynard replied he would need a basis/scope of work the Board was asking for. Mr. Montbleau stated the Board should consider deferring to Keach Nordstrom for that scope and site assessment.

Mr. Doherty spoke about the conservation land the Town had been acquiring. He referenced the site across the street and commented when that development came in front of the Board, he suggested the Board consider asking the applicant to donate the open space (within the development) to the Town. He said behind that development there was Town land and described how it might have potentially been connected through future development. He said the Board should be thinking of long term how different areas of the Town could be connected. He commented that the problem with the development across the street was that the Selectmen 'dropped the ball' and recently found out that they didn't accept the parcel. He said the Board worked hard with that other development, but now can't connect the proposed open space across street. Mr. Doherty stated the Planning Board needed to start working more closely with the Selectmen.



Mr. Clark was disappointed that the plan referenced (and mis-labeled) 'old rock crushing plant' when it was actually an 'asphalt plant', which he couldn't give a pass to. He wanted to know if the Board had a right to have an environmental review regardless of whether it would be conventional or a conservation project. He wasn't comfortable going forward without environmental information. Mr. Gowan replied it hadn't come up a lot, but felt the Board was within its right to be sure as they had a fiduciary responsibility to the future residents of the development to rule out contamination. He noted at the right step it would be reasonable to make some sort of request for environmental review. Mr. Clark advised the applicant putting anything on the parcel would need that information. He couldn't see accepting a plan for consideration without that information. Mr. Gowan recommended if the Board was to ask for that type of information, it should be after they've accepted the plan for consideration. Given that the plan was conceptual, Mr. Clark strongly recommended Mr. Maynard speak to his client about the expense of doing an environmental review of the property.

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

Mr. Gowan suggested polling the Board to find out whether they advise the applicant to move forward with a conservation subdivision.

Mr. Doherty wanted to know where the water runoff would flow in a conservation subdivision. Mr. Maynard replied down by the brook there was a pocket of open space. A conventional plan would need two detention ponds and a conservation plan would need one (in the back on Lot 7). Mr. Doherty asked if there was enough room next to the flood plain area. Mr. Maynard answered yes; however, it would probably need a Shoreline permit to construct the detention pond, but primarily within the 150ft-200ft setback associated with the brook. He noted there was flood plain area they would have to stay out of. They ran some preliminary numbers and found the area was big enough to do what was needed. Mr. Doherty saw there was enough room in the conventional plan but had been unsure if there as enough room in the conservation development where it would need to pick up all the roofs and driveways. Mr. Maynard noted with an alteration of terrain, it would probably end up being an infiltration-type pond in the back end of the site and good for ground water re-charge.

Mr. Bergeron inquired what was used to determine the 250ft. (shoreline limit). Mr. Maynard replied jurisdictionally the Department of Environmental Services ('DES') would use a 'defined top of bank'; however, in this case there wasn't one. In his experience the DES would have him use information from aerial maps (with any evidence) and pick off the thread of the stream and use a distance from the edge of that stream. Mr. Bergeron asked if there would be any misinterpretation of line shown on the plan. Mr. Maynard answered no; the plan showed the 'worst case' scenario. He stated they would apply for a Shoreline permit and pointed out they could go into the 50ft. area if they needed to excavate that far for an outlet, but he could permit between the 150ft. – 250ft. without issues. Mr. Doherty stated they would be within the flood plain. Mr. Maynard noted the wet back area was an old gravel operation from the paving business. He said because it was excavated the flood plain was brought up to the wrong sight. Mr. Bergeron said without having the benefit of proper scale, he saw less impact to the sensitive lots with a conventional plan. He felt the Board should decide whether the plan should proceed as a conventional or conservation plan. In his opinion they should suggest moving forward with a conventional plan.

In a conventional plan, Mr. Doherty asked if the retention area would be located on Lot 2 (sheet 3). Mr. Maynard replied it would probably be located off the cul-de-sac. He would need a special permit to get the outlet pipe to the wetland. Mr. Doherty said if the plan went forward as a conservation development he wanted to know if consideration was given to putting a community well in that location to supply the development opposed to having individual wells. Mr. Maynard preferred not to have a community water system from the standpoint of the permitting and associated costs because they would be double/triple the cost of having individual wells. Mr. Bergeron noted the Board could deny the proposal (per the Zoning Ordinance)

based on how they saw the water being supplied. In his opinion, the overlapping well radii and condensing of the wells in the area was a dangerous precedent for the Board.

Mr. Clark inquired if there was a length limit for a dead-end road with cul-de-sac. Mr. Gowan believed it was 2400ft. Mr. Clark saw that the road length was labeled in two sections. Mr. Gowan replied it was usually measured from the diversion point to each end point. He didn't think road length was an issue in this case. Mr. Maynard said one road measured approximately 650ft. to the center of cul-de-sac and the other measured approximately 528ft. to the center of cul-de-sac. There was an additional 550ft. back to Patriot Drive.

Mr. Montbleau asked for the Board to provide direction to the applicant. Mr. Bergeron offered to make a motion for the applicant to proceed with a conventional subdivision with the safeguards discussed by Mr. Clark and Mr. Thomas; however, he wanted further discussion regarding Mr. Clark's and Mr. Thomas' concerns. Mr. Doherty asked for clarification of the motion. Mr. Bergeron stated the Special Permit not be granted for a conservation subdivision. To have the applicant proceed with a conventional subdivision (based on plan set pages 2-4 provided to the Board). Mr. Doherty seconded for discussion. He asked Mr. Gowan if it was too late to obtain the open space across the street from the proposed development. Mr. Gowan said the Selectmen would have to accept the 'gift of open space'. He believed Mr. Doherty was referring to the Sherburne Woods development (corner of Sherburne Road and Mammoth Road). He said the lots were for the most part finished and sold, and the open space belonged primarily to the homeowner's association. Mr. Lynde stated he supported acquiring the land but was in the minority. Based on the response, Mr. Doherty saw no reason to have the proposal go forward as a conservation development. Mr. Clark wanted to know if the (Sherburne/Mammoth) subdivision allowed for open space, if the spirit was to still have the connectivity regardless of whether the Town owned the property. Mr. Doherty replied the parcel wasn't remotely able to be connected by the owners of the proposed property. He commented that he was usually very pro-conservation subdivision, but with the proposed parcel being long and skinny and containing so much wetland, he saw that the development would be pushed right to Patriot Drive abutters with effluents and retention ponds at the edge of the flood plain. He felt Mr. Bergeron made a strong argument for a conservation plan. Mr. Clark understood they may not be able to connect Town property to Town property but wanted to know if there was still an ability to connect open space to open space to create wildlife corridors. Mr. Doherty didn't feel the wildlife would use the open space along the two main roads, but it was possible. Mr. Clark clarified with Mr. Maynard how the lots would be configured within a conventional plan in relation to the brook. He would rather see the area near the brook held with some restrictions for natural value.

Mr. Bergeron noted if the development moved forward as a conservation subdivision the property and road would be privately owned. He said each and every case was different. Mr. Clark understood the Board was voting whether to have the applicant move forward with a conventional or conservation plan.

The motion on the floor was clarified; Mr. Bergeron stated his motion was for a conventional subdivision and for the applicant to do all their work with that intention, with the proviso of having a soil analysis. Being a conceptual review, it was understood there may not be eleven lots in a conventional subdivision. Mr. Clark felt neither option looked good without having an environmental review being done first and foremost.

Mr. Lynde stated one of the reasons the Selectmen didn't accept the open space (within the Sherburne Woods development) because they didn't see that there was safe passage across the street to go onto the land. He said the proposed lots abutted Town land and felt there was a better chance of making connectivity on the other side (of Sherburne Road).

Mr. Doherty felt the Board didn't need to vote and could instead have a member-to-member consensus.

Mr. Montbleau – Conventional development

Mr. Clark – Conservation development – leaning in this direction

Mr. Dadak – Conventional development

Mr. Doherty – Conventional development – leaning in that direction because of a lack of connectivity  
Mr. Bergeron – Conventional development  
Ms. Kirkpatrick – Conventional development  
Mr. Lynde – abstained from responding

Mr. Montbleau reiterated that there were members who needed assurance that the property was not contaminated.

Mr. Gowan wanted the members to understand that there was no requirement for a road within a conservation subdivision to be private. Mr. Bergeron further rebutted by saying that the ordinance does however provide for private road provisions.

## **DISCUSSION**

**Development of new zoning either by sub-committee or full Board. *Planning Director suggests establishing a schedule for zoning subcommittee meetings and/or full Board workshops for the balance of 2019.***

Mr. Culbert was in favor of having a subcommittee do the work and come back to the Board with information. Mr. Bergeron agreed. He felt subcommittees got a lot of work done and noted the subcommittee had to report back to the Board to make the final determination. He suggested each Board member pick a topic for the subcommittee to work on for consideration. He wanted to put a public notice out to advertise public input.

Mr. Clark recalled some discussion about having a quorum and asked for clarification. Mr. Bergeron understood Mr. Gowan needed legal posting time if more than three Planning Board members were in attendance. Mr. Gowan stated he simply wanted to post any meeting (subcommittee or board) accurately. He thought it was a great idea for the Board to start identifying the areas of zoning to prioritize. Mr. Clark asked if it was possible to form two or three subcommittees. Mr. Gowan answered yes. Mr. Clark questioned if alternates counted toward having a 'quorum'. Mr. Gowan believed alternates played an important role but didn't count toward a quorum. He felt the subcommittee should be an inclusive group with people from the public, engineers, etc.

Mr. Doherty felt discussions should go through a subcommittee process versus a workshop and post as a Planning Board meeting regardless of whether enough members show up since no significant votes would be taken. He noted votes during a workshop would have to be made by Planning Board members whereas votes during a subcommittee were a consensus by everyone present.

Based on statements made there was a general consensus for subcommittee meetings. Mr. Bergeron noted after the subcommittee got ideas on paper, the process would continue to a Planning Board workshop for them to vote. Ultimately, the voters would have the opportunity to vote on proposed/amended Zoning. Mr. Doherty discussed the process taken when he was the subcommittee chair. In that he asked members to list two things they were interested in focusing on; duplicates were prioritized.

## **NON-PUBLIC SESSION - If requested in accordance with RSA 91:A:3**

Not requested.

## **ADJOURNMENT**

**MOTION:** (Kirkpatrick/Bergeron) To adjourn the meeting.

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

The meeting was adjourned at approximately 9:45pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary

**ATTACHMENT – CT EQUIPMENT CASE #PB2019-00002**

**The following list below is our intended use for 18 Atwood Rd Pelham, NH**

Per the board's request, here is a details list of what we would like to use the South Side of 18 Atwood Rd for.

- This property would be used for storage purpose only, to park, house, store construction equipment. We plan on making the following repairs when necessary, -Inflate or changing a tire.
- Jump starting or changing a battery.
- Unlocking breaks, or any other minor repairs deemed necessary to move equipment out.
- THERE WILL BE NO FLUID EXCHANGE, MAJOR REPAIRS OR SALES AT 18 ATWOOD RD.
- Most of the equipment is running and operating, at no time will there be parts removed and offered for sale.
- hours of operation will be 7am to 10pm 7 days a week with the occasional drop off during off hours.

**Spills and leaking**

- We plan on always having a spill kit on site.
- All employees will be required to read the manufactures instruction and watch the following two videos.  
<https://www.youtube.com/watch?v=IUdevBQEbRO> <https://www.youtube.com/watch?v=ARiULAGczg>
- Below

-Below is a picture of the spill kit that will be onsite.

EMPLOYEES TO SIGN AVIDAVIT THAT THEY HAVE READ THE ABOVE.



a picture of the spill kit that will be onsite.

is